Tom Wicker has brought to the public's attention a thoughtful proposal developed in Cambridge, Mass., for a multi-city 200th national anniversary observance in 1976. The Cambridge group's views are the most advanced and meritorious of the many being advanced for the bicentennial celebration, and I insert it in the RECORD with my full endorsement:

NO EXPO FOR THE CENTENNIAL

(By Tom Wicker)

WASHINGTON, March 18.—John Canaday of The New York Times reports from Osaka that Expo '70 is "no more than the continuation of a pattern," the biggest and most fanciful version of Montreal and New York and Brussels and Seattle and Chicago and St. Louis and the other conventional fairs that in the past have served as showpieces of "progress"—as "a kind of supermarket" for modern technology.

Thus, he wrote, Expo '70 appears to be "the world fair to end all world's fairs, and there is a possibility that it will do just that." Maybe it should.

Why, for instance, to celebrate its 200th birthday in 1976, should the United States throw together in one of the presently competing cities—Washington, Boston, Philadelphia, Miami—another of these gaudy monuments to extravagance and vainglory? If past history is a guide, it would include all too many expensive, gadgety pavilions which, soon after closing, would be knocked down and hauled off by the junkmen with no lasting gain to anyone; it would both bamboozle and dazzle the multitudes with technological wizardry of little relevance to their lives; and both the expense and the irrelevance would mock the real social needs of America today, while symbolizing all too exactly the consumption-and-waste ethic that inflates the national economy.

All this is what a group of Cambridge, Mass., planners propose to avoid with a new multicity festival concept for the 200th anniversary. Its theme structure would not be a pretentious piece of bad sculpture but a high-speed rail transportation link between the participating cities—basically those stretching through the thirteen original colonies from Boston to Atlanta.

LONG-RANGE GOAL

Rather than seeking in an artificial environment of pavilions and displays something as elusive as "progress and harmony for mankind" (Osaka's theme), the multicity bicentennial would have as a specific goal a cooperative undertaking to improve in fact the actual environment of the participating cities and the areas between them.

Both the transportation link and the environmental projects—which would survive the passing of the bicentennial and act as functional models for other regions—would require great efforts from private interests, cities, states, the Federal Government, and regions as distinct as New England and the South; thus, these tangible efforts would virtually require development of the proposal's loftier central purpose of "bringing our people together."

The high-speed rail system linking the cities would beautifully symbolize that purpose. For the future, it would relieve dependence on air and highway transportation, and at the time it would provide the physical means by which visitors from all over the world could take in the various observations of the bicentennial cheaply, swiftly and comfortably.

These observations would take place in each of the various cities—first, by the exploitation of the existing historical, technical and recreational attributes of each; second, by their development with state and Federal aid not of temporary white-elephant pavilions but of permanent social improvements through new forms and ideas for housing, education, transportation, industry, communications and recreation. One standard project in each major city, for instance, could be the construction of a terminal that would provide maximum linkage of the rail line to air, highway, subway and bus systems.

NOT FOR EPHEMERAL GLORY

The cost would be great, the organization problems would be even bigger, and the time is so short that the plan might have to rely on some air links, particularly in the South. But that it would be the most challenging proposal the Commerce Department and the American Revolution Bicentennial Commission could put before President Nixon (the final decision will be his) only makes it the more appropriate for such an anniversary.

The greatest value of the idea has been expressed by the Cambridge Seven Associates, the group that developed it, in its title—not Expo '76, with all that that suggests of spectacle and ephemeral glory, but "Polis '76," with polis defined as "the city in its ideal form as a community" devoted to man's effort to live comfortably with himself.

SENATE—*Friday, April 3, 1970*

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

The Reverend Dr. David Justin Davis, pastor, Plymouth Congregational Church, Coconut Grove, Miami, Fla., offered the following prayer:

Almighty God, when we are in Thee, Thy wisdom illumines our minds and Thy power infuses us with moral and spiritual strength.

We pray for the Members of the Senate, for the President, for all advisers and counselors that they may guide our Nation wisely and rightly in these times of strife and turmoil.

Grant them strong faith, for faith can remove the mountains of fear, doubt, and indecision that weaken us.

Grant them lofty vision, for without vision the people perish.

Help them to set the example of justice, mercy, and righteousness which exalt a nation.

O God, rekindle in the hearts of all our people, the old and the young, the patriotic, the disenchanted, and the rebellious, a new appreciation of our blessings and an enlightened dedication to meet the challenges at home and abroad.

In the name of Him who said "Ye shall know the truth, and the truth shall make you free." Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 3, 1970.

To the Senate:

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

RICHARD B. RUSSELL,
President pro tempore.

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, with the permission of the acting minority leader, I should like to proceed for 1 or 2 minutes.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, April 2, 1970, be dispensed with.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS AND LIMITATION ON STATEMENTS THEREIN

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, at the conclusion of the remarks of the distinguished Senator from Florida (Mr. HOLLAND), there be a period for the conduct of morning business, with statements therein 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.

ADDITIONAL FUNDS FOR THE DISTRICT OF COLUMBIA BAIL AGENCY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 756, H.R. 16612.

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

The BILL CLERK. H.R. 16612 to amend the District of Columbia Bail Agency Act to provide additional funds for the District of Columbia Bail Agency for fiscal year 1970.

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

There being no objection, the Senate proceeded to consider the bill which was ordered to a third reading, was read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in

the RECORD an excerpt from the report (No. 91–753), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of the bill (H.R. 16612) is to meet the immediate need of the District of Columbia Bail Agency for additional funds to continue its operations. H.R. 16612 fulfills this purpose by removing the ceiling of $130,000 from the agency's annual appropriation authorization.

NEED FOR LEGISLATION

Your committee is advised by the District of Columbia Bail Agency that the agency will have exhausted its $130,000 appropriation for the fiscal year 1970 by approximately by the middle of April 1970.

As part of the official supplemental request for fiscal year 1970, therefore, the District of Columbia government with full support from the administration has sought an additional $16,000 for agency operations. Still, this necessary additional sum could not be paid out, unless the authorized ceiling is raised or removed.

From a practical standpoint, termination of the operations of the District of Columbia Bail Agency would severely cripple the administration of criminal justice in the District of Columbia. It is the District of Columbia Bail Agency (1) that supplies the courts of the District with information necessary for fail or other release determinations, (2) that must notify certain defendants of required court appearances, and (3) that supervises, to the extent that its resources permit, a substantial number of defendants in the community on court-ordered release.

Both Houses of Congress have now enacted comprehensive District of Columbia "crime packages," which at once revise the overall operations of the District of Columbia Bail Agency and raise or remove the ceiling on its annual appropriation authorization. (See the House of Representatives amendment to S. 2601 and the most recent Senate amendment thereto.) The imminence of the agency's financial embarrassment, however, requires that additional funding authorization be not delayed pending the resolution of differences in the House and Senate "crime packages."

HISTORY OF LEGISLATION

In January 1969, Senator Tydings, for himself, Senator Ervin, and Senator Hruska, introduced legislation (S. 545) to remove the ceiling from the District of Columbia Bail Agency's annual appropriation authorization.

The need which the bill S. 545 sought to meet was at that time considered to be of "emergency" proportions. As a consequence, a hearing was promptly conducted on the subject of the legislation, on February 1, 1969. (See published hearing, "Increased Bail Agency Staff," hearing before the Committee on the District of Columbia, U.S. Senate, 91st Cong., first sess., on S. 545, Feb. 1, 1969.)

The measure S. 545 was vigorously supported by the District of Columbia government, by the District of Columbia Bail Agency, and by the respective chief judges of the two criminal trial benches in the Nation's Capital.

The bill S. 545 was reported favorably by your committee, and was passed by the Senate without opposition on July 8, 1969.

On July 11, 1969, a District of Columbia omnibus "crime package" was introduced on behalf of the administration. This legislation (S. 2601 as introduced) revised, principally expanded, the operations of the District of Columbia Bail Agency and, again, increased the agency's funding authorization.

The House of Representatives initially deferred action of the Senate-passed measure S. 545 in favor of the incorporation of said measure into the House version of the omnibus "crime package." After receiving an urgent plea from the Executive Committee of the District of Columbia Bail Agency, however, the House Committee on the District of Columbia approved, and the House of Representatives subsequently enacted, the instant limited act H.R. 16612 akin to the original Senate-passed S. 545. (See letter of Roger Robb for the Executive Committee of the District of Columbia Bail Agency in appendix.)

DESCRIPTION OF THE BILL AND FURTHER DISCUSSION

The act, H.R. 16612, strikes the annual limitation of $130,000 from the appropriation authorization in the District of Columbia Bail Agency Act.

Your committee is advised that the original limitation was premised upon neither the scope nor the level of operations presently conducted by the District of Columbia Bail Agency.

Wholly apart from the functions outlined in the District of Columbia Bail Agency Act, as amended, the agency has had to assume responsibility for notifying certain defendants of required court appearances. Ordinarily the Bail Agency alone—not the courts and not court-appointed counsel—has adequate background data to locate the majority of defendants on nonfinancial release, on release with percentage deposit to the registry of the court (in lieu of commercial bond), or otherwise not subject to the supervision of a commercial bondsman.

As for the level of operations, the Bail Agency in its first year of existence processed 5,600 defendants. By calendar year 1969, however, the number of persons processed had loomed to 14,000. What was once considered a heavy daily load for the agency—namely, 50 defendants to be processed—has now become the daily average, and the heavy daily loads now average as many as 80 cases. The limitation on the annual appropriation authorization, meanwhile, has never been increased.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Michigan (Mr. GRIFFIN) is now recognized for not to exceed 30 minutes.

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

Mr. GRIFFIN. Mr. President, I rise to speak again on the nomination of Judge G. Harrold Carswell to be an Associate Justice of the U.S. Supreme Court.

As one who is deeply interested in, and fully committed to, the goal of maintaining and, indeed, enhancing the strength and vitality of the Supreme Court, I strongly support this nomination.

I am convinced that Judge Carswell is well qualified for a place on the Nation's highest tribunal. I am confident that after he is confirmed and takes his seat, he will serve ably and with distinction.

My only reluctance in speaking today is due to the fact that so much has already been said, and the record is so full and complete, that there seems to be little need to go over and over it again.

At the outset, I wish to make it clear that I do not question the rights or the motives of any Senator in challenging this or any other nomination. However, at the same time, it is difficult not to comment on the obvious and the apparent; namely, that some opponents of Judge Carswell have been seeking rather frantically—and almost desperately—for some issue of substance—for some question which might justify recommitting this nomination.

As the threadbare reasons for opposing Judge Carswell have been held up to the light and exposed, there has been a tendency, more recently, to turn the attack from the merits of the nomination to such targets as the FBI and even the President.

Mr. President, I believe it is now obvious to the Nation and to a majority in this body that the Senate should vote up or down on the merits of the nomination of Judge Harrold Carswell, and that no useful purpose can be served by recommitting the nomination to the Judiciary Committee.

Most important, Mr. President, that is also the view of a majority of members of the Senate Committee on the Judiciary to whom the nomination would be re-referred if the motion to recommit were to prevail.

In fact, a majority of the committee members have written a letter to that effect which reads as follows:

> The undersigned, being a majority of the members of the Senate Judiciary Committee, believe that no useful purpose would be served by further hearings before the Committee on the matter of Judge Carswell and, therefore, urge our colleagues of the Senate to vote against the motion to recommit on Monday, April 6.

The letter is signed by the chairman of the committee (Mr. EASTLAND), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from North Carolina (Mr. ERVIN), the Senator from West Virginia (Mr. BYRD), by the ranking Republican of the committee (Mr. HRUSKA), by the distinguished minority leader (Mr. SCOTT), the junior Senator from Michigan who now has the floor, the Senator from Hawaii (Mr. FONG), the Senator from South Carolina (Mr. THURMOND), and the Senator from Kentucky (Mr. COOK).

Mr. President, this nomination has been closely scrutinized by the Judiciary Committee and by the Senate. It has been subjected to the most searching and intensive investigation. Indeed, I question whether a nomination to the Supreme Court could be more carefully and more thoroughly examined.

Of course, the Senate has a perfect right and, indeed, an obligation, under its advise and consent power, to consider any nomination in depth and at length. It should do that. And it has done that with respect to this nomination.

The letter this morning from a majority of the members of the Judiciary Committee should make it crystal clear—if there was any doubt—that sending the nomination back to the committee would not only be a futile and useless exercise, it would be interpreted as an abdication by the Senate of its constitutional responsibilities.

Mr. BYRD of West Virginia. Mr. President, will the Senator from Michigan yield at that point?

Mr. GRIFFIN. I am happy to yield to the Senator from West Virginia.

Mr. BYRD of West Virginia. Mr. President, I wish to join with the Senator in the statement he is making. Might it not be a fair question to ask those who oppose the nomination, if they do not really have in mind killing it by recommitting it, whether they would be willing to add instructions to the committee to report back this nomination within 10 days or 2 weeks or 3 weeks.

I should think that would have been the proper approach if, indeed, their intent is not to kill the nomination. Let the committee hold hearings and require it to report this nomination back within 10 days, 2 weeks, or 3 weeks so that the Senate can conduct an up or down vote on the nomination.

Mr. GRIFFIN. I think the Senator from West Virginia, the distinguished acting majority leader, makes a very valid point; he underscores and emphasizes the fact that the real purpose of the motion as it has been correctly interpreted in the press, is to kill the nomination.

It seems that those who are opposed to the nomination—and they have a right to be—should be willing to vote on the nomination, up or down.

Mr. BYRD of West Virginia. Mr. President, if the Senator will yield further, does not the unanimous consent agreement close all possibilities of any amendment to add such instructions to the recommittal motion?

Mr. GRIFFIN. The Senator is absolutely correct.

Mr. BYRD of West Virginia. So that we are completely shut out from any such instructions. A vote to recommit, therefore, is a vote to kill the nomination.

Mr. GRIFFIN. The Senator is absolutely correct.

Mr. BYRD of West Virginia. I am glad the Senator is making the statement. I think that the Senate should face up to the decision and vote the nomination up or down.

Mr. GRIFFIN. Mr. President, much of the debate on this nomination has revolved around the respective roles of the President of the United States and the Senate of the United States.

No Senator could be more pleased than the junior Senator from Michigan that the Senate once again asserting itself and is fulfilling its advice and consent responsibilities. It is obvious that the Senate no longer operates as a rubber stamp with respect to nominations for the Supreme Court.

But on the other hand, it is important to keep the roles of the President and the Senate in perspective. While the debate on the qualifications of Judge Carswell is certainly within the sphere of the Senate's advice and consent responsibility, much of the opposition to this nomination bears earmarks of a desperate effort to void and turn back the election of 1968.

When the people in November 1968, chose Richard M. Nixon as their President, they indicated a preference to have him, rather than another candidate for the Presidency, nominate Justices of the Supreme Court.

President Nixon touched on that point in his letter of this week to Senator SAXBE. The President might well have said: "To the extent that the opposition to this nomination is really based on considerations of philosophy and politics, rather than on the qualifications of Judge Carswell, much more is on the line than the power of the President. In a real sense, the power of the people is at stake."

Mr. President, questions have been raised concerning the racial attitude of Judge Carswell. Some opponents have repeatedly pointed to some remarks he made in 1948 as a candidate for a local office in Georgia.

The attack is continued despite the nominee's eloquent and moving repudiation of those remarks in his testimony before the Senate Judiciary Committee when he said:

> I state now as fully and completely as I possibly can that those words themselves are obnoxious and abhorrent to me. I am not a racist. I have no notions, secretive, open, or otherwise, of racial superiority. That is an insulting term in itself, and I reject it out of hand. (Hearings, p. 10.)

The charges are repeated, despite the words of a former Department of Justice official. Following the Supreme Court school desegregation decision in the Brown case, he called upon the U.S. attorneys in the South to assist the Justice Department in the implementation of that decision.

In a letter to the committee, this former Department of Justice official, Joseph H. Lesh, stated that the only southern U.S. attorney to step forward and be helpful was G. Harrold Carswell, then U.S. attorney for the northern district of Florida.

Mr. President, in his conversation with me, Dean Ladd volunteered that in considering the possibility of the appointment as dean of the new law school in the South, one of his first concerns was the attitude in that community and in such a university toward the admission of black students. He said he was pleasantly surprised, not previously knowing the members of this committee, that not only was there no opposition or objection to the admission of black students to this new law school, in fact, he said, the committee, and particularly Judge Carswell, was insistent that this be the policy of the new law school.

He told me that there was some concern as to whether or not there would be qualified black applicants who would apply for admission to the law school. He said that the committee decided with the strong recommendation of Judge Carswell that the requirements of the Princeton Law School entrance examination (L.S.A.T.) should be waived if necessary, in order to make sure that black students would have an opportunity to attend the law school.

This was a view particularly expressed and agreed to by Judge Carswell.

In the course of the conversation which I had with Dean Ladd, he indicated that he would like to confirm his views and convictions on this point by sending me a telegram. His telegram, which was dated and received by me on April 1, 1970, reads in part as follows:

> Judge Carswell was a member of the committee appointed by the President of the University to select a dean and to establish the new College of Law at Florida State University. In late November, 1965, I was asked to come to Tallahassee to visit about this undertaking. I was much concerned about having an integrated law school and I did not know what the feeling would be as I had always lived in the north.
>
> I visited with the committee on this and at some length with Judge Carswell as he was a federal judge here.
>
> The judge was strongly in favor of having black students even though it became necessary to waive requirements under the legal aptitude tests if the applicants were otherwise qualified.
>
> He (Judge Carswell) expressed firmly the need of more qualified black lawyers and stated that with quality education he was sure we would have them.

Mr. President, deeds certainly do speak louder than words, and in my view, this very important incident in the life and service of Judge Carswell is most significant. I believe it speaks not only to the nominee's racial attitude and lack of bias but it speaks as well to his competence, his intellectual ability, his interest and achievement in the law, and his views on legal education.

Throughout the hearings and the debate, I have carefully followed and reviewed the nominee's record as a Federal judge. Although, quite candidly, I state that I do not necessarily agree with all of his decisions, I believe it would be unreasonable for a Senator to demand or expect 100-percent agreement with the views of any judicial nominee. And, quite frankly, a number of Judge Carswell's decisions provide convincing proof that he approaches his judicial responsibilities fairly and without bias.

Mr. President, in the case of *Pinkney* v. *Meloy*, 242 F. Supp. 943 (1965), Judge Carswell held that a hotel barber shop was covered by the Civil Rights Act of 1964, even though 95 percent of its clients, including the judge himself, were local Tallahassee residents.

This was the first time a court had been asked to consider whether the 1964 Civil Rights Act extended to a barbershop located in a hotel.

Significantly, at the time there were no judicial interpretations of the 1964 act by higher courts which would have required Judge Carswell to rule in favor of the Negro plaintiff.

In another case, Judge Carswell held that a restaurant at the Tallahassee Airport in the city of Tallahassee had violated the constitutional rights of blacks by maintaining signs designating separate waiting rooms, lunchrooms, and restroom facilities at the airport. I refer to his decision in the case of *Brooks* v. *The City of Tallahassee*, 202 F. Supp. 56 (1961).

There are other rulings by the nominee in favor of civil rights plaintiffs and, of course, there are decisions by the nominee which hold against civil rights plaintiffs. But this is no surprise. A judge who approaches cases which may come before him even-handedly obviously could not be expected to rule one way in all the cases. But, as his decisions demonstrate, Judge Carswell is a man of moderation and compassion in matters involving racial equality.

Moreover, Mr. President, I should like to restate a point well and eloquently made by the distinguished Senator from West Virginia in an address delivered recently on the Senate floor. From the standpoint of prior judicial experience, Judge Carswell is one of the best qualified nominees ever to be nominated for the Supreme Court of the United States.

Particularly significant are the nominee's 11 years of experience as a district court judge actually involved in the trial of cases. For on the present U.S. Supreme Court, with the exception of Justice Black's 18 months' service as a judge of the municipal court in Birmingham, Ala., and Justice Brennan's 2 years' service on the superior court of New Jersey, none of the other sitting justices had experience as a trial judge.

In case after case coming to the Supreme Court of the United States, errors in the conduct of a trial are urged as grounds for reversal. Certainly, one who has tried cases over a long period of time is well qualified to evaluate the impact of a given ruling by a judge, particularly in the type of case in which the Supreme Court is most frequently called upon to review trial errors—I refer to criminal cases.

It might be too much to insist that all Supreme Court Justices should have trial experience. But one former trial judge with extensive recent experience in the trial of cases in the Federal district courts would bring needed skills to the Court.

Judge Carswell is such a man.

As a district judge, he heard more than 4,500 cases, roughly 2,500 of which were criminal matters. Many of these cases were, of course, disposed of on motion or by a guilty plea. However, more than 750 cases were tried by the nominee.

And of the cases actually tried by the nominee, more than 93 percent were either not appealed or were affirmed by appellate courts.

Of all the matters brought before the nominee, more than 98 percent were either not appealed or were affirmed upon appeal.

I submit that such a record is one of which the nominee can be justly very proud.

It is a good record, particularly in view of a series of cases, unrelated to civil rights, which were reversed because of technical difference of viewpoint regarding the use of summary judgments. As a distinguished woman lawyer from Tallahassee observed:

> I have been engaged in practicing law in Tallahassee, Florida for the past four years and have had a fairly extensive practice in the District Court before Judge Carswell. He has always been eminently fair and courteous to all parties, he has displayed a deep learning in the law and his opinions have a clarity, that is sadly lacking in many . . .
>
> It has also been my observation that whatever reversals Judge Carswell has sustained at the hands of the Fifth Circuit have been the result of his being willing to use the summary judgment rule, a rule to which the Fifth Circuit is avowedly opposed. (Letter of Helen Carey Ellis, dated Mar. 20, 1970.)

An experienced, competent trial judge does not believe in trying issues of fact which have no conceivable bearing on the outcome of the case. In a number of the cases tried by Judge Carswell where he had ruled by summary judgment, the court of appeals returned the case for a trial of an alleged issue of fact.

Mr. President, in virtually all of these cases, the court upon reconsideration reached the very same decision as had initially been handed down by the nominee.

As we know, Judge Carswell is now a member of the Fifth Circuit Court of Appeals. I think it is important to note that a number of the very same judges, who have from time to time disagreed with the nominee's use of summary judgment, have highly praised his nomination to be a member of the Supreme Court.

For example, 11 of his fellow judges on the court of appeals have stated:

> As colleagues of Judge Harrold Carswell on the United States Court of Appeals for the Fifth Circuit, we hereby express our complete confidence in him as a nominee for associate justice of the Supreme Court from the standpoint of integrity, fairness and ability.

Mr. President, in addition to his experience as a trial and appellate judge, the nominee has been very active in efforts by the Federal judiciary to improve the quality of our courts.

Shortly after becoming a district judge, the nominee was appointed by Chief Justice Warren to the Committee of the Judicial Conference which analyzes the work, caseload and other factors affecting the performance of every judicial district in the United States. It is the recommendations of this committee, passed on through the Judicial Conference, that become the basis for the creation of additional judgeships by the Congress and for the improvement of the operations of the Federal judiciary.

Significantly, Judge Carswell was elected last year by a vote of all the circuit and district judges in the fifth circuit to be that circuit's representative on the Judicial Conference of the United States. To be selected from among more than 70 judges by a vote of his colleagues to represent them in the highest adminstrative body of our Federal judiciary indicates the high degree of confidence which fellow judges have in Judge Carswell.

Mr. President, what does all this show about Judge Carswell in the way of qualifications for the appointment to the Supreme Court?

In the nominee we find a very remarkable combination of experience—4 years in private practice, 5 years as a prosecutor, 11 years as a district judge, and a year as a judge of the Court of Appeals for the Fifth Circuit. We have a man who took time away from his normal judicial duties to be active in the work of judicial administration. We have a man who gave freely of his time and energy to assist in the formation of a new law school in his hometown. We have a man described by his fellow judges who have worked with him over a period of years, as having "intellect and ability of the highest order" and as one who "measures up to the rigorous demands of the high position for which he has been nominated."

In short, we have a nominee thoroughly qualified to be an Associate Justice of the Supreme Court. As Prof. Charles Alan Wright, one of the most respected authorities in our Nation on the Federal court system, commented:

> I have known Harrold Carswell for eight years and argued a case before him prior to that time. I have also had the benefit as I suspect many of the professors who oppose him have not—of reading every word of the hearings with regard to his nomination as well as the Report of the Judiciary Committee and the statements of individual views that accompany it . . . I hope that the nomination will be confirmed.

Mr. President, I am confident that the Senate will fairly and justly appraise the merits of the pending nomination. As one Senator, I sincerely believe that the nominee is well qualified and that his nomination to be an Associate Justice of the Supreme Court should be confirmed.

Mr. President, I ask unanimous consent that the telegram of Dean Ladd to which I earlier referred as well as three other telegrams be printed at this point in the RECORD.

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

APRIL 1, 1970.

Senator ROBERT P. GRIFFIN:

I take pleasure in sending you supplementary information about Judge Carswell's part in helping to establish the new College of Law at Florida State University in response to your telephone call to me this afternoon. Judge Carswell was a member of the committee appointed by the president of the university to select a dean and to establish the new college of law at Florida State University. In late November 1965 I was asked to come to Tallahassee to visit about this undertaking. I was much concerned about having an integrated law school and I did not know what the feeling would be as I had always lived in the North. I visited with the committee on this and at some length with Judge Carswell as he was a Federal judge here. The judge was strongly in favor of having black students even though it became necessary to waive requirements under the legal aptitude tests if the applicants were otherwise qualified. He expressed firmly the need of more qualified black lawyers and stated that with quality education he was sure we would have them. The whole committee felt the same way and were very happy when we had some black students. Some of those in school now are going to make able lawyers. I mention the matter of black students because this is very important to me. This was just one of the ways in which Judge Carswell has helped the law school. He was anxious that the new college be at the very top in quality and much has been accomplished in that direction. The judge selected his two law clerks from our graduating seniors. One stood in the top ten of 328 applicants who took the Florida Bar examinations the other was in the top ten of over four hundred who took a later examination. The judge has shown a continued interest and frequently inquired about its development. In the beginning period Judge Carswell came out to the law school and served as judge of first year student arguments. He had great interest in students and they respected him. The judge was a wise counsellor and he is surely entitled to high credit for his interest in establishing a high quality law school.

MASON LADD.

APRIL 2, 1970.

Senator ROBERT P. GRIFFIN:

As the former president of Florida State University I have worked closely with Judge Harrold Carswell. I requested him to serve

on an advisory committee when the first dean of our law school was under consideration. Things have been said about Judge Carswell which have not been given in the proper perspective. As one who has known him for many years I have been impressed with his integrity, his intellect and his sense of fair play. I consider him well qualified for the position of associate justice of the Supreme Court of the United States.

JOHN E. CHAMPION.

APRIL 2, 1970.

Senator ROBERT P. GRIFFIN:

I have been Judge Carswell's law clerk since February 3, 1969, when he was chief judge of the Northern District of Florida and have remained in the capacity during the Judge's tenure on the fifth circuit. During this time I attended virtually all pretrial conferences and hearings held by the Judge and have had the opportunity to observe his actions during the decisional process with a closeness and familarity that could not otherwise be achieved.

Without violating any confidence of the court by discussing the substantive merit of specific cases, there are two areas concerning Judge Carswell which should be mentioned. First, the Judge is fair and unbiased in matters of race in both his public and private life. From my observations the ugly charge of racism is totally without merit. There has not been one single instance where I have observed the slightest bias towards attorneys or causes because they involved racial or civil rights matters. Indeed, by my observation the Judge's demeanor and temperament towards black attorneys and those advocating civil rights causes has been more favorable than might otherwise be expected because the Judge patiently recognized that a dedicated advocate often becomes emotionally involved in his case. In fact, the only time I ever recall the Judge showing the slightest impatience with an attorney in a civil rights matter involved a school board's attorney. In the sensitive area of school desegregation, the Judge felt that it was the responsibility of a trial court to follow the decision of the appellate courts rather than to attempt to speculate what new course might be forthcoming. The Judge consistently sought to reach workable solutions which were consistent with sound legal and educational principles; second, there is the groundless charge of lack of ability. Having been a personal observer of the Judge for over a year and on two courts, I am totally and unequivocably convinced that he has one of the finest and quickest minds I have ever encountered. In writing decisions the Judge seeks two goals: clarity and brevity.

The Judge believes in thoroughly researching existing authority but distains efforts to impress people with pedantry unnecessary to the resolution of the immediate conflict. He has strived never to abuse his public office or the decisional process by using an opinion as a devise to advocate personal, political or social views.

Judge Carswell is a strong, thoroughly competent jurist with a keen, inquiring mind who has served with distinction for 12 years and will continue to serve in the future.

Respectfully,

T. R. MANRY III,
Law Clerk to G. Harrold Carswell, U.S. Circuit Judge.

Senator ROBERT P. GRIFFIN:

Having worked with Judge Carswell as his law clerk since July of 1969, I am absolutely and unequivocally convinced that Judge Carswell is in no way prejudiced against any individual or group as a result of race, religion, or sex, and that he has never acted with such bias in the court room or to my knowledge in his personal and civic affairs. As a woman serving as Judge Carswell's law clerk, I have always been treated fairly and equally in the assignment of responsibilities and tendering of opportunities.

Judge Carswell is keenly aware of his duty to dispatch justice impartially, speedily and in a manner which is judicially and constitutionally proper, and has done so with true competence. Having had some first-hand knowledge of Judge Carswell's character and access to the information about his background and judicial record now being aired in the Senate debates and by the press, there is no doubt in my mind that opponents to his nomination have incorrectly characterized his views, activities, record and abilities as a concerned citizen and new member of the legal profession. In addition to being a part of Judge Carswell's staff, I wish to go on record as endorsing Judge Carswell's elevation to the U.S. Supreme Court.

Respectfully,

Mrs. DIANE DUBOIS TREMOR,
Law Clerk.

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

Mr. GRIFFIN. I yield.

Mr. TYDINGS. Mr. President, what is the reference to that statement in the record?

Mr. GRIFFIN. The letter from the Justice Department official, Joseph H. Lesh, appears in the record at page 327.

Mr. President, there is much evidence in the record, most of which has been ignored, that Judge Carswell, indeed, has been sympathetic and, at the very least, moderate in his views on the subject of civil rights.

Of particular interest to this Senator was the role that Judge Carswell played in the establishment of a new law school in Tallahassee, Fla.—the Florida State University College at Law.

After learning about this incident in the course of the hearings as a result of the testimony of Professor Moore, a very distinguished professor of Yale University, I followed up my study of the record by personally making a telephone call to Dean Mason Ladd, the first dean of this recently established law school in Florida.

Dean Ladd is a very distinguished former dean of the University of Iowa College of Law and an outstanding educator. I spoke with him for some 20 minutes, and he related to me that he had been asked in the fall of 1965 to come to Tallahassee and consider the possibility of heading up a new law school.

The president of the Florida State University at that time, Dr. John Champion, had named a small committee to advise and to assist in the establishment of the college of law and in the selection of a dean.

That committee consisted of Justice B. K. Roberts of the Florida Supreme Court, Judge G. Harrold Carswell, Attorney Robert Ervin, then president of the Florida State Bar Association, and James Jonas, an alumnus of Florida State and also a graduate of Yale Law School.

Before relating further the conversation that I had with Dean Ladd, it should be pointed out that Prof. James Moore, professor of law at Yale Law School, who is an eminent legal scholar as well as a member of the Supreme Court's Standing Committee on Practice and Procedure, was consulted by the committee. In testimony before the Committee on the Judiciary, Professor Moore stated:

About 5 years ago a small group of jurists, educators, and lawyers consulted me, without compensation, in connection with the establishment of a law school at Florida State University at Tallahassee. Judge Carswell was a very active member of that group. I was impressed with his views on legal education and the type of school that he desired to establish: a law school free of all racial discrimination—he was very clear about that; one offering both basic and higher legal theoretical training; and one that would attract students of all races and creed and from all walks of life and sections of the country. Judge Carswell and his group succeeded admirably. Taking a national approach they chose, as their first dean, Mason Ladd, who for a generation had been dean of the college of law at the University of Iowa and one of the most respected and successful deans in the field of American legal education. And from the vision and support of the Carswell group has emerged, within the span of a few years, an excellent, vigorous law school . . .

I have a firm and abiding conviction that Judge Carswell is not a racist, but a judge who has and will deal fairly with all races, creed, and classes. If I had doubts, I would not be testifying in support, for during all my teaching life over 34 years on the faculty of the Yale Law School I have championed and still champion the rights of all minorities.

From the contacts I have had with Judge Carswell, and the general familiarity with the Federal judicial literature, I conclude that he is both a good lawyer and a fine jurist. (Hearings, p. 112.)

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

Mr. GRIFFIN. I yield.

Mr. TYDINGS. Since the Senator brought up the Florida State University School of Law——

Mr. GRIFFIN. Does the Senator have a question to ask?

Mr. TYDINGS. Yes, I do. Does the Senator from Michigan realize that a majority of the members of the faculty of the Florida State Law School opposed the nomination of G. Harrold Carswell and were willing to say so publicly? Does the Senator realize that?

Mr. GRIFFIN. The Senator from Michigan also realizes that this group——

Mr. TYDINGS. The Senator just finished telling us what a fine school it is.

Mr. GRIFFIN. It is a fine school.

Mr. TYDINGS. And he extolled the virtues of it. The fact that a majority of the faculty of this law school in the judge's own area, which is dependent upon the State legislature for financial support, would oppose the nomination of G. Harrold Carswell is perhaps the most damning type evidence that could be presented in opposition to his nomination.

Mr. GRIFFIN. The Senator is also aware of the fact that not one of those professors begins to approach the stature of Dean Ladd or the distinguished professor, James William Moore. I am also conscious of the fact——

Mr. TYDINGS. That is the Senator's opinion.

Mr. GRIFFIN. Mr. President, I do not yield further at this time.

Also I am very well aware that not a one of those young new professors is a

member of the Florida bar. Quite frankly, I am much more impressed with the views of those who have worked closely with the nominee than the views of a number of young professors whose motives in opposing the nomination are, at best, unclear.

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

Mr. GRIFFIN. I yield.

Mr. GURNEY. I am sorry I was not here earlier, when the Senator from Michigan was having a colloquy with the Senator from Maryland about the law school faculty of Florida State University. I did a little investigation into the background of those faculty members because, on the surface, it appears as though some hometown faculty members of a hometown law school are opposing Judge Carswell.

It was very interesting to find out something about the biographical sketches of these faculty members of the Florida State University Law School. I recite them here for the record.

Robert Davidow was one. He has been in Florida and at this law school less than a year.

Jarret Oeltjen, whose age is 28, has been at Florida State University Law School for less than a year.

Edwin Schroeder is another one. He is aged 32. He has been there less than a year. I might say he is the librarian. He is not even a law school professor.

John Van Doren, 35 years of age, also has been in Florida State University less than a year.

Kenneth Vinson, 34, also had been in Florida State less than a year.

Raymond Maguire has been there just short of 2 years.

John Yetter has been there just short of 2 years.

The last two are David Dickson and Francis Millett, who have been there about 4 years.

Not a single one of these law school faculty members are members of the Florida bar. They have never practiced in the Florida courts at all. The background of nearly all of them is very interesting. Before, they were professors at places like Harvard, Chicago, Yale, Columbia—in fact, only one of them was not at one of those schools, and that was the librarian.

What I am saying here is that these law school professors are in no way representative of the bar of Florida at all. None of them are members of the bar. None of them are Floridians.

Mr. GRIFFIN. I think more importantly, none of them have practiced in Judge Carswell's court.

Mr. GURNEY. That is very true; none of them have.

Mr. GRIFFIN. It is quite noticeable that most of the criticism of Judge Carswell that appears in the record has come from those who do not know him or have had very little contact with him. But the evidence in the record indicating that he is highly qualified comes from people who have dealt with him for a considerable length of time, and have had, in most cases, a close association with him. Is that not correct?

Mr. GURNEY. The Senator's point is certainly well made. The record is replete, of course, with endorsements of lawyers and judges in Florida who have been colleagues of Judge Carswell and who practiced before his court. But I did want to point out, more than anything else, that these law school faculty members, who are represented as coming from the university in his hometown, and represented as sort of hometown boys who oppose the judge, obviously are not that at all, but have been there for only a short duration, have come from a lot of places, and—I think this is important, too—obviously, from their backgrounds, their training, and their leanings, I am sure their political philosophy is highly liberal.

The ACTING PRESIDENT pro tempore (Mr. ALLEN). In accordance with the previous order, the Chair recognizes the Senator from Wisconsin (Mr. PROXMIRE) for not to exceed 30 minutes.

STUDENTS SHOULD SUPPLY CONSUMER'S VOICE

Mr. PROXMIRE. Mr. President, for too long the consumers have been ignored as "the silent majority."

No administration, including this one, deliberately goes out of its way to injure the consumers. However, each administration reacts to the facts which are presented to it and the pressures that are brought to bear on it.

The special interests have the knowledge, the power and the money to present their views to those in the administration who have to make decisions which may affect the special interests. Consumers, unfortunately, have not organized their power, they have not spoken up—primarily because they do not know what is going on—and, thus, they have been ignored by the decisionmakers. Their power is diffuse. Some items worth tens of millions to a special interest group, which makes it exceedingly important for them to organize their strength and to apply pressure, may mean only a few dollars to the average consumer and taxpayer. Consequently, it is almost impossible either to inform them about their interests or to arouse them about the consequences.

Consumer spokesmen are needed. Although there are various proposals for establishing official consumer spokesmen and there are many groups which take the consumers' side, what is really needed is an organized, broad-based consumer movement.

The best group to lead this broad consumer movement is our much maligned student population.

Our students have the power and the knowledge and the organization to become effective consumer advocates. Our students ought to become more sophisticated. As consumer champions their energy and idealism would be channeled into constructive endeavors. They ought to leave the streets for the hearing rooms in which decisions affecting millions of consumers are made. For too long, the only occupants of these hearing rooms have been the representatives of the special interests and the decisionmakers.

Our students have the ability to go out and dig up the facts that the decisionmakers must have if the consumers are to be protected. Our students have access to the necessary expertise to put these facts in perspective and to present them effectively. And our students have the power to make sure that the decisionmakers pay attention to these facts when they make their decisions.

Look at what one man, Ralph Nader, has done. Mr. Nader has been effective because he has exposed certain facts to public view and made people aware of the issues that were involved in these decisions.

Think of what thousands of Ralph Naders scattered throughout the Nation could do.

A LOOK AT THE RECORD

Let us look at what has happened to the consumers in the absence of such broad based consumer groups to present the consumer point of view and to expose the weaknesses in the special interest pleadings.

The record is clear and unequivocal: It is full of instances in which the interests of the silent majority, the consumers, have been sacrificed to the interests of very powerful economic forces.

The past is replete with such instances. Government is a continuing struggle to determine whether power and wealth will call the tune or whether the broad public interest will receive the representation it deserves.

We have watched while agencies, originally established to protect the public interest, have been captured by the very interests they were established to regulate.

We have seen numerous progressive and idealistic programs captured by interest groups or by an entrenched bureaucracy.

Virtually all subsidies—overt and covert—go to those interests who have the economic and political muscle to carry the day, not to the weak and the poor. Neither the weak nor the poor, nor the generations of the future, are fairly represented in the Halls of Congress or in the corridors of the bureaucracy.

Examples are legion. During the years in which my own party was in power, the infamous oil depletion allowance or other huge tax loopholes were never successfully challenged. Few attacked these citadels of privilege.

The ICC continued as a captive of the railroad industry it was designed to regulate.

Defense contractors' hearts beat as one with their Pentagon counterparts.

Men from the oil industry were appointed to the office of oil and gas and to a seat on the Federal Power Commission.

Central bankers were routinely called in by the Treasury to help set the rate at which Federal bonds were to be issued and sold.

The Negro and the sharecropper went unrepresented in the great educational and extension service programs of the Department of Agriculture.

I raise all these points against my own party and a Democratic administration because I do not want it thought partisan when I read the roll as to how consumer

interests have fared under the present Republican administration.

The answer is that it has fared no better and in some ways worse. It reminds me of the old song, "The Music Went Round and Round and Came Out Here," or the old campfire tune in which the leading line is "The second verse is the same as the first."

Because there are so many instances in which the consumers have been sacrificed to the special interests, I will only deal with a few blatant instances in which this administration, like its predecessors, ignored the advice of its own experts in order to subsidize or protect the special interests.

This caving in to the special interests can usually occur only when the consumers are unaware of what is happening; that is, the action must be too complex for the average individual to understand or be done behind closed doors so that the consumers do not find out about it. That is why it is so important to have consumer representatives with the time and the energy to examine the myriad decisions made by government officials on all levels which affect consumers.

INFLATION

Mr. President, inflation, along with rising unemployment, is today one of the greatest threats to our economy and, in particular, to the consumer. The stratospheric climb of the cost-of-living index shows almost no signs of slowing. In 1969, it rose by 6.1 percent, the highest rate in 18 years.

Inflation hits the little person—the low- and moderate-income families—the worst: The family that cannot afford meat for the kids, who must do with macaroni. The middle-class worker who has struggled to accumulate money for a home and now finds that, even if he can afford the downpayment, he cannot make the huge payments required with sky-high interest rates.

The big corporations are not hurt by inflation. While money costs them more than they would like to pay, they can, nonetheless, get it and pass the increased cost on to the consumer; and, of course, they have terrific internal sources of cash flow. The little man cannot pass on these increased costs to anyone. He is truly the one who is caught in the cost-price squeeze.

Consumers and homeowners should not be asked to bear the overwhelming cost of fighting inflation. It should not be placed disproportionately on the backs of postal workers and Federal employees with modest incomes.

Unless the administration realizes that the special interests must bear part of the cost of stopping inflation, we may plummet into a bone-jarring recession. New building permits dropped 23 percent in January from the previous month, the sharpest drop on record. The housing industry is already in a recession and other industries will shortly follow unless the administration bears down on the special interests.

But neither this administration nor most of the previous administrations took steps to stop inflation by squeezing the special interests as well as the consumers. Neither this administration nor the previous one has taken steps to reorder its priorities. To shift the huge benefits and economic favors from the producers and the powerful interests to the consumers and those in need. I think the record is clear they have not. Let me be specific.

OIL IMPORT QUOTAS

Eleven months ago, President Nixon appointed a Cabinet Task Force on Oil Import Control. Its report, which was released February 13, contained the most thorough analysis ever made of the rationale for limiting the importation of oil.

The only legal justification for imposing import limitations is national security.

Let me read what President Nixon's own Cabinet Task Force had to say about the national security justification of the present oil import quota program:

> The present import control program is not adequately responsive to present and future security considerations.

That statement alone, it seems to me, indicts the program pretty emphatically. Continuing:

> The fixed quota limitations that have been in effect for the past ten years, and the system of implementation that has grown up around them, bear no reasonable relation to current requirements for protection either of the national economy or of essential oil consumption. The level of restriction is arbitrary and the treatment of secure foreign sources internally inconsistent. The present system has spawned a host of special arrangements and exceptions for purposes essentially unrelated to the national security, has imposed high costs and inefficiencies on consumers and the economy, and has led to undue government intervention in the market and consequent competitive distortions. In addition, the existing quota system has left a significant degree of control over this national program to state regulatory authorities. If import controls are to serve the distinctive needs of national security, they should be subject to a system of federal control that interferes as little as possible with the operation of competitive market forces while remaining subject to adjustment as needed to respond to changes in the over-all security environment. A majority of the Task Force finds that the present import control system, as it has developed in practice, is no longer acceptable.

Mr. President, that was President Nixon's own appointed task force, selected by him, appointed by him, and this was their finding.

I repeat the conclusion of the presidential task force:

> The present import control program is not adequately responsive to present and future security considerations.

The only basis which justifies its existence.

What did President Nixon do with this report that took 11 months to complete? Despite the fact that the task force estimated the present oil import quota program costs the American consumer $5 billion a year, President Nixon set up another group to examine the problem. This new group has the same membership as the task force with two significant exceptions: Secretary of Labor Shultz, the former chairman of the task force, who was the only professional economist among the original group and the only member to admit that the domestic price oil could drop to $2.50 a barrel without injuring our national security—incidentally, a drop which would have enormously benefited our consumers—was the only member of the original group excluded from the new group. And Attorney General Mitchell, President Nixon's chief political adviser, who allegedly told Secretary Shultz before the task force report was cleared "don't box the President in," was added to the group. Why? I think the answer is obvious. He was trying to insure that this new group would be more responsive to the oil interests.

Mr. HANSEN. Mr. Presdent, will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. HANSEN. First of all, I should like to say that I welcome this opportunity to be able to discuss with my good friend, the Senator from Wisconsin, a problem that has been featured prominently in the news for several months. As the Senator knows, perhaps as well as any other Member of either House of Congress, there is great interest in what should be our national policy with regard to our oil program; and I think few people indeed have studied the issue as assiduously and as studiously as has my friend from the State of Wisconsin.

I am certain that when he says that he finds it hard to understand why the President of the United States has not chosen to implement the advice of a majority of the members of the task force, he raises a question that has been asked many times. I asked the same sort of question a few years ago, when President Johnson, my President, appointed a study group to see what might be done with the postal deficits and what ought to be done about postal reform. I thought that the Cabinet commission report had great merit, and I was surprised that not one member of the President's own party chose to recommend that the proposals that had been made by that study group be implemented by legislation. So, finally, after waiting some time, I, myself, introduced a postal reform bill, which would have put into law the recommendations made by the President's study group.

Now the distinguished Senator from Wisconsin has raised a question.

Mr. PROXMIRE. Mr. President, will the Senator yield at this point?

Mr. HANSEN. I yield.

Mr. PROXMIRE. The Senator may not have been in the Chamber earlier, when I said that I was very critical of past democratic administrations for caving in to special interests at the expense of the consumer.

I think the Senator raises a legitimate and proper point. The expert task forces are appointed by the President and make their studies; and when the evidence is as convincing as I felt it was in this case, it seems to me that there should be every reason why the President should implement it, especially under present circumstances, when inflation is so serious and the timing is so important.

It is not going to help consumers very much today if 3, 4, or 5 years from now this report may be partially implemented. It has to be done now, if it is going to help the consumer.

Mr. HANSEN. I appreciate the Senator's calling my attention to what he had said prior to my entering the Chamber. I am sorry that I was not able to be present just as he started to speak.

I will say only this in response to his statement: I think that in many, many instances some very commendable work has been done by study groups. But just as an individual occasionally can be mistaken, I think it is equally true that a study group also can be mistaken. I would cite as classic example No. 1 of that fact the report that a majority of the President's task force made on the oil import question. I think they were wrong; and I suspect that as we look back from the vantage point of historical perspective a few years from now, we will agree that it was a happy day for America that the recommendations of a majority of those who served on this particular study group were not implemented into law nor into actions by the Executive.

Mr. PROXMIRE. If I may interrupt, I want to tell the Senator from Wyoming that he is a very able Senator. I saw him on national educational television last Sunday, and he did an excellent job. I thought he was the best witness who appeared in that very fine show, and they were all good witnesses. It was a fine presentation of the issue we are discussing now.

I should like to discuss this with him in detail. I am in difficulties, however, because time is limited for my speech. The Senator from Florida (Mr. HOLLAND) is waiting. He has a half-hour speech to deliver right after mine. My order covers only 30 minutes. Therefore, I shall have to restrict my yielding to the Senator from Wyoming perhaps to one more brief observation on his part, because I do have to get on with my speech or I will have to yield the floor.

Mr. HANSEN. I do appreciate that, Mr. President.

Without knowing what may be contemplated today insofar as action on the floor of the Senate is concerned. I respect the Senator's desire to complete his speech. It is entirely proper that he should be accorded that privilege, and I will not interrupt him further, although I will want to raise a number of points. I certainly do not want to do anything to contribute to a denial of our opportunity to hear from the distinguished Senator from Florida.

If the distinguished Senator from Wisconsin is here later, after he has concluded his remarks and after the Senator from Florida has spoken, I wonder whether I might raise some questions with the Senator from Wisconsin.

Mr. PROXMIRE. Yes, indeed. I would be delighted to do that. I will make it a point to be here.

Mr. HANSEN. I thank the Senator. I appreciate that courtesy.

Mr. PROXMIRE. Mr. President, why did President Nixon postpone a decision on this program that is fueling the fires of inflation, costing the American consumers $5 billion a year and is, according to his own experts, unresponsive to our national security needs? The answer is supplied by a recent National Journal article which quoted an aide to Peter Flanigan, one of President Nixon's chief advisers who said: Flanigan "focused his attention on the political aspects of the issue rather than the economic aspects." In other words, because there was no consumer group to make its voice heard and to provide a counterweight to the oil groups, it was easier to give in to the pressures of the oil industry by trying to hide behind another "study," at least until after the election, than to stand up for the voiceless consumer.

This impression is reinforced by President Nixon's recent decision to cut back the amount of Canadian oil that can be imported into the United States. There was no impairment of national security by the importation of cheaper Canadian oil. Indeed, it is more secure from a security standpoint than Alaskan oil, or off-shore oil, or oil from Louisiana or Texas which has to be shipped by tanker around to the Atlantic Ocean. The only conceivable justification for President Nixon's action, which will cost midwestern consumers about 1 cent a gallon in higher prices, is that he believes the oil companies have a divine right to a certain amount of oil import tickets worth $1.50 a barrel. His action takes over $85 million from the pockets of the consumer and puts it into the pockets of big oil. If he had thought about the consumers, he could have given the oil companies their due by just excluding Canadian oil from the level of imports allowed to come in from foreign countries. This would give the consumers the cheaper but secure Canadian oil and at the same time continue the expensive subsidies for the big oil companies. But, the President did not take even that action. Why? Because the consumers voice was not heard. There was no one to force the administration to take the consumer into consideration.

SUPERSONIC TRANSPORT

The supersonic transport, the SST, presents another obvious example in which the administration ignored the advice of experts to subsidize the special interests. To his credit, President Nixon last year appointed a special ad hoc committee to reexamine the rationale of the SST and determine whether the Federal Government ought to continue spending money for its development in light of the obvious economic limitations caused by the sonic boom.

Let me read you, Mr. President, what various members of President Nixon's committee had to say about the SST. They were appointed by President Nixon to give him their expert advice on the SST and whether we should go ahead with it:

The Council of Economic Advisers:

We do not believe that our prestige abroad will be enhanced by a concentration on white elephants . . . Our recommendation, therefore, is that no funds for prototype construction be included in the 1970 budget.

The Department of Labor:

The justification for proceeding with the program is not now apparent.

Treasury Department—they are called upon to help advise this Nation on its balance of payments and that is an area in which the Treasury Department is excellent:

We would be opposed to heavy further commitment of Federal funds at this stage.

They point out that the SST would have an adverse effect not a favorable effect on our balance of payments.

The Office of Science and Technology:

On the whole, I come out negative on the desirability for further government subsidy for the development of this plane and would suggest that the possibility be explored of turning the remainder of the development and, of course, all of the production expenditures over to private enterprise.

The Interior Department made a finding that in terms of the effect on the atmosphere not only of the sonic boom but also other adverse effects, the SST was a serious mistake.

In other words, President Nixon's own group of experts said that the Federal Government should not subsidize the SST. Such expenditures were not justified by considerations of balance of payments, economics and design, employment, environment effects, passenger safety, technological fallout or national prestige.

Yet, the Nixon administration wants to amplify President Johnson's mistake and spend up to $4 billion over the next few years to subsidize the development of a plane that will allow members of the jetset to arrive at their destination a little earlier. If the economics of the situation justified it, the airplane manufacturers would fund the development of the SST themselves.

Apparently, it is all right to spend money to subsidize the well-to-do, but not to protect the consumers, the silent majority. Apparently, we have the money for the SST but not to meet the burgeoning needs for housing, pollution, health and education.

In order to fight inflation, President Nixon would cut the school milk program, and provide less than is needed for health and vocational education.

At that point the White House and President Nixon were on record, because his consumer office was on record, against unsolicited distribution of credit cards. Yet, on December 7, 1969, when I held hearings on the bill which would only regulate unsolicited credit cards, not ban them, Mr. Meade did a turnabout, representing the White House, and indicated the whole issue needed further study.

Why he has even asked that Federal employees forgo for 6 months their cost-of-living raise which would enable them to keep their heads above the wave of inflation that the administration has not stopped. All of these acts would hurt the needy, not the special interests. Vocational education is the best way of taking people off the relief rolls and in the long run is one of the most effective ways of combating inflation. Cutting these programs is not the way to stop inflation. Cutting the subsidies to the special interests is the way to stop inflation, but it takes courage.

CONSUMER PROTECTION

Consumer protection is another area in which the administration has sadly

failed to respond to the needs of the silent majority. Although Virginia Knauer, President Nixon's very competent consumer adviser, has been allowed to talk about consumer protection, she has not been allowed to take any significant action to help the consumer.

UNSOLICITED CREDIT CARDS

Unfortunately, in today's complex society, the average consumer has almost no protection against giant corporations relying upon gigantic, impersonal computers which can ruin an individual's reputation. In the old days, when a store or a bank made a mistake, the consumer could go into the store or bank and talk to someone who could rectify the error right away. Now, the average consumer has to deal with a computer which may or may not respond to requests for corrections.

In order to protect the consumers against possible abuses from unsolicited credit cards, I introduced a bill, S. 721, to regulate them. Robert Meade, who was Mrs. Knauer's assistant, supported a total ban on unsolicited credit cards in testimony before the House Subcommittee on Postal Operations November 19, 1969.

The reason for this change in position, according to the National Journal, which is widely respected for its accuracy, was that he was ordered to do so by Presidential assistant Peter M. Flanigan. Meade was ordered to do so less than 72 hours before he was to testify before the Banking and Currency Committee. Perhaps this is what Presidential counselor Bryce Harlow meant when he told the American Advertising Federation:

> This (Administration) is more likely to be alive to legitimate concerns of industry than those whose political fortunes are dependent upon interests usually antithetical to American business.

Fortunately, some people do care about the consumers. The members of the Banking and Currency Committee voted out a bill prohibiting the mailing of unsolicited credit cards and the Federal Trade Commission took similar action within its sphere of influence.

CLASS ACTIONS

As a practical matter, an individual consumer is powerless to curb abuses by the giant corporations that run our economy. Unless he has independent means, he is unable to bear the cost or to take off the time to bring legal action against a corporation to recoup his damages or prevent further abuses. The average consumer just cannot afford the legal costs involved in such a step.

The only way to provide consumers with an adequate legal remedy is a strong class action bill which would allow one consumer to sue on behalf of all consumers who have been similarly injured by a corporation's activity.

Senator TYDINGS, one of the leading consumer advocates in the Senate, introduced such a bill, S. 3092, and on July 28, 1969, Mrs. Knauer, representing the White House and the Nixon administration, supported such a strong class action bill.

Knowing that Congress was likely to pass a strong class action bill, and being wise in the ways of the administration, the American Retail Federation which represents most of the special interests that might be brought under control by such a measure spoke to Peter Flanigan; the same Peter Flanigan who attempted to squelch Meade on unsolicited credit cards and who took the "political" approach to oil imports.

Once again, the Nixon administration listened to the pleas of the special interests and forsook the consumers. In his "consumer message" of October 30, 1969, President Nixon recognized the pressure for a class action bill, but recommended one that failed to correct the major weaknesses in the present system: Rather than providing relief, Nixon's bill provided an illusion of relief.

The Nixon administration bill, S. 3201, would only allow class actions to be brought after the FTC or the Justice Department had completed "final action" against the offender and, even then, class actions would only be allowed in 11 specific instances. The problem now is that neither the FTC or the Justice Department can cope with all the consumer abuses that are brought to their attention. Class actions are intended to provide an alternative means of relief. If class actions must depend upon "final action" by these agencies, then the whole purpose of class action suits is effectively undercut.

SPECIAL INTEREST LEGISLATION

Having seen how, without a loud and effective voice, the consumers are forgotten when giving them protection interferes with the activities of the special interests, it should come as no surprise that the same thing happens when it comes to law enforcement. Apparently, the administration feels it is alright to strengthen the laws that apply to the little man, but not to the laws that apply to the more sophisticated and, I might add, more dangerous law breakers.

SECRET SWISS BANK ACCOUNTS

Secret numbered accounts in Swiss banks have been used as conduits by criminals to hide their ill-gotten gains from taxation and to take over legitimate businesses without anyone knowing it. The only way to stop this activity is to expose it. One way of exposing this flow of funds is to require U.S. banks that are transferring funds to Swiss banks to keep records of such transactions which could be examined by law-enforcement agencies.

Once again, we have the same situation. Will R. Wilson, Assistant Attorney General, Criminal Division, recognized the need to expose the flow of illegal funds to secret Swiss bank accounts and on December 4, 1969, testified in support of H.R. 15073, which would do just that. This bill was drafted by the staff of the House Banking and Currency Committee and experts from the Treasury Department, although, of course, their function at that time was to see that the provisions of the bill were technically correct, not to endorse the goal of the bill.

The bill, however, would or, rather, could interfere with the extremely profitable trade our largest banks have with the Swiss banks. That could not be allowed to happen and on the very day that Assistant Attorney General Wilson was testifying in support of H.R. 15073, representatives of the Bank of America, Chase Manhattan, First National City Bank & Trust, Manufacturers Hanover, and the American Banking Association met with Eugene T. Rossides who is an Assistant Secretary of the Treasury. Manufacturers Hanover, by the way, is an expert in this area because they have been involved in Vietnam currency manipulations through some Swiss banks.

In any case, their entreaties fell on friendly ears and on December 10, 1969, Assistant Secretary Rossides repudiated his own technicians from the Treasury Department and attacked the bill as unworkable. Strange, is it not, that he would endorse the objectives of the bill and yet attack the provisions of the bill drafted by his own experts?

Fortunately, for the consumers, some alert newspapermen picked up the activities of the bankers. Exposed to the glare of publicity, Rossides had to do some fancy footwork. Rather than oppose the bill entirely, now he suggested giving the Secretary of the Treasury the authority to do what he deemed necessary to block this loophole. The House Banking and Currency Committee, however, saw through this transparent ploy. Knowing the relationship between the banks and the Treasury Department, the committee voted on March 17 to report out the bill originally proposed by Representative PATMAN and drafted by the Treasury for him. This victory was only possible because a strong consumer advocate kept pushing for it and the special interests could not stop him in the light of publicity.

SUMMARY

Mr. President, the record is clear. When an administration, Republican or Democratic, is faced with a choice of protecting the voiceless consumers or protecting the vocal special interest, it protects the special interest.

I have listed four specific instances in which this administration has rejected the advice of its own experts in order to further some special interest, four instances in which the consumers were thrown to the wolves, four instances in which the consumers remained silent. In one instance—the secret Swiss bank accounts where newspapermen spoke up in behalf of the public interest—the Congress has to date rejected the special interest to act in the public interest. The moral is clear. These fights are not inevitably going to be won by special interests. The consumer can win. But it is going to take work and organization.

Although, as Bryce Harlow pointed out, this administration is "friendly toward business," the problem of the forgotten consumer is, of course, not limited to this administration. It is a persistent problem which has existed as long as I have been in the Senate and, I would imagine, long before.

Mr. President, the need is clear. The consumer must have a voice. That voice could be supplied by the students of our Nation. Students could function as the consumers' ears, informing and arousing

the consumers as the need arises if they were willing to channel their energy, talent, and idealism in that direction.

The special interests may be able to afford large campaign contributions and swarms of high-priced lobbyists, but the consumers have the votes.

Mr. President, I yield the floor.

A NATIONAL POLICY ON AN OIL PROGRAM

Mr. HANSEN subsequently said: Mr. President, it was the intention of the distinguished Senator from Wisconsin (Mr. PROXMIRE) to be in the Chamber with me this afternoon in order that I might ask some questions and debate some of the points he made earlier today in his speech on the floor. Time limitations precluded that opportunity this morning when the distinguished Senator spoke. In order that Senators might have the benefit of our opposing points of view, the Senator from Wisconsin asked that I proceed without him.

The mandatory oil import program was instituted by the Congress in 1959 for one reason: To assure the adequacy of domestically produced oil and gas necessary to guarantee our national security.

Our country is fed, clothed, and sheltered with the aid of ever-present, ever-ready energy. We move by ship, plane, train, or car—with energy 99 percent petroleum generated.

Seventy-five percent of all the power Americans use comes from oil and natural gas.

President Roosevelt understood this. We had access to the extra petroleum reserves which tipped the scales in our favor in World War II.

President Truman clearly comprehended our vital stake in energy—petroleum energy.

President Eisenhower ordered the study resulting in the mandatory oil import program. Having led the allies to victory, no one knew better than he how closely related is abundant oil and gas supplies to national security and independence.

President Kennedy enacted the present 12.2 percent quotas in 1962 which included Canada.

President Johnson continued this program.

> I would like to state here my firm view that, in the present world petroleum situation, oil imports should be controlled in the interests of our national security. I think there has always been a strong case for this and there is today. This is the paramount, the only reason why such imports are controlled. In no sense does this position alter my views with respect to opposing trade barriers generally. But in the case of oil, our security would be jeopardized unless we have a strong, healthy, domestic oil industry, capable of meeting the demands of any conceivable emergency. One only has to look at the Middle East and what happened there a few months ago; Israel had to win or lose a war in a matter of days because of the fact that the mobility of their machines rested on very limited supplies of petroleum and I just use this to underscore what I mean.

Secretary Udall, incidentally, was speaking before the Committee on Finance on October 18, 1967, when he made this statement. I continue to read from it:

> This we could not do if low-cost oil from petroleum-exporting countries were to flood this country, with consequent damage to our own energy-producing industries.
>
> The relationship between our national security and adequate supplies of oil is clear. On this score, it suffices to point out that oil is practically the sole source of energy for transportation—both civilian and military, and we are a highly mobile Nation.

President Nixon has wisely chosen not to implement a change in a program which would surely seriously weaken our security.

In his address before this Chamber this morning, the distinguished senior Senator from Wisconsin had taken steps to stop inflation by squeezing the special interests as well as the consumers. He made particular reference to the oil import controversy and to recent cutbacks in the rate of Canadian imports into the United States.

Inasmuch as the distinguished Senator addressed his remarks to the interests of the American consumer, I shall point out what I believe are the fallacies in his arguments for the recommendations of the majority of members of the Cabinet Task Force on Oil Import Control—recommendations which the President has not yet adopted.

The President noted in releasing the report that "reasonable men can and will differ about the information, premises, and conclusions contained in the report" and that—

> It is not surprising that the members of the Task Force did not reach unanimous agreement on a set of recommendations.

The President added:

> The conclusions reached by the Secretary of Commerce and the Secretary of Interior differ sharply from those reached by the remaining five members of the Task Force.

The President also emphasized that:

> Among the majority there is also a divergence of views with the Secretaries of State and Defense expressing particular concern over the implications of the report's conclusions for the nation's security and our international relations.

Mr. President, it is to these separate and divergent views and the dubious consumer benefits—if any—that might accrue from the tariff plan recommended by the Task Force that I address myself.

As I have pointed out in this Chamber on a number of occasions, including my colloquy with the senior Senator from Indiana (Mr. HARTKE) when he introduced a resolution urging the President to adopt the task force majority recommendations, I strongly differ with those recommendations but certainly do support, in essence, the separate report and recommendations of the Secretaries of Interior and Commerce and the Chairman of the Federal Power Commission.

And I might point out, Mr. President, that those three agencies of Government are more directly concerned with, and responsible for, the Nation's energy supply and sources than any of the agencies involved in the study directed by the President.

I notice, also, that little has been said here or by the press of the separate report and recommendations of those three agencies.

Inasmuch as my good colleague from Wisconsin has emphasized the majority task force comments on the national security justification of the present oil import quota program, let me quote what the knowledgeable minority report says about national security:

> The national security would be jeopardized. The tariff approach diverts all emphasis from national security and puts it on domestic crude oil price and tax revenues. A tariff which would maintain a significantly lower crude oil price had it been in effect over the last decade, would have deprived us of such major developments as the Alaska North Slope, offshore development of reserves on the Continental Shelf, exploration to develop new offshore reserves, an adequate supply of low-price natural gas, and productive research leading to secondary recoveries from existing domestic fields.

I quote further:

> A further serious problem with the proposal to establish a tariff to maintain a significantly lower crude oil price relates to the estimates of sources of supply basic to this proposal. We believe the Task Force staff has overestimated the availability of supply from domestic production, from Canada, and from Latin American sources. This will mean, therefore, that the dependence on Middle East and North African supply inevitably will be significantly higher than the staff has estimated. Here, question seriously the wisdom of the United States undertaking the risks involved in becoming oil dependent on Middle East countries.

And the divergent views of the Secretary of Defense qualify his approval to the extent that the task force recommendations could not be approved without major revisions.

These are that domestic exploration be maintained at approximately current rates and that no reduction in reserves be allowed, that tariffs be changed only after security needs have been satisfied, and that the control organization is not to be restricted by pre-established price levels. These are the exceptions by which the Secretary of Defense qualifies his endorsement of the task force recommendations.

Inasmuch as recent testimony before the Senate Antitrust Committee acknowledged that one of the aims of the tariff plan would be an immediate reduction in the wellhead price of domestic crude of 30 cents per barrel, I would think that condition of the Secretary of Defense would be violated.

And how any industry that has had two successive cutbacks of 10 percent in the price of its basic product could be expected to maintain exploration at current rates and see that there would be no reduction in domestic reserves is something I do not believe is possible.

The separate report of the task force also emphasizes, apart from its opinion that a tariff system is not workable, its fundamental disagreements with the analysis and the judgments which the "Task Force" presents in support of its conclusions. They also questioned, as I do, the appropriateness of a number of the report's peripheral observations which relate to the petroleum industry

generally, but which are not immediately pertinent to oil import controls.

Among the widely publicized claims of the task force is the purported consumer cost of import controls which are alleged to be $5 billion a year and which are further broken down to a per capita basis. Inasmuch as this program is based on national security and, as my colleague from Wisconsin has emphasized, on national security and, as my colleague from Wisconsin has emphasized, on national security alone, then even that cost may be reasonable when we contemplate the effects on oil shortage could have on this country.

We are now concerned with the possibility of a national railroad strike but an oil shortage could shutdown not only our railroads but all airlines, trucks, automobiles, and water transportation, as well as a good part of our electrical powerplants which depend on oil-powered transportation for fuel. And most of U.S. industry would come to a grinding halt.

So the national security threat, alone, is enough, even if the many and widely varying estimates of cost to the consumer are anywhere near accurate.

I might add that the separate report of Interior, Commerce, and FPC estimates this cost at $1 billion rather than $5 billion and testimony before the Senate Antitrust Subcommittee placed an actual benefit to the consumer of several billions when the losses to the economy are considered.

But essentially, we are talking about national security and I commend the President for his refusal to adopt a program that, in my opinion, would seriously jeopardize that security by destroying the Nation's self-sufficiency in the energy on which it must depend for that security.

What about Canada?

Those who now criticize the President's action apparently have not examined the task force recommendations which they say should have been adopted. What the task force recommended is essentially what the Presidential proclamation will accomplish. On page 105, the report states:

Canada would be permitted to export to the United States as a whole 615,000 barrels of crude or products at existing rates during the first six months of the transition—roughly the volumes expected in July, 1970.

At the time the President issued the proclamation, Canadian imports were running at a rate of between 550,000 and 600,000 barrels per day for the area east of the Rocky Mountains and at 235,000 barrels per day for the west coast area.

The task force report says:

A large U.S. tariff preference for Canadian oil is difficult to justify while eastern Canada continues to import all of its requirements from potentially insecure sources. In case of a supply interruption, Canada could be expected to turn to the United States to furnish those imports, or to compete for whatever source is available.

They still have a pretty good thing going when they can import more than half of their requirements at cheap foreign rates and, at the same time, export more than half of their domestic production to the higher priced U.S. market.

Let me quote Mr. J. J. Greene, their Minister of Energy, in regard to that point. Greene said in his recent speech to Canadian oil producers:

It will be no surprise for me to tell you that the United States authorities are concerned at this extraordinary fluctuation in our exports.

I hope it will not surprise you to know that the Canadian Government is also concerned.

This concern stems partly from the nature of our oil relations with the United States and our current understandings with the American Government. The development of our petroleum resources and the growth of our industry is predicated in part on expansion of exports to the U.S.A. The Canadian industry has benefited greatly from the relatively free access it has had to this large and valuable market. We have fought hard for this access and will continue to do so. But the current surge in Canadian exports undoubtedly poses a problem for the United States authorities in the short run. We have always recognized that the overland exemption to which we attach the highest importance carries with it the responsibility of avoiding disruption of U.S. markets. I feel therefore that we must be prepared to give the Americans what assistance we can in dealing with their short-term problem if we are to approach the bargaining table regarding long-term arrangements in a spirit of mutual confidence and with a likelihood of success.

I have had some concern about the high level of exports in relation to the domestic situation. With trunk pipe lines operating at or near capacity, we find ourselves virtually without any cushion to deal with emergency circumstances which may arise in the short-term. This I find disturbing. It has been part of our posture in regard to the matter of supply security that we maintain a measure of emergency capacity to the U.S. West Coast and also to Ontario as a back-up for Quebec's oil supply. The current high level of oil exports leaves us virtually without this cushion.

Those are the words of Canada's Minister of Energy, Mr. Greene.

And in regard to the Eastern Provinces of Canada which now depend on some 700,000 barrels per day of foreign oil, Minister Greene said:

The Federal Government would have welcomed and encouraged any industry initiative designed to market western Canadian oil on an economic basis east of Ontario, but such has not been forthcoming and eastern Canada remains dependent on imports.

The fact of continued reliance on overseas supplies for approximately half of our domestic oil requirements has in recent months brought the question of the security of imported supply into public debate. This is both inevitable and desirable. It is inevitable because of continuing conflict in the Middle East and other oil-supplying areas, and desirable because basic issues relating to our national oil policy must be, and are, subject to periodic reappraisal.

Insofar as consumer savings are concerned, I would like to quote from the task force report itself:

Consumers generally would no longer receive whatever benefits they now receive from low-cost imported oil. The tariff would appropriate the difference between foreign and domestic prices. Some of that difference may now be passed through to consumers. To that extent, *the tariff would raise consumer prices.*

This language is taken directly from the task force committee reports and should set to rest any illusion that any single American may have that the implementation of the recommendations made by the task force to the President would result in a lowered prices of oil and oil products.

Mr. President, because the distinguished Senator from Wisconsin (Mr. PROXMIRE) is, by his own direct declaration, concerned with the damaging effects of inflation, some may find it hard to understand why he should single out the oil industry for criticism and the mandatory oil import program for special attack.

Perhaps the Senator does not know that oil and oil products imported into the United States under the present program account for nearly 25 percent of our domestic production.

On the other hand, dairy imports, which the distinguished Senator from Wisconsin seeks to limit, account for only 1.5 percent of our total domestic dairy output. And what about inflation?

Over the past 10 years, we find petroleum products have gone up in price only 2.2 percent. Crude oil increased during this same decade 4.5 percent.

Let us see what happened to the dairy products.

While refined petroleum products rose 2.2 percent and crude oil rose 4.5 percent, dairy products, which my good friend, the Senator from Wisconsin, wants to restrict insofar as imports are concerned, increased in price 33.9 percent.

Two days ago the distinguished Senator from Indiana (Mr. HARTKE) spoke at length on the floor of the Senate about the need, as he saw it, for the President to implement the task force recommendation. And I would like to read, if I may, what he said on April 1 as appears in the RECORD at page 9932. Incidentally, I regret that the Senator could not be here. I called his office, and he was unable to be here. It may be that he has a representative present. I hope that he does have, because I look forward to discussing the points I now make with him at a later date, as I hope to do also with my good friend, the Senator from Wisconsin.

Let me read what Senator HARTKE said the day before yesterday:

Thus 11 years ago we embarked on a disastrously costly program that mixes defense considerations with protectionism. Should anyone doubt that this is the case, he should examine some of the provisions of our present program. He will find an incomprehensible array of provisions rationalized in the name of national security, but he will never find a definition of that elusive phrase. It is time that we realistically and objectively appraise our national security needs in regard to oil. National security does not mean that we should rely exclusively on domestic sources for our oil supply. This is clearly impossible. Right now we import yearly 19 percent of the oil we use. By 1980, even with the domestic price of oil maintained at its present level, $1.25 above the world price, we shall have to import 27 percent of our petroleum requirements. Thus it is abundantly clear that the question is not, are we to rely on imported oil to some extent, but, rather, from what

sources and how much imported oil should we use?

Mr. President, the Senator from Indiana goes on to identify some of the sources. He mentions the Middle East and Latin America. Let me point out two things that I think are highly significant.

The Department of the Interior has said that with our great dependency on oil and gas as a source of energy in this country, that if we have to import as much as 10 percent—of Middle East oil, then the Department of Interior says that we shall indeed have approached that point where the national security of this country is truly at stake.

Likewise, I would like to call attention to the fact that I agree with the Senator from Iowa when he spoke 3 years ago, on October 16, 1967.

At that time the Senator was discussing the merits of a bill he had introduced entitled "The Iron and Steel Orderly Trade Act of 1967." I refer to the CONGRESSIONAL RECORD, volume 113, part 21, page 28923. At that time my good friend from Indiana the distinguished Senator made the following statement. He spoke also for me; I joined with him because I think he was right then as now; I think his argument was valid then as it is now. These are the words spoken by the Senator from Indiana who now finds little merit in a mandatory oil import program to restrict oil at a time in our Nation's history when 25 percent of the oil we produce domestically is imported from foreign sources. I wish to refer now to the statement of the Senator from Indiana back in 1967 in support of his bill on iron and steel:

Steel is important to the country. Its major uses—automobiles, construction, containers, machinery, appliances—all catalog our industrial strength. Although much military hardware today consists of materials other than steel, all of it includes some vital steel components for which there are no practical substitutes. A simple economy or one in the early stages of development can safely depend upon significant external sources for its steel requirements. But every advanced economy needs steel in amounts and types too large and varied to be supplied in significant tonnages by others, particularly in case of national emergency. Realization of this basic requirement has been behind the continuing drive by the Soviet Union to build up its steel industry regardless of cost.

The continued growth of imports at only half the rate experienced during the 5-year period 1961–66, would produce a situation within 10 years in which the United States is dependent on foreign sources for a staggering 40 million tons of steel. Consider the effect on the country if these imports were to be shut off in a national emergency. In fact our limited war planning envisions the shutoff of such noncontiguous sources of supply. President Johnson has aptly described steel as "basic to our economy and essential to our security—increasingly important to us in the years ahead."

Mr. President, I am quoting from the remarks of my good friend from Indiana less than 3 years ago. He further said at that time:

Because steel is essential to our security, we must provide for equitable terms of world steel trade, which the industry requires to keep itself healthy and the Nation strong.

Mr. President, I have not changed my position. I was pleased to join my good friend from Indiana in supporting the bill because I think we have the greatest Nation in the world. It is the greatest Nation in the world because we have the highest standard of living in the world and part of that high standard of living reflects the wages that are paid in this country. Those who talk about lowering the barriers to make ours a truly free trade country—and we come the nearest of any country in the world to fitting that description—I think lose sight of the fact that it is impossible to compete on the one hand with labor that is paid only a fraction of what the working man is paid in America, and at the same time hope to continue the standard of living we presently enjoy. That, in itself, seems reasonable enough to support my friend from Indiana.

The Senator from Wisconsin is concerned that our imports now are approximately only 1.5 percent of what the dairy industry produces in this country today. He recognizes imports of 1.5 percent to be a threat to his State, to his workers, and to industry in Wisconsin. I agree that it is a threat. It is a threat because our wages are so much higher than wages in those countries that export their products into the United States.

Mr. President, I join him but I find it difficult to rationalize how they, on the one hand can say, "These things weaken America. Steel imported beyond a certain limit weakens America." I find it difficult to understand how they make that contention and then turn around and say, "This does not apply to oil," despite the fact that 25 percent of all of the oil and oil products we use in this country today are imported; and despite the fact that imports reaching the United States today account for 25 percent of our total domestic production.

They are concerned on the one hand—and I hesitate to say this—if it puts people in their States out of business or jeopardizes their jobs and businesses. This may not be the reason, but I suggest it could be. I would like to ask them, What is the reason? So I look forward at a later date to the opportunity of asking them in this forum what their reasons are.

All I can say is that I think the security of the United States is the most sacred obligation this body has to protect for all times. Everything this country stands for, the progress we have made, and the prospect and the hope of greater progress to be made in the future will depend primarily on the ability of this country to reach decisions that shall not be influenced by our dependency upon foreign countries for things as vital to us as our oil and natural gas.

Mr. President, look at the world today; read any newspaper. There is great ferment in the nations of the world. There is trouble in Indonesia and the Middle East which is one of the major sources of oil in the world today. There is trouble in South America, and there is trouble in Central America.

The task force talks about how we can depend on Latin America. I am old enough to remember that not too many decades ago Mexico, our great neighbor to the south, expropriated all U.S. oil company properties in that country.

I do not want the time to come when we will have to place our reliance on the continuing good will that a foreign country may have toward the United States on something as important as energy.

Mr. President, with that thought in mind, I shall continue to speak out for a policy that has been endorsed by every President since they have been talking about national security, so far as energy is concerned; a policy that is as defensible today as it was in 1959 when it was implemented by President Eisenhower; a policy which must be continued if we are to achieve the goals and fulfill the aspirations we hold for this country.

I yield the floor.

The ACTING PRESIDENT pro tempore. At this time, under the previous order, the Chair recognizes the Senator from Florida (Mr. HOLLAND) for not to exceed 30 minutes.

ORDER FOR RECOGNITION OF SENATOR GURNEY AND SENATOR HANSEN TODAY

Mr. HANSEN. Mr. President, will the Senator from Florida yield for a unanimous-consent request?

Mr. HOLLAND. Mr. President, I yield to the Senator from Wyoming provided that the time for the unanimous-consent request does not come out of my time.

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

Mr. HANSEN. Mr. President, I ask unanimous consent that the distinguished Senator from Florida (Mr. GURNEY) be recognized for 30 minutes after the germaneness rule has expired at 1:03 p.m., and that following his address, I be recognized for an hour, or as much time as will be required, in order to discuss in further detail the issues of the mandatory oil import program with the distinguished Senator from Wisconsin (Mr. PROXMIRE).

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered. The Senator from Florida (Mr. GURNEY) will be recognized at 1:03 p.m. for not to exceed 30 minutes, following which the Senator from Wyoming (Mr. HANSEN) will be recognized for not to exceed 1 hour.

THE NOMINATION OF JUDGE CARSWELL

Mr. HOLLAND. Mr. President, after a lengthy hearing by the Judiciary Committee on his nomination to the Supreme Court, as shown by the printed record of 467 pages, the committee favorably reported the nomination of Judge G. Harrold Carswell to the Senate by a vote of 13 to 4. Those Senators supporting the nomination were Senators EASTLAND, MCCLELLAN, ERVIN, DODD, BURDICK, BYRD of West Virginia, HRUSKA, FONG, SCOTT, THURMOND, COOK, MATHIAS, and GRIFFIN. Those opposing the nomina-

tion were Senators HART, KENNEDY, BAYH, and TYDINGS.

The Senate commenced debate on the nomination on March 13 and to date there has been little if anything said during all the oratory that reflects adversely on the character, ability, or sincerity of Judge Carswell.

Mr. President, I am deeply concerned that the nitpicking that has occurred during this extended debate will make it more difficult to obtain truly qualified persons for high offices requiring Senate confirmation for, like Judge Carswell, even though all the oratory and all the condemnation expressed brings to light little, if anything, reflecting adversely on the individual man, they will be unwilling to have their families, friends, and indeed themselves put through tortuous smear campaigns which are largely politically inspired.

Mr. President, I feel very keenly that the tenor of this extended debate—bringing forth little that was not brought out in the Judiciary Committee when it considered the nomination and acted favorably on it by a vote of 13 to 4—has resulted in a tug of war, not between men but between philosophies, and that the Senate itself owes Judge Carswell, a man who has throughout his legal career given much to this country's judicial system, a vote of confidence by confirming his nomination to the Supreme Court forthwith, without further delay and discussion which can lead only to further degeneration of the prestige of the Senate itself.

Mr. President, many articles have appeared in the press and a great deal has been said over radio and television. Possibly the nomination of Judge Carswell has received greater national coverage than any other nomination the Senate has considered in recent years, certainly within my memory and my service of 24 years in this body.

Mr. President, I have previously introduced into the RECORD numerous letters, resolutions, and telegrams strongly supporting Judge Carswell's nomination. I have many hundreds of additional endorsements in the form of petitions, letters, and telegrams supporting the nominee but do not desire to further enlarge the RECORD by asking that they be included in my remarks. They are available and may be reviewed in my office by any Senator desiring to see them. I believe the Senate will be interested, however, in a copy of a letter written by Marshall R. Cassedy, executive director of the Florida bar, dated March 24, 1970, to Leonard Robbins regarding this nomination. I ask unanimous consent that this letter be printed in the RECORD along with the documents attached thereto. The gist of this letter is that of the 41 members of the board of governors of the Florida bar, 40 specifically approved the appearance of the president of the Florida bar, Hon. Mark Hulsey, before the Senate Committee on the Judiciary to endorse and approve, on behalf of the Florida bar, the confirmation of Judge Carswell as a member of the Supreme Court. The only member of the board of governors who did not join in this action abstained from voting because he "was not in any way acquainted with Judge Carswell."

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

THE FLORIDA BAR,
Tallahassee, Fla., March 24, 1970.

Re: Nomination of Judge G. Harrold Carswell
Hon. LEONARD ROBBINS,
Hollywood, Fla.

DEAR LEONARD: Thank you for your letter of March 20, 1970, addressed to The Florida Bar concerning the nomination of Judge G. Harrold Carswell to the United States Supreme Court. We note in your letter that you express the belief that the action of The Florida Bar in endorsing this appointment was improper.

More often than not, the organized bar is accused of "not speaking out" on issues of vital interest to the public and the administration of justice. For more than a decade, the Board of Governors of The Florida Bar has had a standing policy that outlines procedures for the Board to follow in responding to Congressional requests for recommendations on a federal judicial nominee. These procedures basically provide that the Board of Governors will consider such a request at a regular meeting, or if time does not permit, the Executive Committee may act in behalf of the Board as is provided for in the Integration Rule of The Florida Bar.

With respect to the request received by The Florida Bar from the Chairman of the Senate Judiciary Committee, Senator James O. Eastland, received January 21, 1970, rather than have just the Executive Committee respond because the Board was not in session and early response requested, a letter dated January 22, 1970, was forwarded to all 41 members of the Board of Governors. You will note from the copy of this particular letter that is enclosed that not only was the telegram of Senator Eastland set forth in full but also a suggested response. The approval or disapproval of the membership of the Board of Governors was requested in writing and a complete tabulation recorded. You will also note that the Board of Governors was specifically polled concerning authorization of President Hulsey to appear before the Senate Judiciary Committee to speak in favor of Judge Carswell.

As you know, the membership of the Board of Governors is selected by the individual lawyers in each judicial circuit in Florida. This is accomplished by any lawyer in good standing filing a petition seeking membership on the Board of Governors and submitting his name in a popular election to the membership within this judicial circuit. It is fair and accurate to say that a member of the Board of Governors so elected represents the lawyers in his circuit as a result of what we conceive to be a most democratic process. You can further appreciate the fact that it is virtually impossible to poll all 11,363 members of The Florida Bar on every major issue which confronts their elected representatives on the Board of Governors.

The result of the written poll of these elected representatives was 40 favorable endorsements of Judge Carswell and one abstention, the latter being due to the fact that this particular Board member was not in any way acquainted with Judge Carswell. The Board further in their response authorized President Hulsey to speak in favor of the nomination of Judge Carswell.

Since the Florida Bar became directly involved with the nomination of Judge Carswell on January 21, 1970, you will be interested to know that yours is the first and only letter received in the headquarters office of The Florida Bar which has expressed opposition to the action taken by the Board of Governors in endorsing Judge Carswell. Many members of the Board of Governors, prior to responding to the letter of January 22, 1970, polled a number of the lawyers in their circuit for the purpose of sampling the opinion of the Bar in their area. Some of the Board members responded with remarks such as "enthusiastically endorsing" and similar words of commendation.

You might also be interested to know that there has been a grass roots effort by Florida lawyers and judges who have forwarded over 400 individual telegrams to the United States Senate supporting the confirmation of the nomination of Judge G. Harrold Carswell. Most of these telegrams come from lawyers and judges who are personally acquainted with Judge Carswell and know of his ability and high qualifications.

Leonard, again let me express our appreciation for your interest in expressing your views concerning a matter of great interest to the legal profession of the nation. We are calling this matter to the attention of your three elected representatives in the Seventeenth Judicial Circuit, the Honorable Robert C. Scott, the Honorable John S. Neely, Jr., and the Honorable Russell E. Carlisle, so that they may contact you directly regarding their actions in your behalf in urging the confirmation of Judge Carswell.

Sincerely yours,

MARSHALL R. CASSEDY.

HOLLYWOOD, FLA.,
March 20, 1970.

THE FLORIDA BAR,
Florida Bar Center,
Tallasassee, Fla.

DEAR SIRS: I note by the press that the Florida Bar had the temerity and bad judgment to endorse the appointment of Judge Carswell to the United States Supreme Court.

Let me say that the Florida Bar does not speak for me in any way, shape or form in making endorsement. I do not consider Judge Carswell to be qualified either intellectually or by reason of his social attitudes as expressed in his actions and decisions over the years. I want you to know that the Florida Bar does not speak for me in this case, and I consider the action of the Florida Bar to be completely improper in endorsing the appointment of this man to the United States Supreme Court.

Very truly yours,

LEONARD ROBBINS.

THE FLORIDA BAR,
Tallahassee, Fla., January 22, 1970.

To: Board of Governors, The Florida Bar.
Re: Judge G. Harrold Carswell.

GENTLEMEN: The following telegram from Senator James O. Eastland was received yesterday:

"MARK HULSEY, Jr.,
"President, Florida Bar Association,
"Jacksonville, Fla.:

"Public hearing has been scheduled on nomination of George Harrold Carswell, to be Associate Justice of the Supreme Court of the United States, vice Abe Fortas, resigned; for Tuesday, January 27, 1970, at 10:30 a.m. in Room 2228, New Senate Office Building. It is requested that any opinion or recommendation the association desires to make be submitted to the Committee on or before that date.

"JAMES O. EASTLAND,
"Chairman, Senate Judiciary Committee."

The Executive Committee suggests, with your approval, the following response:

"Senator JAMES O. EASTLAND,
"Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.:

"Reurtel January 21, 1970 the Board of Governors of the Florida Bar speaking as the elected representatives of Florida's 11,373 lawyers and judges endorses the nomination of Judge G. Harrold Carswell to the office of Associate Justice of the Supreme Court of the United States and urges his early confirmation.

"MARK HULSEY, Jr.,
"President, the Florida Bar."

In talking with Judge Carswell this morning, an invitation may be extended to President Hulsey to testify before the Senate Judiciary Committee next week in behalf of The Florida Bar. On the second copy of this memorandum enclosed, please vote with an "X" on these two questions:

1. I ____ approve, ____ disapprove the above suggested telegram response.

2. I ____ authorize, ____ do not authorize President Hulsey to appear before the Senate Judiciary Committee to speak in favor of the confirmation of Judge George Harrold Carswell by the United States Senate.

Please mail your response immediately to: Marshall R. Cassedy, the Florida Bar, Tallahassee, Fla.

We thank you for your prompt attention.

Sincerely yours,

MARSHALL R. CASSEDY.

Mr. HOLLAND. Mr. President, I believe the Senate will also be interested in a letter I received under date of March 25, 1970, from Robert L. Bell, a member of the law firm of Dixon, Bradford, Williams, McKay & Kimbrell of Miami, Fla. Mr. Bell was chief research aide for Judge Carswell from June 1967 through January 1969. I ask unanimous consent to have this letter printed in the RECORD at this point of my remarks.

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

MIAMI, FLA.,
March 25, 1970.

Senator SPESSARD L. HOLLAND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HOLLAND: I have never before written a letter to someone with whom I am not personally acquainted, not even a Public Official. However, I felt that in view of my personal knowledge of a certain situation which is now before you and your colleagues for their thorough consideration, that I should write this letter to you setting forth with as much detail as possible, what I know.

Let me say that I worked as Chief Research Aide for Judge G. Harrold Carswell for almost two years, from June, 1967 through January, 1969. During that period of time, as you will recall, he was the only Federal Judge serving in a district where two Federal Judges were authorized. As a result, he was laboring, and I was assisting him with what was at that time the fifth heaviest caseload of any Federal Judge in the United States.

In spite of such heavy burdens upon him at that time, he gave careful attention to every case, and I am convinced that only a person of unusual intellectual ability would have been able to function as he did. Of course I observed Judge Carswell sitting on many cases, including Civil Rights cases. I recall one instance where a prominent Civil Rights attorney from New York City was appearing before Judge Carswell. As I recall now, after a passage of some three and one-half years, this attorney had applied for some additional injunctive relief in one of the integration cases before Judge Carswell. Judge Carswell noted that the attorney had not given timely notice to opposing counsel nor had he submitted the required supporting Affidavits to justify such relief. However, Judge Carswell stated that he would grant the relief requested and would urge opposing counsel not to object and not to appeal, but to accept his decision. Whereupon, the Civil Rights attorney responded, as I now recall his words, 'Judge Carswell, it is always a pleasure to appear in your Court because you are always so courteous and so congenial, even when you rule against us, and today you have gone out of your way to accommodate us'. Judge Carswell then made a further statement that he realized that he could require the attorney to go back to New York City and give timely notice and prepare Affidavits, but that this would unnecessarily take the time of counsel and the Court, when the decision was inevitable, anyway.

Of course the above is just one instance of courtesy to out of town lawyers which I observed while working for Judge Carswell and I found him extremely sympathetic to the plight of an out of town attorney seeking to work through local Counsel and perhaps unfamiliar with the Rules of the Court. In Civil Rights cases particularly, it was not ususual for an attorney representing the Civil Rights cause, to be unprepared. This was through no fault of the attorney but resulted from the fact that they were necessarily practicing law out of a suitcase and also because the same attorney would not be sent to argue the same case each time some matter would arise for determination. In other words, there were a group of lawyers, some local and some out of State, who assisted in this type of case and usually had to travel some distance, or a great distance to appear before the Judge. Therefore, it was not unusual for the attorney appearing on behalf of the Civil Rights claim to be unfamiliar with what had occurred at previous hearings because someone else had been involved in the case earlier.

As I now know from my private practice here in Dade County, most Judges will not hear a Motion if the attorney is not prepared to argue the Motion. However, to the contrary, Judge Carswell would explain to the attorney what had occurred previously in the case and give the attorney in effect a report of the status of the case. Then he would listen to the further arguments and suggestions of counsel concerning the matter for current consideration. Judge Carswell would also have his own personal secretary type up Orders and other matters which a traveling attorney would experience difficulty doing for himself (although it is definitely the responsibility of the attorney in most Courts).

I could go on and on discussing these matters. However, from the above I think it will be clear that I believe, based upon what I actually saw, that Judge Carswell was far more considerate and courteous than most Judges would have been in the same circumstances. His entire personality and demeanor on the bench was personable and evidenced a desire to cooperate with counsel. I never saw any incident which I feel would disqualify Judge Carswell from sitting on this nation's highest Court. In fact, I feel that he is extremely well qualified and has a brilliant practical mind which results in the solution of many problems without fanfare or disturbance and without unnecessary verbiage (which many might confuse with fluent opinion writing). The only time when Judge Carswell ever spoke firmly to counsel was when their conduct bordered on Contempt or was otherwise in error. It was necessary for him, on these occasions, to be firm, in order to maintain the dignity of the Court and in order to maintain respect in the Courtroom.

If you or any of your colleagues desire any further information from me, I, of course, will be happy to cooperate.

Very truly yours,

ROBERT L. BELL.

Mr. HOLLAND. Mr. President, I quote from the letter:

Let me say that I worked as Chief Research Aide for Judge G. Harrold Carswell for almost two years, from June, 1967 through January, 1969. During that period of time, as you will recall, he was the only Federal Judge serving in a district where two Federal Judges were authorized. As a result, he was laboring, and I was assisting him with what was at that time the fifth heaviest caseload of any Federal Judge in the United States.

In spite of such heavy burdens upon him at that time, he gave careful attention to every case, and I am convinced that only a person of unusual intellectual ability would have been able to function as he did. Of course I observed Judge Carswell sitting on many cases, including Civil Rights cases. I recall one instance where a prominent Civil Rights attorney from New York City was appearing before Judge Carswell. As I recall now, after a passage of some three and one-half years, this attorney had applied for some additional injunctive relief in one of the integration cases before Judge Carswell. Judge Carswell noted that the attorney had not given timely notice to opposing counsel nor had he submitted the required supporting Affidavits to justify such relief. However, Judge Carswell stated that he would grant the relief requested and would urge opposing counsel not to object and not to appeal, but to accept his decision. Whereupon, the Civil Rights attorney responded, as I now recall his words, 'Judge Carswell, it is always a pleasure to appear in your Court because you are always so courteous and so congenial, even when you rule against us, and today you have gone out of your way to accommodate us'. Judge Carswell then made a further statement that he realized that he could require the attorney to go back to New York City and give timely notice and prepare Affidavits, but that this would unnecessarily take the time of counsel and the Court, when the decision was inevitable, anyway.

Of course the above is just one instance of courtesy to out of town lawyers which I observed while working for Judge Carswell and I found him extremely sympathetic to the plight of an out of town attorney seeking to work through local Counsel and perhaps unfamiliar with the Rules of the Court. In Civil Rights cases particularly, it was not unusual for an attorney representing the Civil Rights cause, to be unprepared. This was through no fault of the attorney but resulted from the fact that they were necessarily practicing law out of a suitcase and also because the same attorney would not be sent to argue the same case each time some matter would arise for determination. In other words, there were a group of lawyers, some local and some out of State, who assisted in this type of case and usually had to travel some distance, or a great distance, to appear before the Judge. Therefore, it was not unusual for the attorney appearing on behalf of the Civil Rights claim to be unfamiliar with what had occurred at previous hearings because someone else had been involved in the case earlier.

As I now know from my private practice here in Dade County, most Judges will not hear a Motion if the attorney is not prepared to argue the Motion. However, to the contrary, Judge Carswell would explain to the attorney what had occurred previously in the case and give the attorney in effect a report of the status of the case. Then he would listen to the further arguments and suggestions of counsel concerning the matter for current consideration. Judge Carswell would also have his own personal secretary type up Orders and other matters which a traveling attorney would experience difficulty doing for himself (although it is definitely the responsibility of the attorney in most Courts).

Mr. President, in addition to the previously mentioned letter, I have also received a letter dated March 25, 1970, from William Royall Middelthon, Jr., of the firm of Mershon, Sawyer, Johnston, Dunwody & Cole of Miami, Fla. Mr. Middelthon was Judge Carswell's law clerk from January 1, 1966, through August 1966. I believe the Senate will be interested in his comments and observations

regarding Judge Carswell and I ask unanimous consent to have this letter printed in the RECORD at this point.

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

MIAMI, FLA.,
March 25, 1970.

Re: G. Harrold Carswell.
Hon. SPESSARD L. HOLLAND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HOLLAND: I was Judge Carswell's law clerk in Tallahassee from January 1, 1966 through August, 1966. I have become quite upset over what I consider completely unfounded and unwarranted attacks on Judge Carswell's character, integrity, intelligence and judicial stature. Particularly galling to my wife and myself are the charges that Judge Carswell is a racist.

For eight months I had the opportunity to observe this man as no other lawyer or person before his court could. The man is fair. He had a particular concern for and sensitivity toward civil rights cases and the advocates of civil rights causes. From my observations the only fair statement that can be made is that Judge Carswell leaned over backwards to see that civil rights issues received a full and fair hearing and that lawyers representing civil rights clients were treated with respect and dignity.

Judge Carswell has also been charged publicly as being mentally mediocre. Charges such as this are obviously malicious. They are also untrue. I know this man's capabilities and one purpose of this letter is to assure you and all that care to listen to me, that Judge Carswell is a first rate intellect. I recall with pleasure one quite lengthy discussion (it could almost be called an argument) concerning whether or not the public policy of the State of Florida would be violated by recognizing in a federal trial form the assignment of a cause of action for personal injury. Judge Carswell's off-the-cuff observations and comments had me doing research for a week. His perceptive grasp of legal issues, in general, is always thorough and frequently brilliant.

In short, I feel that the nomination of the Honorable G. Harrold Carswell to the Supreme Court of the United States should be confirmed. Judge Carswell is a gentleman and an able and fair jurist whose presence on the Supreme Court is much needed.

Sincerely yours,
WM. ROYALL MIDDELTHON, Jr.

Mr. HOLLAND. Mr. President, I also ask unanimous consent to have a part of a telegram I received under date of March 25, 1970, from Mr. Pat Thomas, chairman of the Democratic Party of Florida, inserted in the RECORD at this point. The remainder of the telegram applied to me personally and not to the Carswell matter.

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

I keenly sense that the people in Florida—including the majority of Democrats—are weary of the debate on this nomination. I sense, too, that this feeling is not restricted to any geographical section of the country.

I have said previously that this man had distinguished himself in the field of law. I was proud of our friend, Leroy Collins, for his outspoken advocacy of Judge Carswell. My comments favoring this man would have to be acknowledged as consistent with the feelings of Democrats of this State, as well as Florida's Senior Senator, Spessard Holland, the six democratic cabinet officers of this State, members of our congressional delegation, and prominent jurists.

Such a thorough hearing as the Senate has given this man is healthy. Again, let me say I do not urge you to change your mind, but I do plead with you to use your influence to bring the nomination to an early vote.

When we in Florida read that the judge is criticized because his opinions averaged only two pages in length while the average length of opinions of all district judges was four and two-tenths pages, it appears that the debate has degenerated into nit-picking.

In addition, I sense that many people believe the opposition is based primarily on the fact that the judge is a southerner. While I recognize this is not the case, the people I see each day complain that opponents are still fighting the civil war. I find it difficult to respond to them because of what we are reading of the debate. The civil war is over. I hope the debate on the nomination of Judge Carswell will be over soon, too.

Sincerely,
PAT THOMAS,
Chairman, Democratic Party of Florida.

Mr. HOLLAND. Mr. President, I ask unanimous consent to have printed in the RECORD at this point a telegram from U.S. District Court Judges Charles B. Fulton, Emett C. Choate, W. O. Mehrtens, C. Clyde Atkins, Ted Cabot and Joe Eaton, being all the district judges of the Southern District of Florida, strongly supporting the confirmation of Judge Carswell.

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

MIAMI, FLA.,
March 30, 1970.

Hon. SPESSARD L. HOLLAND,
U.S. Senator,
Old Senate Office Building,
Washington, D.C.:

The judges of the United States District Court in and for the southern district of Florida consisting of Judges Charles B. Fulton, Emett C. Choate, W. O. Mehrtens, C. Clyde Atkins, Ted Cabot, and Joe Eaton have complete confidence in the integrity and professional ability of Judge Carswell. In our opinion he is well qualified to sit upon the Supreme Court of the United States. We enthusiastically urge his confirmation.

CHARLES B. FULTON,
Chief Judge.

Mr. HOLLAND. Mr. President, I have also received a telegram from U.S. Circuit Court Judge Volie A. Williams, Jr., 18th Circuit. I ask unanimous consent to have this telegam printed in the RECORD.

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

SANFORD, FLA.,
March 25, 1970.

U.S. Senator SPESSARD L. HOLLAND,
Washington, D.C.:

I was distressed to hear a few moments ago on TV news that Harrold Carswell's opponents now have enough votes to return his nomination to the Judiciary Committee. Harrold and I were admitted to practice before the Federal district court in Tallahassee on the same day in 1949. I was well acquainted with him from 1949 through 1955. I know he is not a racist. For 13 years now, I have served as a Florida circuit judge. I, too, have been reversed by appellate courts about 20 times. 20 reversals when a judge has considered more than 10,000 cases isn't bad. Why don't you get the number of cases Harrold has considered. Another good argument would be that most of a judges reversals occur because the lawyers prepare at the appellate level but do not show the same courtesy to a trial judge.

VOLIE A. WILLIAMS, Jr.
Circuit Judge.

Mr. HOLLAND. This makes telegrams from 38 circuit judges of Florida which I have inserted in the RECORD of this debate strongly approving the confirmation of Judge Carswell. To these I add similar support from the entire membership of the supreme court of Florida, from the entire district court of appeals, from the first or northern district court of appeals, which covers the northern district of our State, and from the three Florida members of the Circuit Court of Appeals, Fifth Circuit.

Mr. President, I have also received a letter from Judge Winston E. Arnow, U.S. District Court, Northern District of Florida, dated March 26, 1970, strongly endorsing the nomination and confirmation of Judge Carswell. I ask unanimous consent to have this letter printed in the RECORD at this point.

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

U.S. DISTRICT COURT,
Pensacola, Fla., March 26, 1970.

Hon. SPESSARD L. HOLLAND,
U.S. Senator from Florida, Senate Office Building, Washington, D.C.

DEAR SENATOR HOLLAND: Recent newspaper and television accounts concerning the progress of Judge Carswell's nomination to the Supreme Court of the United States through the Senate have given me concern, and have prompted this unsolicited letter.

During the years, from the time of Judge Carswell's appointment as United States District Judge in the Northern District of Florida, until I took office as United States District Judge in January of 1968, I practiced law in the Northern District of Florida. From time to time I was, of course, before Judge Carswell in various legal matters.

When I assumed office in January, 1968, I became, as you know, the other United States District Judge in the Northern District of Florida. As such, I worked under and with him, as Chief Judge in this District, from that time until he was elevated to the Circuit Court of Appeals last year.

I have been before this man as a lawyer, and worked with him as a judge. He is an able, intelligent and conscientious man, and in my opinion, he will serve us as a Justice of the Supreme Court of the United States with credit and with ability. I hope the Senate will confirm his nomination.

You are, of course, at liberty to use this letter in any way you see fit.

I am sending a copy of this letter to Senators Eastland and Sparkman, and they are, of course, at liberty to use them in any way they see fit.

I hope everything is going well with you, and that I shall have the good fortune of seeing you somewhere along the way before too long.

Sincerely yours,
WINSTON E. ARNOW.

Mr. HOLLAND. Mr. President, I have received telegrams from J. Lewis Hall, Fletcher G. Rush, and Delbridge L. Gibbs, all past presidents of the Florida Bar Association, strongly endorsing the nomination and confirmation of Judge Carswell, and I ask unanimous consent to have these telegrams printed in the RECORD at this point.

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

TALLAHASSEE, FLA.,
March 24, 1970.

Hon. SPESSARD L. HOLLAND,
U.S. Senate,
Senate Office Building,
Washington, D.C.:

Re Honorable G. Harrold Carswell as a past president of the Florida bar I wholeheartedly and unequivocally endorse the nomination

of Honorable G. Harrold Carswell. I have known Judge Carswell for many years while he was in the active practice. I found him to be an excellent attorney who represented his clients in keeping with the highest standards of our profession. I have practiced before his court and found him to be an enlightened and eminently capable judge of insight and integrity who disposed of his cases with decisiveness and total impartiality.

Very truly yours,

J. LEWIS HALL.

DALLAS, TEX.,
March 17, 1970.

HON. SPESSARD L. HOLLAND,
U.S. Senator,
Washington, D.C.:

Urge you do all in your power to obtain Senate confirmation of Judge Carswell as Associate Justice United States Supreme Court.

FLETCHER G. RUSH,
Former President of the Florida Bar.

JACKSONVILLE, FLA.,
March 26, 1970.

HON. SPESSARD L. HOLLAND,
U.S. Senate,
Washington, D.C.:

I join with the other past presidents of the Florida Bar in strongly urging the prompt confirmation of Judge G. Harrold Carswell to the Supreme Court.

DELBRIDGE L. GIBBS.

Mr. HOLLAND. Mr. President, I do not think I have ever seen such unanimous approval of a nomination as this coming from our Supreme Court, district court of appeals, and the circuit courts, the present head of the Florida bar, and three immediate past presidents of the Florida bar, and all Florida members of the circuit court of appeals.

Mr. President, I want to mention at this point that I have received under date of March 23, 1970, a petition signed by over 1,100 citizens in Tallahassee, representing a cross section of the people of the community and who are personally acquainted with Judge Carswell. I will not ask that this petition be printed in the RECORD. Suffice it to say that the petition attests to Judge Carswell's ability, wholesome character, and his fair, considerate temperament, as well as the respect the community holds for him.

Mr. President, I also ask unanimous consent to have an editorial, entitled "Keelhauling an Honorable Career," appearing in the Florida Times-Union under date of March 28, 1970, printed in the RECORD at this point.

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

KEELHAULING AN HONORABLE CAREER

The "definitive" word has now come in on the confirmation of Judge G. Harrold Carswell to the U.S. Supreme Court.

It came from no less than the senior senator from Maryland, Joseph Tydings. He released the news to the press that an associate municipal judge of Opa Locka opposed the nomination.

This was coupled with the devastating news that one of the judges of the municipal court in Miami was also opposed. The clincher to this announcement seemed to lie in the portentous bit of background that both were former assistant U.S. attorneys.

No doubt, Senator Tydings and his staff are overworked in their round-the-clock vigil to see that justice is done—and presumably if justice is to be done, Judge Carswell is entitled to some miniscule portion of it—so perhaps they won't feel hurt if a gentle reminder is given of some of the support the judge has received.

"We are concerned," said Senators Tydings, Birch Bayh, Philip Hart and Edward Kennedy, "that Judge Carswell's record indicates that he is insensitive to human rights and that he has allowed his insensitivity to invade the judicial process."

Lest anybody conclude that the aforementioned gentlemen are insensitive to Judge Carswell's right to a fair hearing and are allowing this insensitivity to invade the senatorial process, we would be so bold as to suggest that there is some testimony that tends to offset that of the distinguished associate municipal judge of Opa Locka and perhaps Tydings et al. would wish to point this out.

The Fifth Circuit Court of Appeals is on the second tier of the federal judiciary, the level just below that of the U.S. Supreme Court.

Sen. Tydings himself mentioned some of its members as "eminent constitutional lawyers . . . who have demonstrated that they are judicious men, able to give any man a fair and impartial hearing." Two of those he mentioned are Judge Bryan Simpson and Judge Robert A. Ainsworth.

Both of these judges sent the Senate Judiciary Committee strong letters of support on behalf of Carswell's nomination as did their colleagues, Warren Jones, Homer Thornberry, David Dyer and Griffin Bell. And there are hosts of other judges who have sent in letters of support.

And if Judge Carswell is so "insensitive to human rights" (the liberal code phraase for "not far enough to the left to suit us") why has the Senate unanimously confirmed him three times—as U.S. attorney, district judge and appellate court judge?

Further, it seems passing strange that a judge so insensitive would have been assigned so often while a district court judge to sit as a visiting judge on the Fifth Circuit bench.

And, it seems most insensitive of Senator Tydings not to acknowledge this fact since our own source is the record of the testimony before the Senate Subcommittee on Improvements in Judicial Machinery on May 28 and 29, 1968. The chairman of that subcommittee is Senator Tydings of Maryland.

The statistics in the record show that from fiscal 1960–61 through fiscal 1966–67, during all of which time the Chief Judge of the Fifth Circuit was Elbert Tuttle, a man of impeccable liberal and civil rights credentials, who assigned Judge Carswell to sit as visiting judge longer than any other district judge in the Fifth Circuit.

He sat on three-judge panels—composed of two Fifth Circuit judges and himself—for 8½ weeks during those years. Two other judges sat for eight weeks during that period. None of the other 34 district judges assigned to that duty even approached this length of assignment on the appellate court.

Is it a practice to single out "mediocre" or "insensitive" judges to help decide cases on a higher bench—and to do so consistently?

The answer to that question is "no" and Senator Tydings well knows that this is the answer.

The effect of the distorted and one-sided picture of Carswell being presented is to defame and vilify the man before the entire world and to do so unjustly.

Perhaps we can draw a parallel which will bring it closer to home to some senators—especially Senator Tydings.

Back in 1950, a composite photo was used in the campaign against Sen. Millard Tydings—father of the present senator—purporting to show the elder Tydings in friendly conversation with Communist Earl Browder. It was part of a back-alley campaign that helped to defeat the elder Tydings.

The campaign against Carswell is not of the same nature. But in its own way, it is just as vicious.

A composite word picture is being drawn of him, attempting to plant in the mind the idea that he is a mediocre judge on the one hand and a racist on the other.

There is plenty of evidence that he is neither but we hear little about it from the opposition.

It is one thing to defeat Carswell's nomination. It is another thing to impugn an honorable career.

Let the record show that there are many persons—some of them uniquely qualified to judge in this instance—who believe G. Harrold Carswell to be a decent, sensitive human being of outstanding integrity, a man who has devoted his entire life to public service, and a highly qualified judge.

Mr. HOLLAND. It is also interesting to note, Mr. President, that on page 90 of the hearings referred to in the editorial just quoted, hearings held by the senior Senator from Maryland, Mr. TYDINGS—but not referred to by him in his argument in this matter—Chief Judge John R. Brown, who was elevated to the chief judgeship of the Fifth Circuit, U.S Court of Appeals, on July 17, 1967, in speaking of the visiting judges stated:

They are some of the hardest working judges, most of the time. They are willing to take on some more work. Here is Judge Carswell, on line 3, exhibit VIII, chief judge of the northern district, a district entirely overworked until the recent addition of a new judge. Judge Carswell has served us in over 6 years to sit 8½ weeks.

Mr. President, the Senate should take note of this statement by the chief judge of the fifth circuit for I believe it is most enlightening, particularly when there are those of us who make reference to the brevity of Judge Carswell's opinions. Perhaps if other judges followed the example of Judge Carswell with brief and clear opinions, the case backlog of the courts might be considerably reduced.

In the course of this debate I have heard several references by Senators to an affidavit by Mrs. Clifton Van Brunt Lewis of Tallahassee which appears on page 274 of the printed record. This affidavit, introduced by Mr. Clarence Mitchell, the NAACP witness, was designed to accuse Judge Carswell of racism in the organization of a golf and country club in Tallahassee. I think the Senate should know the correct details of this situation and more of the background of the maker of the affidavit.

Mrs. Clifton Van Brunt Lewis is a member of the old and highly respected Van Brunt family who, for reasons sufficient to herself, has adopted ultraliberal, so-called way-out, leftwing philosophies and programs. Her husband George E. Lewis, Jr., to whom she referred as "chairman" of the Lewis State Bank at Tallahassee, matches his wife in enthusiasm for ultraliberalism. I happen to well know this situation since Jeff D. Lewis, brother of George E. Lewis, Jr., is my son-in-law, and since the whole Lewis family, with the single exception of George E. Lewis, Jr., have been my close and intimate friends for many years.

I want the record to show that George E. Lewis, Sr., was the very first Floridian who called me to urge the nomination and confirmation of Judge Carswell to be an Associate Justice of the U.S. Supreme Court. His son, my son-in-law, Jeff D. Lewis, and another son, B. Cheever Lewis, president of the Lewis State Bank, are also strongly supporting Judge Carswell as are all other members of the Lewis family, excepting George E. Lewis, Jr.

The record shows that George Lewis, Sr., that is the father, was a stockholder and a director in the Tallahassee Country Club when it was originally organized, as shown at pages 335 and following of the printed record. Senators will remember that this club deeded the golf club facility to the city of Tallahassee in 1935 with a reversion understanding under which this club received back the club property from the city under a long-term lease in 1956. The record is completely clear on this point.

The record shows that B. Cheever Lewis, president of the Lewis State Bank, was an incorporator and treasurer of the new Capital City Country Club. See pages 352 and following of the printed record. The record also shows that Judge Carswell, the district attorney, and former Gov. Leroy Collins and other fine and fairminded citizens were members of the new golf club which took over from the Tallahassee Country Club the long-term lease back from the city in order to assure the construction of a new and handsome club building, an adequate swimming pool, and the reconstruction and modernization of the golf course itself. The record shows that somewhere between 300 and 400 of the citizens of Tallahassee joined in this successful effort to finance an adequate golf course, clubhouse and other facilities for Tallahassee, which is the capital city of Florida. The record shows also these objectives have been attained through the joint effort of these many fine citizens of Tallahassee. See the testimony of Mr. Julian Proctor, pages 107–111 of the record.

I want the Senate to know that Mrs. Clifton Lewis, the maker of the affidavit appearing in the record speaks only for herself and her husband and not for the Lewis family or the Lewis State Bank group or any other large and reputable group known to me in the city of Tallahassee, Fla.

The fact of the matter is that if the leaseback to the Tallahassee Country Club, the original owner of the property, was, as stated by Mrs. Clifton Lewis and by others in the course of the hearing an "obvious racial subterfuge" to deprive Negroes of the opportunity of using the golf course, every lawyer in this Senate must know full well that such a subterfuge would be ineffective and that since the title remained in the city of Tallahassee a successful Federal suit would have been brought long ago to avert any racial injustices growing out of this transaction. The plain fact is that the city of Tallahassee would not go to the expense of building a modern clubhouse and swimming pool and of modernizing the golf course and that the original club, the Tallahassee Country Club, the original owner of the golf course, had the clear right under its conveyance to the city in 1935 to request the city to lease the golf course property back to it for the purpose of accomplishing its improvement and development as an adequate golf course and club facility for our capital city.

Mr. President, I shall not take the time of the Senate to read a number of editorials and articles appearing in the newspapers regarding the nomination of Judge Carswell. There are a number of them, however, that are worthy of reading by all of the Senate. Therefore, I ask unanimous consent to have the following editorials and articles printed in the RECORD at this point.

I want to make it clear that I have many more of these editorials which I am not asking now to have printed in the RECORD:

First, an article appearing in the Washington Post under date of January 27, 1970, by B. J. Phillips, entitled "Carswell: 'Eisenhower Philosophy' ";

Second, an article appearing in the Washington Star under date of January 27, 1970, by David Lawrence, entitled "Carswell and 'the Law of the Land' ";

Third, another article by David Lawrence entitled "What Presidents Once Said About Racial Equality," appearing in the February 9, 1970, issue of U.S. News & World Report;

Fourth, an editorial appearing in the Orlando Evening Star, January 29, 1970, entitled "Carswell Critics Need To Remember Hugo Black";

Fifth, an editorial appearing in the Tampa Tribune, January 31, 1970, entitled "This Supremacist The Court Needs";

Sixth, an article appearing in Today, February 3, 1970, written by Columnist Malcolm Johnson entitled "Carswell Meets Nixon Wishes";

Seventh, an article appearing in the Chicago Tribune, February 10, 1970, entitled "Digging for Dirt in Carswell's Record";

Eighth, an editorial appearing in the Orlando Sentinel of February 20, 1970, entitled "Carswell's Qualifications";

Ninth, a column appearing in the Tampa Tribune, March 14, 1970, written by William F. Buckley, Jr., entitled "Carswell Critics Aren't Being Fair With Charges";

Tenth, an editorial appearing in the Pensacola Journal, March 19, 1970, entitled "Why Carswell Delay?";

Eleventh, an editorial appearing in the Pompano Beach Sun-Sentinel, March 19, 1970, entitled "Bickering Over Carswell Anti-Man or Anti-South?";

Twelfth, an article appearing in the Fort Lauderdale News and Sun-Sentinel, March 22, 1970, entitled "Ex-Law Dean Says Carswell Unbiased";

Thirteenth, a letter to the editor appearing in the Orlando Sentinel, March 22, 1970, entitled "Control of Supreme Court is Real Goal of Liberals";

Fourteenth, an article appearing in the Orlando Evening Star, March 23, 1970, by Ernest Cuneo, entitled "Power Struggle Over Court";

Fifteenth, an editorial appearing in the Fort Lauderdale News, March 23, 1970, entitled "Not so Speedy Congress Really Drags its Feet on Carswell Voting";

Sixteenth, a column by Malcolm Johnson appearing in the Tallahassee Democrat, March 24, 1970, entitled "Carswell Praise is Overlooked";

Seventeenth, an article appearing in the Miami Herald, March 24, 1970, entitled "An Unenthusiastic Vote for Judge Carswell," written by James L. Kilpatrick;

Eighteenth, an article appearing in the Florida Times-Union, March 25, 1970, entitled "Could Carswell Be Any Worse Than the Others?" written by John Chamberlain;

Nineteenth, an editorial appearing in the Florida Times-Union, March 26, 1970, entitled "Neo-McCarthyism and Carswell";

Twentieth, an article by David Lawrence appearing in the Tampa Tribune, March 28, 1970 entitled "Lack of Special Interests 'Hurts' Carswell";

Twenty-first, an editorial appearing in the Florida Times-Union, March 29, 1970, entitled "Where Are Carswell's Defenders";

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

[From the Washington (D.C.) Post, Jan. 27, 1970]

CARSWELL: "EISENHOWER PHILOSOPHY"

(By B. J. Phillips)

"You don't always get your first choice, and this just shows how it can work out sometimes."—Wilbur Council, Ordinary (records clerk), Wilkinson County, Ga.

World War II took George Harrold Carswell out of the law school that is first choice for aspiring Georgia politicians. He was defeated the first time he, a young man whom his friends thought would be governor some day, ran for public office. He changed states and political parties. He was not the first choice for his seat on the Fifth Circuit Court of Appeals, gaining it after President Johnson's nominee, Judge William McRae, lost the post in one of the few political disputes of the Johnson-Nixon transition.

Today, hearings before the Senate Judiciary Subcommittee open on his nomination for the Supreme Court seat vacated by Abe Fortas and denied Clement Haynsworth.

In one respect, his career is, like fellow Southerner Haynsworth's, marked by an orderly progression through the federal judicial branch under the aegis of Republican politics. Judge Haynsworth was a Democrat for Eisenhower and was named to the Fourth Circuit Court of Appeals. Judge Carswell, too, was a Democrat for Eisenhower, an organizer of the group in Florida, was appointed United States attorney, federal district judge and was elevated to a Circuit Court, the Fifth.

Behind these similarities, however, can be seen the twists and ironies and the reordering of choices.

Haynsworth, 56, is an aloof, shy man who shunned the rough-and-tumble of politics to fill a position of business and legal leadership in the tradition of his aristocratic family.

Judge Carswell, 50, was once an active political candidate, the heir to a political tradition born of malapportioned statehouses and nurtured on suspender-snapping oratory. A portion from one of his political speeches and its compromise with Georgia racial rhetoric has come back to haunt him.

Judge Carswell, his relatives in Tallahassee, Fla., and his friends there, his home since 1949, have refused to grant interviews since his nomination Jan. 19.

"I suppose it is the Haynsworth thing," one of the family spokesmen said. "After all, everything he (Haynsworth) said was used against him by the liberals, and, under the circumstances, I can understand the way they (the Carswells) feel."

Friends and relatives from his home town do not share this reticence and describe young Harrold Carswell as a bright, eager follower of his father, George Henry Carswell.

George Henry Carswell was the descendent of a pioneer Irwinton, Ga., family. The family fortunes were up and down as slavery, Sherman's march through Georgia and the boll weevil dictated. The Depression came early to Irwinton and Wilkinson County, but by that time George Carswell was one of the state's most prominent politicians.

At the time that the elder Carswell, a progressive state lawmaker sponsored legislation that revolutionized Georgia's educational system, provided workmen's compensation and protected child labor, he was without a namesake and heir. Two daughters were in their teens when George Harrold was born, Dec. 22, 1919. Another son, Hubert, followed, but he died at the age of 2.

When Harrold Carswell was 5, his mother died of tuberculosis.

His sister, Ellen (Mrs. Ramsay) Simmons said their mother "contacted TB after getting all run down nursing Hubert. Daddy sent her off to North Carolina to sleep on (sanatorium) porches, but it didn't help and she died when Harrold was just 5. Our older sister, Claire, was living at home then; I was in college and so she looked after Daddy and Harrold until she married."

Harrold's father, who was to serve a total of 30 years in the Georgia legislature, became secretary of state. He ran against and lost to Richard Russell in the 1930 gubernatorial campaign. Harrold was 11.

Mrs. Simmons described this period: "Harrold definitely came under the spell of my father. After all, Mother was gone and he spent a lot of time with him.

"He would tell funny stories at the supper table and talk to us about his cases. Every chance we got, we would go down to the court house and listen to Daddy argue a case."

County Ordinary Wilbur Council remembers "young Harrold coming around the courthouse when he wasn't in school to watch his daddy defend."

Shortly after this, Harrold moved to Bainbridge, Ga., to live with Mrs. Simmons.

"After my sister married and left home, we thought that Harrold ought to have a woman's influence, so he moved in with us. I had a 2-year-old daughter, a baby 3 weeks and I was 24. It was a handful. But my husband just took Harrold in like he was his own and took great pride in educating him and helping to rear him."

Four years later, Harrold's father died at 61, like his wife, a victim of tuberculosis. Ironically, the senior Carswell, as president of the Georgia Senate, had broken a tie vote for the establishment of a sanatorium for tuberculosis victims with, in one Georgia historian's words, "the speech of his life . . . an impassioned plea for those 'wasting away' from the disease."

Harrold graduated from Bainbridge High School and as a youngster there, met Virginia Simmons, the daughter of Jack Simmons, of Tallahassee. Jack and Ramsay Simmons (Harrold's brother-in-law) are brothers. They helped run crate-and-box factories started by their father in Tallahassee, Fla., Bainbridge, Tennille and Macon, Ga.

Although not related by blood, the future Judge and Mrs. Carswell shared mutual bonds of family—strong bonds, often found in the South, that last to the present.

"They sort of grew up together," Mrs. Ramsay Simmons said.

"We built a house in 1938 in Panacea, Fla., big enough for the whole family and we used to spend the summers there. All the Simmonses.

"Somebody always had to be taken to the store or to the train station and I started noticing that Harrold was asking Virginia if she didn't want to ride with him when he went. This was when he was in college."

Harrold Carswell graduated from Duke University, then entered the University of Georgia Law School—a matriculation once considered such a necessity for would-be politicians in the state that it was called "the club"—in 1941.

After Pearl Harbor, he joined the Navy, serving as an officer on a heavy cruiser at the battles of Tarawa, Kwajalein and Iwo Jima. In 1944, he married Virginia Simmons and left the Navy in November, 1945.

Then he entered law school at Mercer University in Macon, Ga., less than an hour's drive from the old Carswell home in Irwinton. He edited a small newspaper started by his father and uncle, The Bulletin, and organized the Wilkinson County Telephone Co.

The telephone company still exists, under different ownership. The newspaper is defunct. But little else has changed in Irwinton. The older generation of politicians are still designated as "Carswell men" or "Talmadge/Boone men" (after Eugene and Herman Talmadge and Alex Boone, the man who beat Harrold Carswell in his only political race).

"He started the paper to begin his political base here," Joe Boone, editor of the Wilkinson County News, successor to The Bulletin, and son of Alex Boone, said.

After graduating from Mercer Law School, he returned and announced his candidacy for the Georgia House of Representatives. He was 28 and it was in this race that Carswell made the statements about his belief in white supremacy that are expected to be an issue at his confirmation hearings today.

He lost the race, some Irwintonians say, "because he was too liberal;" others, "because he was too arrogant, thinking he could come right back here and take over county politics;" still others, "because he was up against one of the wiliest politicians you ever did see."

The winner, Alex Boone, was "far to the right of anyone in the race," son of Joe Boone said. "He had the radical right vote, I guess you'd call it, sewed up."

Friends and enemies in Wilkinson County have proved prophetic about G. Harrold Carswell.

One of his opponents in the 1948 race predicted in a speech that "if he loses, he won't stay in Wilkinson County long (he moved to Tallahassee within a few months of his defeat);" and a little over a year ago, a columnist for the Wilkinson County News wrote about "my dream—Harrold Carswell gets named to the Supreme Court."

Wilbur Council believes young Carswell's failure in his attempt to "carry on in his father's footsteps . . . showed him that he didn't have any political future here. By losing that race, he saw he could never follow the program he had mapped out."

Judge Carswell has declined comment on anything concerning his past, but those who observed him during that period believe that he had definite political ambitions.

"I always thought he'd be governor of Georgia," law school classmate and friend Elmore Floyd said. "And I told him so."

Carswell did not deny such an ambition, Floyd said, "although politics and running for office is a constant source of conversation with law students everywhere, all the time."

The apparent collapse of Carswell's Irwinton political base took him immediately to Tallahassee, his wife's home town, and his law firm of Ausley, Collins and Truett. Former Gov. Leroy Collins was a partner in the firm and it was considered, one Tallahassean said, "a good place for a young man interested in politics to be."

Collins said, "At the time he came, none of us knew him very well, except that he was married to a girl from one of Tallahassee's finest and most prominent families."

Tallahassee, with a society cut into three distinct divisions—government officials (it is the state capital), academics (Florida State University is located there) and old-line families—is the kind of Southern city in which the proper marriage can be very important.

Harrold Carswell's marriage to the daughter of the city's largest private employer helped to smooth his path to the socially elite. Collins added, "I don't know of any man who has come to Tallahassee who has been more popular. He has an engaging personality and is well liked."

Judge Carswell's role in the 1952 Democratic presidential primary in Florida pitting Sen. Richard Russell, old political foe of his father, and Sen Estes Kefauver against each other, is unclear. Reports that he "masterminded" the Russell campaign are denied by the Georgia senator. After Adlai Stevenson won the nomination, Carswell switched his allegiance to the Republicans and Dwight D. Eisenhower.

"I was for Stevenson and Judge Carswell was for Eisenhower," former Gov. Collins said. "I suppose a wise way to sum it up would be to associate him with the Eisenhower philosophy of an approach to government."

He left Ausley, Collins and Truett to start his own firm of Carswell, Cotten and Shivers. He practiced law a total of four years with both firms before being named U.S. Attorney for western Florida in 1953.

The same year, he and his wife officially changed their registration from Democratic to Republican.

Both Carswell's private law practice and two terms as federal prosecutor are unmarked by the spectacular. His practice was described as "good, but ordinary in terms of the kinds of cases he handled." As U.S. Attorney, he had "just one case make headlines—an interstate numbers operation that was the closest we ever came to having a gangster in our midst," according to Tallahassee Democrat editor, Malcolm Johnson.

In 1958, he was named to the federal district court by President Eisenhower. He was, at 38 the youngest federal judge in the country. He served on the court until he was named by President Nixon to the Fifth Circuit Court of Appeals last spring.

Judge William McRae, district judge for eastern Florida, had been nominated in the fall of 1968 to the Appeals Court vacancy by former President Lyndon Johnson. Judge McRae's nomination was allowed to lapse during the transition in a controversial move that in effect, cancelled several Johnson selections for the bench. Carswell was confirmed in June with belated and ineffective opposition from civil rights leaders.

Judge Carswell and his wife live a quiet, family-oriented life in Tallahassee. Their secluded house on a lake 10 miles north of the city is surrounded by the homes of family members. Mr. and Mrs. Fenton Langston (she is the Carswell's 24-year-old daughter; he is a legal aide to Fla. Gov. Claude Kirk) live in a small house on the same lot. Mrs. Carswell's brother, Jack Simmons Jr., lives a few doors away.

Judge Carswell rises early to walk down a dirt driveway to the Langstons to play with his infant granddaughter before anyone else is awake. The White House called Judge Carswell around 1 p.m. Jan. 19 to tell him he had been selected for the Supreme Court.

He was not at home; he was having lunch with his wife's aunt in the company of two other generations of Simmonses and Carswells.

"They are a very, very close family," Leroy Collins said.

Tallahassee insurance executive William Moor said, "Family closeness is kind of a thing here anyhow, but the Simmonses and Carswells are extra close. He's just a family man. He loves his children and their children and his friends' children."Judge Carswell is the godfather of one of Moor's daughters.

The Carswells have three other children, Nan (Mrs. Redford) Cherry, of Tampa, George H. Jr. and Scott Simmons, both students at Florida State University.

Judge Carswell is a gardener. "He has just reclaimed that yard from the woods; that's all it was when they moved out there and now it's a show place," according to Mrs. William Moor. Mrs. Carswell runs the house with the help of a full-time cook and a handy-man.

The house is filled with antiques. Most of the downstairs is panelled and looks out on a sweeping view of Lake Jackson. The Carswells often shoot ducks from the edge of their lawn. Their primary hobby is bridge, a game they "play well, but nicely." Mrs. Carswell is a former president of the Junior League and is now a sustaining member.

Judge Carswell is the former president of the Cotillion Club, an elite, segregated social group that sponsors four dances each year. They were once members of the local country club but resigned because they rarely used the club's facilities. Most of their entertaining is informal, at-home and centers around bridge tables.

Entertaining is altered when quail are in season.

"There's certain people who come down here to shoot birds during the wintertime," William Moor said, "who believe in eating dinner in black tie. When they're here, all of us, including the Carswells, put on formal dinners, but that's the only time."

Mrs. Carswell, an attractive brunette of 44, is noted for outgoing personality. "Vivacious" and "cheer-leader type" are the words her friends most often use to describe her. She served as social secretary to Gov. Claude Kirk for a brief period between his inauguration and remarriage.

While Judge Carswell was U.S. attorney, he became friends with then-assistant Attorney General William Rogers.

Mrs. Carswell described Secretary of State and Mrs. Rogers as "old friends in Washington."

The move to Washington is one that old friends of Carswell expected, although there is a significant split in opinion about how he would reach the capital. The split exists between those who knew him before he had given up active politics and those who knew him after.

Douglass Shrivers, a former law-partner, said, "I always felt he would be on the Supreme Court."

Law school classmate Elmore Floyd "always thought he'd be governor of Georgia and maybe senator later."

"The difference," Wilbur Council said, "is that Harrold learned how to make other opportunities for himself when he got disappointed."

[From the Washington (D.C.) Star, Jan. 27, 1970]

CARSWELL AND "THE LAW OF THE LAND"

(By David Lawrence)

Why should Judge G. Harrold Carswell—who has been nominated for the Supreme Court of the United States—be criticized now for making a political speech in 1948 which was in accordance with "the law of the land" at that time? Millions of people have read the following quotation from an address by Carswell delivered to an American Legion audience on Aug. 2, 1948:

"I am a Southerner by ancestry, birth, training, inclination, belief and practice. I believe that segregation of the races is proper and the only and correct way of life in our state. I have always so believed and I shall always so act."

But segregation was sanctioned by "the law of the land" in 1948, and it was not overturned until May 1954. Up until then, the Supreme Court in six decisions over a period of 75 years had upheld the doctrine of "separate but equal" facilities.

In the famous 1896 case known as Plessy v. Ferguson, the Supreme Court had upheld the validity of a Louisiana law which provided for "equal but separate accommodations for the white, and colored races," on railroad trains. It was not until 1954 that the Supreme Court ruled in Brown v. Board of Education that "separate educational facilities" are "inherently unequal" and unconstitutional.

Segregation was commonplace throughout the South in the years before 1954, and many states outside the South had had segregated schools for a long time. When the Supreme Court in 1896 declared that "separate but equal" was constitutional, the South continued its segregated schools. Doubtless many speeches were made in 1948 and thereafter, along with that of Carswell, supporting the principle of what was then "the law of the land" with respect to segregation.

Carswell's speech was delivered while he was running for the Georgia Legislature, six years before the Supreme Court handed down its desegregation ruling in 1954. Yet he has been condemned all over the country in recent days for expressing views on segregation which were in compliance with "the law of the land" when he spoke. Now—more than 21 years later—he has publicly repudiated the statement and says it is abhorrent to his personal philosophy. Various organizations nevertheless are trying to block his confirmation in the Senate on the ground that his speech in 1948 makes him ineligible for the high court.

To punish anybody today for upholding what was interpreted at the time as within the bounds of the Constitution is surprising. Undoubtedly it results from a failure to look up the record and read what happened prior to 1954 when the Supreme Court made its momentous decision ordering segregation in the public schools to be abolished.

Incidentally, when Senator Hugo L. Black of Alabama was nominated to be an associate justice of the Supreme Court of the United States by President Franklin D. Roosevelt on Aug. 12, 1937, some objection was raised to him because of his alleged membership in the Ku Klux Klan, but he was confirmed within five days. He subsequently acknowledged that he had once been a member of the Klan, but said that he had resigned from the organization and repudiated its purposes. Black in 1954 joined with the other eight justices of the court in rendering a unanimous decision banning segregation in public schools.

Thurgood Marshall—an associate justice of the Supreme Court of the United States since 1967 and the first Negro to hold such an office—was one of the principal attorneys who argued the "desegregation" cases in 1954. He was chief counsel for the National Association for the Advancement of Colored People. But nobody has ever raised any objection in the high court to his having since decided cases which involved his former employer. Logically, there should be none, for he is a man of integrity.

Because a person at one time was identified with a company that has litigation before the court does not necessarily disqualify him. There are many people in Congress, however, who seem to feel that the judges should disqualify themselves when such cases arise. Perhaps the American Bar Association ought to draw up a set of rules which would clarify the whole problem.

[From U.S. News & World Report, Feb. 9, 1970]

WHAT PRESIDENTS ONCE SAID ABOUT RACIAL EQUALITY

(By David Lawrence)

The controversy recently about Judge G. Harrold Carswell's speech which he made in 1948 in favor of segregation—six years before the Supreme Court ordered desegregation in the public schools—prompts a re-examination of just what was said in public speeches and in utterances of Presidents of the United States on the general subject of racial equality prior to the Court's ruling in 1954. Here are some extracts:

Thomas Jefferson, in a letter to Francois Jean de Chastelleux on June 7, 1785:

"I have supposed the black man, in his present state, might not be in body and mind equal to the white man; but it would be hazardous to affirm that, equally cultivated for a few generations, he would not become so."

Jefferson's Autobiography, published in 1821:

"Nothing is more certainly written in the book of fate than that these people are to be free; nor is it less certain that the two races equally free, cannot live in the same government. Nature, habit, opinion have drawn indelible lines of distinction between them."

Abraham Lincoln, in a speech at Ottawa, Ill., on Aug. 21, 1858:

"I have no purpose to introduce political and social equality between the white and the black races. There is a physical difference between the two, which in my judgment will probably forever forbid their living together upon the footing of perfect equality, and inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong having the superior position.

"I have never said anything to the contrary, but I hold that notwithstanding all this, there is no reason in the world why the Negro is not entitled to all the natural rights enumerated in the Declaration of Independence, the right to life, liberty and the pursuit of happiness. I hold that he is as much entitled to these as the white man. I agree with Judge Douglas, he is not my equal in many respects—certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man."

Abraham Lincoln, in a speech at Charleston, Ill., on Sept. 18, 1858:

"I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and black races—that I am not nor ever have been in favor of making voters or jurors of Negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race. . . .

"I will add to this that I have never seen to my knowledge a man, woman or child who

was in favor of producing a perfect equality, social and political, between Negroes and white men."

Theodore Roosevelt, in his Seventh Annual Message to Congress on Dec. 3, 1907:

"Our aim is to recognize what Lincoln pointed out: The fact that there are some respects in which men are obviously not equal; but also to insist that there should be an equality of self-respect and of mutual respect, an equality of rights before the law, and at least an approximate equality in the conditions under which each man obtains the chance to show the stuff that is in him when compared to his fellows."

William Howard Taft, in his Inaugural Address on March 4, 1909:

"The colored men must base their hope on the results of their own industry, self-restraint, thrift and business success, as well as upon the aid, comfort and sympathy which they may receive from their white neighbors."

Franklin Delano Roosevelt, in a letter to Cleveland G. Allen on Dec. 26, 1935:

"It is truly remarkable, the things which the Negro people have accomplished within living memory—their progress in agriculture and industry, their achievements in the field of education, their contributions to the arts and sciences, and, in general, to good citizenship."

Harry S. Truman, to the Democratic National Convention in 1940:

"I wish to make it clear that I am not appealing for social equality of the Negro. The Negro himself knows better than that, and the highest type of Negro leaders say quite frankly they prefer the society of their own people. Negroes want justice, not social relations."

How many of the foregoing statesmen could be confirmed as Justices of the Supreme Court today if their statements of earlier years such as the above were cited against them by members of the Senate?

[From the Orlando (Fla.) Evening Star, Jan. 29, 1970]

CARSWELL CRITICS NEED TO REMEMBER HUGO BLACK

Is Harrold Carswell destined to suffer the same fate as Clement Haynsworth in the Nixon administration's attempt to seat him on the U.S. Supreme Court?

It has been little more than a week since the President nominated the Floridian, and already there are distinct rumblings which indicate Carswell's confirmation is in jeopardy.

Much of the criticism being directed at the Tallahassee jurist stems from a speech he made in 1948, which has stirred racist fears.

Judge Carswell was 28 years old at the time and a student at the University of Georgia. His endorsement of white supremacy in that speech has since been repudiated by the judge. And his rulings during his many years on the bench would indicate no leanings in that direction.

Those who are rushing to the attack against Carswell need to be reminded of the case of Justice Hugo Black.

Back in the 1930s, President Franklin D. Roosevelt nominated Black for the high court and stirred up even more of a hornet's nest than that produced by Nixon's nominations of Haynsworth and Carswell.

Black, a native of Alabama, had been a member of the Ku Klux Klan. Great pressure was applied to Roosevelt to withdraw the nomination and a heated battle followed before the Senate finally confirmed Black.

Now, more than 30 years later Black is still a member of the Supreme Court and one of its foremost liberals. Those who were spouting about Black's racism later were shocked to find the Southern jurist voting on the side of civil rights groups in most cases which reached the Supreme Court.

It has been 22 years since Judge Carswell made his white supremacy speech. Few of us would care to be judged today by words we uttered 22 years ago.

Arguments against Carswell are weak, and insufficient to deny him a seat on the high court.

[From the Tampa Tribune, Jan. 31, 1970]

THE SUPREMACIST THIS COURT NEEDS

Judge Harrold Carswell apparently will survive charges that he is both a white supremacist and a male supremacist.

The first charge arose from a resurrected speech the Supreme Court nominee made while running for the Georgia Legislature 22 years ago. (He lost the race, he said, because the county voters considered him too "liberal"—he hadn't been a backer of Gene Talmadge.)

The second charge was thought up by Hawaii Congresswoman Patsy Mink. She said Carswell showed discrimination against women by voting, along with eight other judges of the Fifth Circuit Court of Appeals, to deny a rehearing of a woman's complaint that she had been refused a job in a defense plant because she had small children.

Judge Carswell repudiated as "abhorrent" white supremacy sentiments he expressed on the political platform in 1948. He had on his behalf a persuasive witness, former Governor LeRoy Collins, a fellow townsman and former law partner in Tallahassee, who has suffered unfair abuse because of his stand for Negro rights.

Men and times change. Nothing in Judge Carswell's record as a U.S. District Attorney or Federal Judge suggests racial or other bias. Civil rights lawyers construed his decisions as hostile; but they would so interpret the decision of any Southern judge who ruled against them, however valid his grounds.

The "male supremacy" complaint hardly needs reply. It is an example of the silly stones likely to be cast at any man who may be nominated for the Supreme Court, especially if he is a conservative from the South.

In his testimony before the Senate Judiciary Committee and in his conduct generally Judge Carswell made a favorable impression. He was calm, articulate and candid—all qualities which are desirable in a judge.

His sponsors do not contend he will prove to be another John Marshall or Oliver Wendell Holmes. They do expect him to be an honest, conscientious interpreter of the law as written, not as he might wish it to be. As Judge Carswell aptly told the Senators, in discussing his philosophy, he does not believe the Supreme Court should act as "a continuing Constitutional Convention".

Senators Walter Mondale of Minnesota and William Proxmire of Wisconsin have announced they will vote against Judge Carswell's confirmation. Other down-the-line liberals, like Birch Bayh of Indiana and Ted Kennedy of Massachusetts, can be expected to join them.

But their ranks are thinner now than in the battle which defeated Judge Clement Haynsworth. Some Republican Senators who went against Haynsworth, ostensibly because of "conflicts of interest" in stock holdings, already have announced support of Carswell.

Senate Republican Leader Hugh Scott predicts Carswell will be confirmed with no more than 20 votes against him.

We trust Senator Scott's analysis is correct.

Judge Carswell, we think, is the kind of Supremacist the Supreme Court can use—a judge who believes in the supremacy of Constitutional principles over social theories.

[From the Tallahassee (Fla.) Democrat, Feb. 3, 1970]

CARSWELL MEETS NIXON WISHES

(By Malcolm Johnson)

TALLAHASSEE.—Harrold Carswell's severest critics are doing a good job of establishing that he meets the major philosophical qualification which President Nixon said, in his campaign, he would seek in naming men to the U.S. Supreme Court.

"I believe we need a court which looks upon its function as being that of interpretation rather than of breaking through into new areas that are really the prerogative of the Congress of the United States," Nixon said in the campaign.

"Since I believe in a strict interpretation of the Supreme Court's rule, I would appoint a man of similar philosophical persuasion," he pledged to the people whose vote he was asking.

Now, his nomination of Judge Carswell is before the U.S. Senate for confirmation, and read what is being said about him in opposition to the judge's seating:

The New York Times, predictably, jumped out instantly in opposition and commented that a review of his decisions as a lower court judge—

NO LEGAL PIONEER

". . . reveal a jurist who hesitates to use judicial power unless the need is clear and demanding; who finds few controversies that cannot be settled by involving some settled precedent, and who rarely finds the need for reference to the social conflict outside the courtroom that brought his cases before him."

The Times indictment, then, is that Judge Carswell has decided litigation according to the law and precedents instead of striking out on his own to dictate rulings based on his private conscience or the persuasion of someone else's social values.

And William Van Alystyne, a Duke University law professor testifying against Carswell before the Senate Judiciary committee, said his examination of Carswell civil rights rulings revealed to him that when the judge ruled favorably for minority groups the law and court precedents were so clear he could not have ruled otherwise.

Well, so what? Even according to the fallacious dogma of judicial activists, "the Supreme Court makes the law of the land," and lesser judges are not allowed to question it.

There is the whole issue, plainly stated by the two sides—President Nixon in his criterion for judges who are what he calls "strict constructionists," and the opponents who want courts to make up the law as they go (as long as it fits their particular desires and philosophy).

President Nixon won. The advocates of judicial activism lost (and ignobly, if you count the George Wallace votes against them, too). They are fighting a last-ditch battle in the Senate to keep a man of the winning philosophy off the court.

The zealousness with which they hold to the liberal bigotry that only their side can ever be anything but right, and deserving of instant judicial acceptance, approaches a religion (as our contemporary flexibility allows us to define a religion). Some even make racial integration a tenet of their religions.

In that sense, their fervor in opposition to Judge Carswell because of his judicial philosophy approaches a religious test—which would be in violation of Article Six of the Constitution which says "no religious test shall ever be required as a qualification to any officer or public trust under the United States."

There really is more to the Constitution than the 5th and 14th amendments.

[From the Chicago Tribune, Feb. 10, 1970]

DIGGING FOR DIRT IN CARSWELL CASE

It must be deeply disappointing to the opponents of G. Harrold Carswell's Supreme Court nomination that he has been unable to build up a fortune in the last 17 years while he was a United States district attorney, a federal district judge, and a judge of the United States Court of Appeals. Extensive digging into his background has shown that

instead of a fortune, the judge has acquired debts.

In 1953, when he became a United States attorney, the pay was $8360 a year. Two years later it rose to $12,500. In 1958, when he became a federal judge, his salary rose to $22,500. Now he gets $42,500 as an Appeals court judge.

His expenses have included the rearing and educating of four children. Two daughters are now married and two sons are students at Florida State university. He has managed to make ends meet by mortgaging and selling off portions of his homesite, which he obtained from his wife's family. Mr. and Mrs. Carswell now have 7.06 acres in their Tallahassee homesite after selling four lots for $30,000 and after giving 2.44 acres to their daughter and her husband.

Judge Carswell told the judiciary committee he valued his house at $90,000. It has a mortgage of $50,347. The Carswells also have a debt of $48,000 secured by his wife's stock in her family's business. Friends of Carswell say that if the judge is confirmed he plans to liquidate his debts and move to Washington.

There is no pay dirt in this record for the opponents of Judge Carswell. They can't scream that he has made fortunate investments and therefore is unfit to be a judge.

[From the Orlando (Fla.) Sentinel, Feb. 20, 1970]

CARSWELL'S QUALIFICATIONS

The worst thing Judge Harrold Carswell's detractors have found to say against him is that he is a Southerner.

The next worst is that he "is run-of-the-mill."

We don't think Carswell needs defending because of his birthplace and place of residence. Being a Southerner, and a conservative one at that, is bad in the eyes of no one except those who are liberal beyond redemption.

The charge of run-of-the-mill can be interpreted as meaning that Harrold Carswell is an average if not ordinary man.

We see this as an asset rather than a liability. If there is anything the Supreme Court needs, it is more down-to-earth decisions and interpretations.

A man of Carswell's background is more likely to insist upon a strict interpretation of the Constitution rather than a will-o'-the-wisp approach to legal matters.

The American people have had enough sociology in their Supreme Court during the last two decades. Let us now restore the balance by approving the appointment of a man who is dedicated to sound law.

[From the Tampa (Fla.) Tribune, Mar. 14, 1970]

CARSWELL CRITICS AREN'T BEING FAIR WITH CHARGES

(By William F. Buckley Jr.)

I do not know Judge Carswell, and could not vouch for it as a matter of personal knowledge that he knows the difference between a lessor and a lessee. I merely take it for granted that someone as thorough as Mr. Nixon is unlikely to nominate anyone to the Supreme Court who is altogether ignorant of the law, and pause to remark that ignorance of the law would appear to have been the principal qualification for service in the Supreme Court over the past dozen years.

But the nature of the campaign being waged against Judge Carswell certainly requires comment.

Mr. Anthony Lewis of the New York Times has discovered that Judge Carswell once told a joke—which joke, one infers, clearly disqualifies Judge Carswell. The joke is as follows (and if you say this joke out loud, you must imitate a Southern accent in order to render it as, one supposes, Judge Carswell rendered it): "I was out in the Far East a little while ago, and I ran into a dark-skinned fella. I asked him if he was from Indo-China, and he said, 'Naw, suh, I'se from Outdah Geowja.' "

Now perhaps judges shouldn't tell jokes. One could as well imagine Earl Warren telling a joke as Mount Rushmore. But great big cosmopolitan newspapermen oughtn't, in the presence of a joke as innocent as this one, to act like Snow White at "Oh! Calcutta!" It is hardly anti-Negro to say of someone that he is "dark-skinned." It is hardly anti-Negro to observe that the body of American Negroes, like the body of American Southerners—like Judge Carswell himself—pronounces "Georgia" as "Jawja." And the fulcrum of the joke, that "Indo" and "Outdah," as pronounced in the South, rhyme, is essential to the mildly amusing story. And Mr. Lewis knows it.

And then another criticism of Judge Carswell. "In 1953 he drafted a charter for a Florida State University boosters club that opened membership to 'any white person interested in the purposes. . .' "

Among the civil liberties of both Southerners and Northerners, back in 1953, in most states of the Union, was the formation of a club with restricted membership. That Mr. Carswell as a practicing attorney drafted a charter for a typical Southern college in which—by state law, because we are talking pre-Brown vs. Board of Education—membership was restricted to white students, was as routine as drawing up a will.

The balance of the charges are of the same order. What the critics of Mr. Carswell fail almost uniformly to bear in mind is that a revolution of sorts has taken place in the South during the past 15 years, that what was only a few years ago altogether routine, is now rejected as obloquy.

Days after the proclamation of the republic, everyone in France was supposed to have been born a republican. Weeks after the triumph of Napoleon, everyone proclaimed himself a lifelong Bonapartist. I do not imply that, like the Vicar of Bray, Carswell would return to the segregationist patterns which were simply taken for granted in the South he grew up in—because, now in the prime of life, he affirms most solemnly his belief that when in the name of morality one catechizes a man who functioned as a royalist back when the king was on his throne, one proceeds, as Anthony Lewis has done, in the spirit not of Abraham Lincoln, but of Robespierre.

[From the Pensacola (Fla.) Journal, Mar. 19, 1970]

WHY CARSWELL DELAY?

Free debate in an unrestricted but reasonable consideration of issues is the essence of the democratic principle in practice. It must always be defended, and its enemies are many.

Those who would destroy the process by direct assault are easily identified and as easily contained; but those who profess to preach the doctrine of democracy and then deliberately use the very guarantees of the system to abuse it are the dangerous ones.

These elements are devious and ruthless. They prefer to work secretly and to create and then manipulate their own political figures. They are less concerned with the nation's welfare than they are with their own limited cause—their political and social objectives.

For overly long the nation has been exposed to such a performance in selection of the ninth member to the Supreme Court, which for many months has been forced to operate one justice short.

Two outstanding nominees have been presented to the Senate by President Nixon. The first, Judge Clement Haynsworth, became a political casualty—a sacrifice to selfish and special interests, although his enemies could not dredge up a single supportable instance of unethical conduct.

The second, Judge G. Harrold Carswell, is receiving like treatment from the same sources, although he too not only is eminently qualified but free of taint.

Any appointee to the federal judiciary must first undergo an FBI investigation which follows him from birth to the date of his consideration for office. This is a routine.

He then is presented to the Senate Judiciary Committee which puts him on the anvil for about as close a scrutiny as a man can get. If approved there, he is given to the Senate which can question his qualifications and record in open debate. Only then is a vote taken.

There is nothing fundamentally wrong with this system. It is in the democratic concept of protecting the public in administration of justice later.

But what is wrong is subversion of the privilege of self-oriented interests.

This is what destroyed Judge Haynsworth, and this is what the same elements intend to do with Judge Carswell, if they can. It matters not at all that both men are clean and that all the hunting and the interpretations of their past statements—in context, of course—have stirred up not even a little lint.

They don't care if the character, of the men is falsely sullied, or if the Supreme Court itself is damaged if in the end they can get a puppet of their own choosing on the court.

Who are these men responsible for interminable and costly delay in appointment of the Supreme Court justice?

They are several, but they represent for the most part organized labor which has boasted it controls senators—shackled through financing of campaigns. And labor makes no secret of the fact that it aspires to control the country politically through one of the major (Democratic) parties, if possible.

And in an uneasy alliance with labor are the professional race zealots and activists who automatically oppose any man from the South.

(We term this an uneasy alliance because between times race leaders are actively fighting organized labor over what they term discrimination against blacks.)

While this insupportable delay goes on, the public suffers and the court is crippled in a pandering to the whims of a few at the expense of the many.

But the public is more numerous and it is time it makes itself felt in demanding the Senate stop dallying and get down to the business of affirming Judge Carswell, labor and racists notwithstanding.

[From the Sun-Sentinel, Mar. 19, 1970]

BICKERING OVER CARSWELL ANTI-MAN OR ANTI-SOUTH?

(By William A. Mullen)

As the battle for control of the U.S. Supreme Court rages over the nomination of Federal Judge Harrold Carswell as associate justice, the opposition debate gets less and less concerned with fact.

The latest gambit is the charge raised by Sen. Joseph Tydings, D-Md., leader of the anti-Carswell forces, that endorsement of the Tallahassee-based federal appeals judge by an esteemed colleague had been withdrawn over racial conflict.

Senator Tydings implied that Judge Carswell had failed to disclose that former Chief Judge Elbert Tuttle of the U.S. Fifth Circuit Court of Appeals, had rescinded his endorsement of Judge Carswell.

The purported reason was Judge Carswell's involvement in the organization of an all-White private club.

At this writing, there has been no confirmation from Judge Tuttle that he intended to reverse his position on the Carswell nomination. Nothing has been said by him about the racial overtones. All that is definitely known is that Judge Tuttle informed Judge

Carswell by telephone that he would not be able to testify in his behalf before the Senate Judiciary Committee.

But the Tydings insinuations perpetuate the racial allegations against Judge Carswell, to which have been added contentions by the United Steelworkers Union, AFL–CIO, that confirmation of President Nixon's nominee would indicate that "bigotry and incompetence" would not disqualify a man for the court.

The union, Senator Tydings, Sen. Edward Kennedy, D-Mass., Sen. Edward Brooke, R-Mass., the Senate's only Negro member, and a number of others opposing Judge Carswell for supposed bigotry all conveniently overlook an entry in the Feb. 16 Congressional Record that records support of the jurist by the former president of the Cleveland, Ohio, chapter of the National Assn. for the Advancement of Colored People (NAACP).

The entry is a letter to the editor published in the Cleveland Plain Dealer and written by Chester Gillespie, presently a member of the chapter's executive committee, urging that unless the NAACP "has very strong evidence against Judge Carswell," it should compromise and support Mr. Nixon's appointment.

The letter further states, in part:

"He (Judge Carswell) has made some mistakes in his several rulings, but he ruled a Negro must be served in a barber shop and that Negroes must be served in public restaurants, both in the State of Florida and his White friends were unhappy about these rulings and the barber closed his shop.

"Judge Carswell should be promptly confirmed so the court can function as the law requires and for the good and welfare of America. We cannot always get everything we desire."

That admonition is wasted upon the liberals who have shown they will fight any Southern conservative nomination, merely because of it being Southern and conservative.

In so doing, they are wholly unrealistic about giving proper regional and philosophical balance to the nation's highest court.

Other than Associate Justice Hugo Black, no southerner is on the bench, and he is 84 years old. Should his place in the court be vacated, the South would be without a voice in the court where a number of cases are brought directly against the South.

The court's only Negro justice, Thurgood Marshall, was born in Maryland, but his appointment was from New York. And he could hardly be regarded as a Southern conservative.

Three of the jurists are from the Northeast, the citadel of liberalism; one is from Ohio and another from Colorado.

Chief Justice Warren Burger resided in Virginia at the time of his appointment, but he is a native Minnesotan.

We believe Senator Tydings, et al., are more in opposition to President Nixon's intention of having, properly, more southern representation on the bench than they are against Judge Carswell, per se.

They would be wiser to heed Mr. Gillespie's views and his counsel that they cannot always get everything they desire.

[From the Fort Lauderdale (Fla.) News and Sun-Sentinel, Mar. 22, 1970]

EX-LAW DEAN SAYS CARSWELL UNBIASED

TALLAHASSEE.—Supreme Court-nominee G. Harrold Carswell represents the "changing views of the South which are becoming strongly favorable to the advancement of Black people," Mason Ladd, former dean of law schools in Iowa and Florida, said Saturday.

Ladd said persons opposing Judge Carswell because they fear he would be racially-biased are "all wrong. On race, he is as fair as any northern judge."

He also said that the 50-year-old Tallahassee jurist, whose nomination is being hotly debated in the U.S. Senate, is competent and qualified to sit on the nation's highest bench "and would expect him to develop into a highly respected member of that bench."

"I firmly believe that were it not for the civil liberties attack upon him, his qualifications would never have been questioned."

Ladd gave up his position as dean of Iowa State University Law School in 1966 to head the new Florida State University Law School here which Judge Carswell helped to found.

Ladd stepped down as dean last year, but still teaches a course in evidence for one quarter each year.

The scholarly dean recalled in an interview that he became dean of the Iowa School in the late 1930's, succeeding the late U.S. Supreme Court Justice Wiile B. Rutledge, a Roosevelt judge whom Ladd supported and admired.

He said Carswell, federal district judge here for 18 years before his elevation to the Fifth Circuit Court of Appeals, "took a strong position supporting enrollment of Black students at the new law school."

Carswell was a member of the committee that helped get the school under way, Ladd said, "and there was a question whether Black students would be able to meet some admission requirements, particularly the Princeton National Education Testing Examination.

"Judge Carswell said we should admit Black students whether they met this test or not, if they were otherwise qualified."

"I am certain that, despite anything he might have said 20 years ago, Judge Carswell is not a racist and harbors no feelings of supremacy."

Civil rights leaders base part of their oppositions to Carswell on a 1948 campaign speech he made for the Georgia legislature race in which he spoke in favor of White supremacy. Carswell has since repudiated the remarks.

"On any issue related to civil rights, I feel he would approach the matter with open mind and decide the case with complete fairness and impartiality," Ladd added. "He does not have preconceived notions and his decisions show it."

He said he has had occasion to look at some of the judge's rulings in connection with research for his classes.

"He has a high sense of fairness, a sharp mind and sees points quickly. He has had excellent experience in a large federal court that has been overly-loaded with work. The practicing bar, which regularly appears before him, thinks highly of Judge Carswell."

Ladd, who expects to return to Iowa City after taking a short vacation over the Easter holidays, said that Judge Carswell has been criticized by some for not making a scholarly treatise out of every opinion.

"I would expect his opinions to be shorter in length than some, but clear, understandable and sound. He is very hardworking, honest and sincere."

[From the Orlando (Fla.) Sentinel, Mar. 22, 1970]

CONTROL OF SUPREME COURT IS REAL GOAL OF LIBERALS

EDITOR: Now we have another group of immature whatnots demanding via petition that Judge Carswell's nomination be withdrawn. Does this bunch of young liberals, with minds still needing a bit of fertilization and experience, really believe or dream that they are qualified to pass judgment on the abilities of a man such as Judge Carswell, who has been on the bench for about 15 years and in practice longer than they are old? These young heads are so swollen with overdoses of protest and dissent that they have lost all sense of direction.

Now that the people do know that it is not Carswell's qualifications that are in question, it positively must be the extreme liberal anxiety to keep control of the U.S. Supreme Court. With this power they control the lives of all people in this nation. If these liberals are not stopped now, there is no telling how far they will carry this nation down the Marxist road.

WALTER H. VER PAULT.

NEW PORT RICHEY.

[From the Orlando (Fla.) Evening Star, Mar. 23, 1970]

POWER STRUGGLE OVER COURT

(By Ernest Cuneo)

WASHINGTON.—The fight against confirmation of Judge G. Harrold Carswell, as was the battle against Judge Clement F. Haynsworth, is the mere surface of the terrific power struggle underneath.

Judge Carswell and Judge Haynsworth, as persons, are relatively unimportant as compared with the much large issue of control of the Supreme Court.

The court has the ultimate power in this republic. When it declares a law unconstitutional, it nullifies an act of Congress because the Constitution, as conservative Chief Justice Charles Evans Hughes declared, means what the Supreme Court says it means.

In the past 20 years, the Supreme Court has placed new interpretations on the constitution which, in effect, changes the law of the land. In this respect, the Supreme Court is legislating new law.

There is nothing particularly new in this practice. It is as old as the republic. However, it does define the importance of the power struggle underneath. Since the Supreme Court is composed of only nine men, and since there are 100 men in the U.S. Senate, each Supreme Court justice has the power of at least 11 senators.

When, as has happened, the high court splits 4 to 4, it means that the vote of a ninth justice may result in the majority opinion of the court.

Thus, the vote of a new justice may decide what is the law and what is not.

While there is nothing particularly new in this, it explains the terrific power struggle. The last knock-down, drag-out battle for Supreme Court supremacy occurred in 1937. The conservative court ruled much of President Franklin D. Roosevelt's legislation unconstitutional.

President Roosevelt sought to overcome this judicial roadblock by adding enough justices to give him a majority which would uphold his legislation. He lost—at the height of his own popularity—the bitter battle.

But the Supreme Court, under this terrific presidential pressure, reversed its posture and held much of the president's new laws constitutional. And another factor entered: man's mortality. The justice were very aged in 1937. They dropped off the court and Roosevelt was enabled to appoint an almost entirely new court before he died in 1945, including moving up Associate Justice Harlan F. Stone to chief justice.

The new court took a much more liberal view than the older one under Chief Justice Hughes, and the court continued this trend under chief justices Fred M. Vinson and Earl Warren.

There is nothing particularly new in this pattern either. Chief Justice John Marshall was a strong federalist. Reversing this, Chief Justice Roger B. Taney, who followed him, was a strong states' rights advocate. For the next 65 years, conservative chief justices Salmon P. Chase, Morrison R. Waite, Melville W. Fuller, Edward D. White and William Howard Taft strongly held for property rights.

The Court was less conservative under Chief Justice Hughes, but it was conservative

enough to bring on the confrontation with President Roosevelt.

The current power struggle, therefore, is not really about Judge Carswell, but over the composition of the Supreme Court. It appears that, to President Nixon, as to President Roosevelt, will come the necessity of naming a large number of Supreme Court justices, particularly if the President is reelected.

Aside from the vacancy caused by the resignation of Justice Abe Fortas, two associate members of the supreme court, Justice William O. Douglas and Justice John Harlan are over 70. Justice Hugo Black is 84 and none of these gentlemen enjoys the health they once had.

The Constitution requires that the President nominate and the Senate confirm nominations for the court. President Nixon has nominated conservatives in Judge Haynsworth and Carswell. The liberal Senate quite aside from the personalities of the President's nominees, wants to continue the power of the liberals on the court.

[From the Fort Lauderdale (Fla.) News, Mar. 23, 1970]

NOT SO SPEEDY CONGRESS REALLY DRAGS ITS FEET ON CARSWELL VOTING

While Congress is moving a bit faster this year with an eye to winding up its work before the fall campaigning gets under way, the spectacle of the United States Senate's delay in acting on the nomination of G. Harrold Carswell to the Supreme Court is not improving the image of our lawmakers in the least.

More than two months has elapsed since President Nixon submitted the nomination of the Florida jurist. That should have been ample time to develop evidence as to whether the nominee is worthy of confirmation.

The situation is important because the Supreme Court is operating with eight justices on the job rather than the full complement of nine. As a result, the court's work is being slowed.

Chief Justice Warren E. Burger is reported to have advised members of Congress of the problems being created and the likelihood that a backlog of cases will slow the processes of justice.

At a time when this nation has more than its share of problems related to maintaining law and order, this certainly cannot help the situation.

Opponents of the nominee have been successful in stalling the Senate vote while striving to dig up just a bit more evidence which might sway additional votes to block confirmation.

Fundamentally, the opposition rests on the fact Judge Carswell is a conservative and a Southerner, and that is distasteful to the liberals.

What is being done is to block representation of the majority in this country. It was quite evident in the 1968 election that some 57 per cent of the people voted a conservative line, favoring either Richard M. Nixon or the third party contender, George Wallace.

In the desperate liberal maneuverings, another aspect of political life was injected by Sen. Birch Bayh, D-Ind., who questioned whether Judge Carswell lacked the "professional excellence" required of the job.

Sen. Russell Long, D-La., answered that question, saying he would prefer having a "B student or C student who was able to think straight," than an A student with "corkscrew thinking."

Sen. Robert Byrd, D-W. Va., added: "Mediocrity cuts across senatorial lines as well as judicial lines. I haven't heard of any senators turning back their paychecks because of mediocrity."

The continued debate on Judge Carswell makes it appear that some of the senators not only are mediocre but afflicted also with corkscrew thinking.

The Senate should get on with its vote on the nomination without further delay. We are anxious to check out the eventual lineup to tally up the mediocre lawmakers and the degree of corkscrew thinking prevailing.

[From the Tallahassee (Fla.) Democrat, Mar. 20, 1970]

CARSWELL PRAISE IS OVERLOOKED

(By Malcolm Johnson)

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 467-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 openminded 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 Supreme Court . . ."

Judge David W. Dwyer: ". . . great judicial talent and vigor."

Judge Robert A. 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.

[From the Miami (Fla.) Herald, Mar. 24, 1970]

A COMPETENT, NO-NONSENSE PRACTITIONER: AN UNENTHUSIASTIC VOTE FOR JUDGE CARSWELL

(By James J. Kilpatrick)

WASHINGTON.—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 predicated 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 criticisms voiced against him, consider this heavy-breathing accusation from the Ripon Society: "Carswell's printed Dis-

trict 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 calculations 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 colleague on the Fifth 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, though 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 Judge Carswell is diminished by his evasive account of his participation in the golf club incident of 1956. He then 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.

[From the Florida Times-Union, Jacksonville, Mar. 25, 1970]

COULD CARSWELL BE ANY WORSE THAN THE OTHERS?

(By John Chamberlain)

I am no student of the judicial opinions of Judge G. Harrold Carswell, but it amuses me to think that any lower court justice in the land could be deemed unfit to mingle on the Supreme Court bench with some of the alleged great brains that have been confusing the legislative function with the judicial for lo! these many years.

Quite privately I have long been convinced that one of the qualifications for a modern Supreme Court justice in the age of the Great Society must be that he is unable to read. How, save on the basis of functional illiteracy, can one explain the eight-to-one decision in the Mrs. Madalyn Murray school prayer case of 1963? Justice Tom Clark, who wrote the majority opinion which effectively made voluntary prayers or Bible-reading in the schools illegal, could hardly have had Article One of the Bill of Rights clearly before him when he spoke for the Court.

What this First Amendment to the Constitution says, quite explicitly, is that "Congress shall make no law respecting the establishment of a religion." Well, Congress never has tried to establish a national church; Congressmen, even the mediocrities among them, have been able to read. The First Amendment, however, conveys no hint of an instruction to state and the local communities about legislating on religious matters. (When the Bill of Rights was adopted some states actually had what amounted to local state churches.)

Presumably Articles Nine and Ten of the Bill of Rights, which defend rights "retained by the people" and "reserved to the States," leave it entirely up to the local voters in the local communities to do as they please about school prayers provided, of course, that individuals are not coerced into praying against their will.

If words mean what they say, eight Supreme Court justices should have been sent back to school for remedial reading instruction after the "Mad Murray" decision.

Then there is the case of Justice William O. Douglas, who has just come out with a book called "Points of Rebellion." Douglas, as a judge, is sworn to uphold the Constitution, the established fundamental law of the lands. This has not stopped him from writing this astounding passage: "We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also revolution."

In my innocent way I had always thought the way to change our basic laws is prescribed in the Constitution which Justice Douglas is supposed to be protecting. The fundamental constitutive document of our Republic has been amended 25 times, proving that it can be done when the urge to depart from the older established law is compelling.

Should not one assume that any right-minded Supreme Court justice would insist that "revolution" is not to be supported in preference to amendment by anyone speaking as a member of the high bench? You can't very well advocate illegality out of one side of your mouth and presume to be taken seriously as a defender of the law when you sit on the cases brought before your court.

Let me say it again that I am not a competent judge of G. Harrold Carswell's legal acumen. To make a proper study of his record I would have to take a month off from my work as a commentator on affairs. Since I am under contract to deliver a certain number of columns to editors each week, no such time is available to me.

However, I do have time to look at individual court opinions and to refresh myself on the wording of the Bill of Rights. I would be willing to gamble that Judge Carswell couldn't do worse than five or six justices who have been legislating for us from the high bench for years. And I am sure that Judge Carswell would never, in his right mind, write a book condoning revolution when the amending process is open to those who want to change the law.

Some of our senators, speaking in defense of Carswell, have said the Supreme Court might benefit by the addition of a representative of "mediocre citizens." This is hardly the most felicitous way to put it. What we do have the right to expect is that judges should at least be able to understand English.

[From the Florida Times-Union, Mar. 26, 1970]

NEO-MCCARTHYISM AND CARSWELL

One of the most salient factors bearing upon the career of Judge G. Harrold Carswell, nominee to the Supreme Court of the United States, has been overlooked completely.

The smear and innuendo continue. The condescending deprecation continues with descriptions of his career as "pedestrian" and "mediocre."

But what did his fellow judges think of him even when there was no thought of his being nominated for the Supreme Court? That is a real criterion upon which to judge the worth and ability of the man.

They thought enough of him to elect him as their representative to the Judicial Conference of the United States from the Fifth Circuit on April 18, 1968.

The conference is composed basically of the chief judges of each of the 11 judicial circuits plus one representative elected by the circuit and district judges in each circuit and is presided over by the Chief Justice of the Supreme Court.

The conference itself might be called the "Cabinet" of the judiciary—one of the three distinct branches of the federal government. It is the governing body of the United States courts.

Carswell was one of two judges nominated for the post and his opponent was also a respected judge. The vote was 33 to 24 in favor of Carswell.

This is hardly the type of position to which the judges would want to send somebody who was "mediocre" or "pedestrian."

And it certainly stands as a far more persuasive testament to his competence than the statements of Ivy League law school deans or even the nine members of the Florida State University Law school faculty—five of whom have taught at FSU less than a year, one just short of two years and two more for four years. There is only one full professor in that group, five associate professors, two assistant professors and the librarian. Not a single one of them is even a member of the Florida Bar, according to Sen. Edward Gurney.

On the other hand, Carswell has been strongly endorsed by FSU Law School Dean Joshua Morse and former dean, Mason Ladd who is now in a teaching position.

Last July the Senate approved without dissent the elevation of Carswell to the Fifth Circuit Court of Appeals bench but now some of the Senators purport to have discovered that he is racially biased and/or incompetent.

What disturbs us most about some of the opposition is its utter lack of rudimentary fairness or perspective. The most trivial things are blown out of all proportion and innuendo is often stated as fact.

For instance, if we were to say that Senator Frank Church inserted into the record a letter from Moscow urging him to oppose Carswell, we would be factually correct. But, standing by itself, the statement would be utterly unfair because the fact that the letter came from Moscow, Idaho certainly clarifies the picture. We liken some of the tactics used to discredit Carswell to such an incomplete and misleading statement.

Creeping into this entire picture is a new McCarthyism being practiced by some of those who most decried the tactics of the now-deceased Senator Joseph R. McCarthy. The term—coined by Washington Post cartoonist Herblock—was defined in an unfriendly biography of McCarthy by Richard Rovere as "a synonym for the hatefulness of baseless defamation or mudslinging."

The charge of "racist" is hurled freely about by some of those who 15 years ago decried any imputation of sympathy with the Communists to anybody—even if it was based on evidence much less tenuous than that which attempts to paint Carswell as a racist.

Some of the ultraliberals who painted membership in subversive organizations during the Twenties and Thirties as harmless youthful flirtations with Communism in keeping with an intellectual fad of the times, now see dark racist conspiracies in almost every move of Carswell's.

Their pious pleas for fairness toward the

political Left in those days, go unheeded today when they face the political Right.

There is a double standard applied and it is applied by some on both sides in the Senate—depending upon the political philosophy of the nominee.

In this case, let Sen. Jacob Javits of New York harken back to the transcript of his defense of the nomination of Constance Baker Motley to the U.S. District Court against unsubstantiated allegations and then let him contrast his own words then and his readiness now to draw sweeping conclusions without giving weight to the pro-Carswell testimony.

Some found Carswell to be evasive before the Judiciary Committee or refused to believe his contention that his part in the private club purchase of the former Tallahassee Municipal Golf course was not based on racism.

Yet, some of these same senators warmly praised the performance of Abe Fortas before the judiciary committee in 1965. They said nothing about evasiveness.

Here is a passage from the Fortas hearing transcript as printed in the Congressional Record:

Chairman: "Did you have any connection with the Southern Conference of Human Welfare?"

Fortas: "Mr. Chairman, I probably did in the early New Deal days. I am a little vague as to whether I was—I am a little vague as to whether I was a member of the Southern Conference, but I remember in the early New Deal days I, like a number of other southerners, thought it was a fine organization, dedicated to bringing the South out of the depths of the depression."

Chairman: "When did you quit the Southern Conference of Human Welfare?"

Fortas: "As I say, Senator, I am not sure I was ever a member of it. I am just giving you an attitude that I had along with many other southerners in those days."

Chairman: "You do not know whether you were a member or not?"

Fortas: "That is correct."

Now the question arises as to what kind of pillory would be applied to Carswell if he had answered any question in that manner?

We do not ask those senators who truthfully and honestly do not believe Carswell should sit upon the Court to go against their own consciences to vote for him. We rather ask that all of the senators put each bit of testimony pro and con into a proper perspective and refrain from political buzzardry in their consideration of the nomination.

Weigh the statements of those attorneys and others who said they received or observed fair and impartial treatment by Carswell as against those who said they did not.

Consider whether Carswell as a District Judge did what a judge in this position is charged to do—conscientiously and consistently follow the law rather than make it. We believe he did. That may not be the "brilliant" course but it is the correct course for a district judge.

Take the reversals of Carswell's opinions and examine them. See how many were due to changes in higher court rulings after Carswell made his own decisions.

Consider the case load of the court and the amount of territory served by Carswell—alone for most of the time he was a district judge.

Take it all into consideration—the bitter and the sweet—and make a determination based on the entire record.

There are indications that the smear campaign has been more effective than even those who did the smearing dared to hope. If so, this plea—even though it would hardly be heeded anyway—comes too late.

If so, with the nomination dies a little more of the integrity of those senators who bowed to pressure rather than to conviction. We believe there are more than a few of those.

Let those who decided to sacrifice Carswell on the altar of political expediency—and this does not include all of his opponents but certainly does include some—live with the knowledge.

To those who held to the courage of their real convictions in the face of the liberal avalanche, whether they opposed Carswell and thus rode the crest or stood by him and were crushed, our admiration and respect. Would that the Senate contained more like them.

[From the Tampa (Fla.) Tribune, Mar. 14, 1970]

LACK OF SPECIAL INTERESTS 'HURTS' CARSWELL

(By David Lawrence)

WASHINGTON.—The American people are being given an example of how a nationwide lobby is being conducted in an effort to prevent Judge G. Harrold Carswell from being confirmed as a Justice of the Supreme Court just because he doesn't hold views satisfactory to racial groups and some labor union partisans.

Although he was nominated more than two months ago, certain members of the Senate have managed to delay action to get time enough to carry on a campaign in various states where constituents have been influenced to send word to their Senators that Judge Carswell should not be confirmed.

After Judge Clement F. Haynsworth's nomination was rejected—also because of objections raised by civil rights and labor groups—and Judge Carswell's name was submitted to the Senate, it was generally agreed that the latter would probably be confirmed without difficulty.

But his opponents immediately adopted tactics of delay while lobbying campaigns were organized. Now rumors are being spread that the vote will be close, and attempts are being made again to put off action in the belief that the longer the motion to confirm is blocked, the better the chance of winning more Senators to the negative side.

During all the time that the campaign against Judge Carswell has been going on, nothing substantial has been revealed against him. The primary objection raised has been that 22 years ago he made a speech on the race question to which civil rights leaders object. But many other persons in public life today made speeches of the same kind in the years before the 1954 decision on public desegregation.

What the current controversy really means is that a President of the United States now is not supposed to appoint fair-minded and objective men to the Supreme Court and that only those who have partisan views are presumed to be suitable.

It is significant that, when Thurgood Marshall, a Negro who served as counsel for the National Association for the Advancement of Colored People in the school desegregation cases, was nominated to the High Court, there was no lobbying movement against him. If, however, civil rights groups stir up racial feelings, it is doubtful whether in the future another Negro will ever be appointed and confirmed to the Supreme Court without controversy.

Voters generally are not familiar with lobbying tactics. But the defeat of two nominees for the Supreme Court by civil rights groups and their allies—namely, certain labor union leaders—could create a feeling of widespread resentment throughout the country.

It seems strange that members of the Senate are trying to tell the President the views a man must hold before he can be confirmed as a Supreme Court Justice. Maybe this means that the highest court in the land hereafter will be a political body and appointees will have to show their support of various "causes."

Throughout our history the Supreme Court has prided itself on indifference to party politics and devotion to basic principles of law as set forth in the Constitution. But in recent years even these precedents have been broken down, and the Supreme Court has undertaken at times to "rewrite" the Constitution. Small wonder that partisan groups are anxious to make sure that newly appointed Justices will rule their way.

[From the Florida Times-Union and Jacksonville (Fla.) Journal, Mar. 29, 1970]

WHERE ARE CARSWELL'S DEFENDERS?

One of the distressing aspects of the attack on Judge G. Harrold Carswell has been the failure of the Nixon administration to mount a defense.

The judge himself can hardly do so. Judicial protocol decrees that he sit back and take what is thrown at him.

It may be that the administration concluded that it went too far in defending Judge Clement Haynsworth and that some senators were angered by administration pressure.

With the Carswell nomination it seems to have gone to the other extreme and left Carswell out on a limb alone. Yet much of the case against Carswell is built upon clever propagandizing of the testimony of persons who started out prejudiced against him. It can be easily refuted, mitigated or at least put into context.

The opposition is well organized and has all the research facilities it needs. Carswell's life has been meticulously researched, for the most part by persons anxious to find something which will damage him.

Sen. Alan Cranston of California has now said that he will hold a news conference tomorrow to disclose some new damaging information. We have no idea what it will be but if it is of the same quality as the rest, it can be answered.

Let's look at the plus side of the ledger for a moment. If we wait for the New York Times, the Washington Post, Time, Newsweek or Life Magazine—or the national television networks—to do so, we'll be sadly disappointed.

The American Bar Association's standing committee on the federal judiciary found Carswell qualified for appointment in 1958 to the U.S. District Court, in 1969 to the Fifth Circuit Court of Appeals and in 1970 to the U.S. Supreme Court.

"In the present case," the latest ABA committee report states, "the committee has solicited the views of a substantial number of judges and lawyers who are familiar with Judge Carswell's work, and it has also surveyed his published opinions. On the basis of its investigation, the committee has concluded, unanimously, that Judge Carswell is qualified for appointment as Associate Justice of the Supreme Court of the United States."

Dean Louis Pollak of Yale Law School doesn't agree. He says that Carswell "presents more slender credentials than any nominee for the Supreme Court put forth in this century." That statement is repeated lovingly by the Carswell opposition—it has become their rallying cry.

The dean is a scholar. And one could be persuaded by his testimony if it is viewed as the dispassionate work of a scholar. But the dean is also an advocate, whether consciously or not. He is listed in Who's Who as a member of the board of the NAACP Legal Defense and Educational Fund and President Nixon hardly had the word "Carswell" out of his mouth before the NAACP came out in opposition.

That fact doesn't negate the dean's testimony but it should be borne in mind in considering whether the testimony might not be affected—even unconsciously—by the all out campaign of civil rights groups to defeat Carswell's nomination.

Let's look at another view from Yale, from a scholar with much more in the way of credentials than even Dean Pollak. This view is from Yale's Sterling Professor of Law, first recipient of the Learned Hand medal, former member of the Supreme Court's Advisory Committee on Civil Rules and author of numerous law tomes.

Professor James William Moore testified:

"I have a firm and abiding conviction that Judge Carswell is not a racist, but a judge who has and will deal fairly with all races, creeds and classes. If I had doubts, I would not be testifying in support, for during all my teaching life over 34 years on the faculty of the Yale Law school I have championed, and still champion, the rights of minorities.

"From the contacts I have had with Judge Carswell, and the general familiarity with the Federal judicial literature, I conclude that he is both a good lawyer and a fine jurist . . ." He concludes by saying that Carswell should be confirmed for the Supreme Court.

The so-called record of reversals—one drawn up by the Ripon Society and the other by some students of the Columbia School of Law—also needs a good going over.

Many reversals were over the issue of summary judgment, and in most of these summary judgment cases Carswell's decision was affirmed after an evidentiary hearing.

The testimony of one black attorney and several other civil rights attorneys that Carswell was brusque towards them should be accompanied by an investigation of their own attitudes in court—did they give the judge reason to be brusque?

Any attempt to tie this in to an antipathy on Carswell's part toward black attorneys or toward civil rights in general is effectively countered by the testimony of the black attorney of whom the Baltimore Afro-American newspaper said: "If it's integrated in Florida, Attorney C. Wilson helped to do it."

Attorney Charles F. Wilson wrote to the Senate Judiciary Committee:

"As a black lawyer, frequently involved . . . in civil rights cases in his (Carswell's) court, there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions. I represented the plaintiffs in three of the major school desegregation cases filed in his district. He invariably granted the plaintiffs favorable judgments in these cases and the only disagreement I had with him in any of them was over the extent of relief to be granted."

The administration should present Carswell's defense without further delay.

Mr. HOLLAND. Mr. President, I also ask that the article appearing in the April 4, 1970, issue of Human Events entitled "Stakes Are Big in Carswell Fight" be printed in the RECORD at this point. This article comes to grips with the problem confronting some Members of the Senate, and I feel it would be well worth the time and effort of Senators to read it.

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

STAKES ARE BIG IN CARSWELL FIGHT

(Liberals could well succeed with vicious propaganda campaign.)

It has come down to the wire for Judge G. Harrold Carswell. The Senate unanimously agreed last week to put President Nixon's nomination to the test by scheduling at 1 p.m., April 6, a vote on a motion to send Carswell's name back to the Judiciary Committee. Everyone knows that the outcome will all but determine whether Carswell will be confirmed (pro-Carswell readers, therefore, should write or wire their senators *now*).

If the move to recommit wins, Carswell—barring a miracle—almost certainly will be out and the President will have to choose yet a third nominee to succeed the discredited Abe Fortas.

The liberals, of course, smell blood, as Carswell's support has reportedly dwindled from 70-odd to 50-odd senators, and by April 6 the balance may have even shifted against the nominee. The nation's major news media have poured out tons of anti-Carswell propaganda, and the Capital's morning metropolitan daily, the Washington *Post*, has outdone itself in printing slanted news stories, editorials, cartoons and columns. Everywhere the liberal litany is the same: Carswell, the racist; Carswell, the mediocre.

The sound and fury, however, are not being directed against the Florida judge because of his qualifications. What is really being staged in the Senate is a monumental battle over who will control that extraordinarily powerful institution of government, the Supreme Court: President Nixon's "strict constructionists" or the social engineering activists so beloved by the liberals.

As Alan L. Otten, a liberal columnist for the *Wall Street Journal*, recently put it:

"The Northern Democrats, Negro leaders and other liberals who fought the Supreme Court nomination of Clement Haynsworth and are now opposing that of G. Harrold Carswell have frequently appeared to be battling with an intensity out of all proportion to the matter involved.

"And yet they know precisely what they are about: Not merely to block one man's confirmation, but to prevent a dramatic rightward shift in the High Court's decisions, a shift that would affect the nation for decades."

The case against Judge Haynsworth, concluded Otten, was "remarkably thin" and men "of unimpressive learning have been named to the court before."

The liberal forces, Otten stressed, "desperately want to block the Nixon Administration's obvious intention to name as justices, one after another, men almost sure to turn the High Court sharply away from the liberal expansionist policies laid down over the past 17 years by the Warren court.

"Such a turn would probably mean more restrictions on the use of government power to solve racial problems, less government intervention in business affairs, a less friendly attitude toward labor unions, a more sympathetic view of police power, coupled with less sympathy for the rights of criminals and protesters and less aggressive emphasis on racial integration."

That, indeed, is what the furor is all about. And those who vote to kill Carswell's nomination—and a vote to recommit is the indirect and cowardly way to do so—should be held strictly accountable at the ballot box.

It is perfectly clear that President Nixon will not be able to achieve crucial domestic reforms until the philosophical complexion of the Supreme Court drastically changes. One of the President's most important campaign promises—and one that he has diligently tried to carry out—has been his vow to wage a war on crime. But he can *never* win that war so long as the current liberal majority on the court continues to unchain criminals on the tiniest of technicalities.

The President is eager to clamp down on violence-prone radicals who are now engaged in sabotage and terror tactics against government officials, businesses and the American people, but his program won't go anywhere so long as the Senate keeps torpedoing conservative jurists who are likely to endorse—rather than strike down—reasonable anti-subversive laws.

A vote against Carswell—either directly or through a recommital motion—is, in our firm opinion, tantamount to a vote encouraging criminals and political acts of terrorism. If your senator wants that on his conscience, so be it.

If Carswell were truly unfit to be on the High Court, we wouldn't want him there either. At the risk of being repetitious, however, we contend that both the "racist" and "mediocre" charges are nothing but part of a full-blown smear campaign to discredit the nominee. And look at who's questioning Carswell's qualifications!

First there's that pillar of virtue and integrity, Sen. Edward Kennedy. The hero of Chappaquiddick, who was chucked out of Harvard for cheating and who unsuccessfully tried to foist on the federal bench Francis X. Morrissey—a Kennedy family crony and an American Bar Association reject—has had the gall to insinuate that the *nominee* is "unworthy of respect" and "honor." Frankly, there are many who think that Teddy should gracefully retire when weighty issues involving morality arise.

Organized labor's pawn in the Senate, Birch Bayh of Indiana, has tarred Carswell with the racist brush, but Bayh himself, it turns out, was a member of Alpha Tau Omega at Purdue and received its Thomas Arkle Clark "man of distinction" award in 1951, when its charter limited membership to "white Christian males."

Former Vice President Hubert Humphrey, another critic of Carswell's supposed lack of sensitivity toward minorities, lived in a house with a restrictive racial covenant for 16 years when he was a U.S. senator. All the while, of course, Humphrey was beating his breast about what others should do for Negroes.

Certainly one of the smuggest Carswell critics has been New York gubernatorial candidate Arthur Goldberg, who modestly enough, recently asserted that Carswell was "not fit" to sit in the same judicial seat once held by Goldberg himself. His old seat, Goldberg contended, had been held by such illustrious judicial heroes as Joseph Story, Benjamin Cardozo and Felix Frankfurter. Goldberg conveniently omitted that it had also been held by Justice Samuel Chase, who was impeached by the House, and by Abe Fortas, who resigned rather than face impeachment proceedings.

Goldberg, furthermore, had a rather, well, mediocre career on the bench. A high-priced union lawyer much of his adult life, Goldberg had had no judicial experience when he ascended to the High Court.

Once having arrived, Goldberg compiled a lackluster record, junking his judgeship in 1965 for a remarkably undistinguished career as ambassador to a most undistinguished organization, the United Nations. Carswell's own judicial background, in point of fact, is clearly superior to that of Goldberg's.

There is nothing wrong with the present nominee that a fair hearing by the press wouldn't cure. Carswell, as we have pointed out before, has had a wide variety of legal and judicial experience. He has been in private practice, was appointed U.S. attorney for the Northern District of Florida in 1953 and five years later became the youngest judge in the country. Considered an exceptionally competent practitioner on the bench—he tried some 4,000 civil and criminal cases—Carswell was elevated to the 5th Circuit Court of Appeals last year. Bear in mind the fact that the Senate continued to endorse his way up the judicial ladder, while the American Bar Association also repeatedly gave him its stamp of approval.

When President Nixon nominated Judge Carswell for a position on the Supreme Court,

the ABA's Standing Committee, on the Federal Judiciary twice concluded, unanimously, "that Judge Carswell is qualified for appointment as associate justice of the Supreme Court of the United States." Judge Walsh, who heads the committee, stated that the committee's judgment was based upon the views of a cross-section of the best-informed lawyers and judges as to the integrity, judicial temperament and professional competence of the nominee.

In his so-called "mediocre" career, Judge Carswell has actually had three times the combined bench experience of all the Kennedy-Johnson appointees to the Supreme Court.

Judge Carswell has also been active in the field of judicial administration. He has served as a member of both the Judicial Conference's Committee on Statistics, which plays an important role in recommending to Congress the creation of additional federal judgeships, and its Committee on Personnel, which deals with problems relating to the administration of the Judiciary. So well thought of was Carswell by his colleagues that in April 1969 he was chosen by the circuit and district judges of the 5th Circuit to be their representative to the Judicial Conference.

The charge of racism stems largely from his "white supremacy" statement uttered 22 years ago in the heat of an election campaign. Standard Southern rhetoric at the time, the statement, made in response to criticism that he was too liberal, has been thoroughly repudiated. How do the liberals find this incident so different from Bayh's "white-only" fraternity membership or Humphrey's restrictive covenant?

Critical mention has also been made of Judge Carswell's purchase in 1956 of a $100 interest in the Capital City Country Club. It was charged that the municipal golf course in Tallahassee was transferred to Capital City, a private club, for the purpose of avoiding the Supreme Court decisions of November 1955 requiring municipally operated recreational facilities to be desegregated. Yet the hearings show that the transfer move had been under serious discussion since 1952—long before the 1955 decision.

The majority report of the Judiciary Committee concludes that "Carswell's brief and insubstantial connection with Capital City furnished no valid basis for criticism. Even if it be assumed that some of those involved were improperly motivated, the fact remains that Judge Carswell was not. The extent of Judge Carswell's participation was comparable to that of former Gov. Leroy Collins, who appeared before the committee. No suggestion has been made that Gov. Collins acted improperly in purchasing an interest in the country club, and the same standard should be applied in regard to the nominee." The Carswell hearings, in fact, are replete with testimony refuting the "racist" contention.

Joseph H. Lesh, formerly special assistant to Attorneys General Herbert Brownell and William P. Rogers as executive officer in charge of all U.S. attorneys, has said: "Shortly following the controversial *Brown* decision on segregation, I held a conference in Washington of all the Southern U.S. attorneys to help the Department of Justice to implement the decision. Harrold Carswell was the only U.S. attorney who was helpful to me and the department in this respect."

Prof. James W. Moore, Sterling Professor of Law at Yale University, who is part Indian himself, testified in support of Carswell's confirmation. Recounting that Carswell about five years ago was instrumental in setting up a first-rate law school at Florida State University, Prof. Moore said:

"I was impressed with his views on legal education and the type of law school that he desired to establish: a law school free of all racial discrimination—he was very clear about that; one offering both basic and higher legal theoretical training; and one that would attract students of all races and creeds and from all walks of life and sections of the country."

Charles F. Wilson, a Negro currently employed as deputy chief conciliator for the U.S. Equal Employment Opportunity Commission, wrote a letter to the Senate Judiciary Committee in defense of Carswell's conduct on the bench.

"As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court," said Wilson, a civil servant who originally obtained his job with the EEOC when LBJ was President, "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 field 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."

Testimony of this nature saturates the hearings. The truth about Judge Harrold Carswell was actually summed up in the New York *Times* on Jan. 21, 1970. Before Senate liberals unleashed their barrage of charges, *Times* writer Fred P. Graham wrote: "Judge G. Harrold Carswell, President Nixon's new nominee to the Supreme Court, has a virtually unblemished record as the type of 'strict constructionist' that Mr. Nixon promised to appoint when he campaigned for the presidency. . . .

"In 11 years as a Federal District judge in Tallahassee, Fla., and in six months as a member of the United States Court of Appeals for the 5th Circuit Judge Carswell sprinkled the lawbooks with opinions on matters ranging from civil rights to the legality of Florida's poultry law.

"Throughout these opinions runs a consistent tendency to view the law as a neutral device for settling disputes, and not as a force for either legal innovation or social change. . . .

"These opinions [on the Court of Appeals] reveal a jurist who hesitates to use judicial power unless the need is clear and demanding; who finds few controversies that cannot be settled by invoking some settled precedent, and who rarely finds the need for referring to the social conflict outside the courtroom that brought his cases before him."

A study in 1968 analyzed the civil rights decisions of the 31 Federal District judges appointed to posts in the Deep South between 1953 and 1963. When the study rated the 31 judges in terms of the number of times they had ruled in favor of Negro plaintiffs, Judge Carswell ranked 23rd. The study showed that of his civil rights decisions to be appealed, 60 per cent were reversed. Though these reversals have been used to reveal Carswell's supposed "racism," Graham stated the essential facts of the matter:

"In most of these cases, Judge Carswell would have had to move beyond clearly settled precedents to rule in favor of the civil rights position. When those precedents have existed, he has struck down segregation in crisp, forthright opinions."

In short, Carswell is what President Nixon and Atty. Gen. John Mitchell say he is: a strict constructionist. The Administration needs him to help tip the balance of the High Court to the conservative side. And that is the reason—and the only reason—the liberal lynch mob in the Senate and in the press is now going after Judge Harrold Carswell's scalp.

Mr. HOLLAND. Mr. President, since there has been some reference to the fact that certain junior law professors at Florida State University are opposing Judge Carswell, I want the record to show again that former Dean Mason Ladd, who was before that the dean of the Iowa State Law School, strongly supports him, and that this is shown in the record; and that the dean of Florida University Law School, Dean Frank E. Maloney, strongly supports him. That, too, is in the record in writing as well as the fact that the present dean of the Florida State University Law School, Joshua Morse, strongly supports Judge Carswell.

Mr. President, I do not know of any case where one could hope to obtain a more unanimous verdict of the outstanding lawyers and judges in a nominee's own State. We have a bar of about 12,000 members, the third largest in the Nation, which is shown to be behind this nominee. Yet Senators on this floor, who do not know Judge Carswell, are asking other Senators who do not know Judge Carswell to knock him down because some people from other States, who have come in there, are complaining of his attitude in a limited number of cases during his years of service since 1953 as district attorney, district judge, and judge of the Circuit Court of Appeals.

Mr. President, there is a strong case for the confirmation of the nomination of Judge Carswell, and I want the Members of the Senate to realize that never in my life have I seen such a unanimous endorsement by men of the highest character—and the Judges on our Supreme Court and on the district courts of appeals of Florida and our circuit judges are men of the highest character. The deans of our law schools are men of high character. The present president of the Florida Bar Association and the three immediate past presidents, all of whom are endorsing Judge Carswell, are men of high character.

Mr. President, shall we rely on endorsements of that kind, or ignore them and take these slanted attacks which are made on him, and place our confidence in them?

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

Mr. HOLLAND. I am happy to yield to the Senator from Kansas.

Mr. DOLE. As the Senator indicates, there is strong sentiment throughout the country for Judge Carswell. Some reference has been made to a newspaper advertisement by 400 or so lawyers and law professors. On checking the list, I find that 126 are practicing lawyers. There are some 300,000 practicing lawyers in America; about 150,000 of these are members of the American Bar Association. There are some 4,500 law professors, in some 145 law schools, in America. Yet we are asked to give consideration to this list, which contains about 300 of their names.

I think one might again ask the question, are we to take the word of three-tenths of 1 percent of the lawyers, or to rely upon men like the Senator from Florida, who have known Judge Carswell throughout the years; or those who have served in the same circuit, and who have practiced before his court?

There is a strong case for the nomination of Judge Carswell. Every Senator, this morning, had a letter on his desk indicating that a majority of the members of the Committee on the Judiciary believe there is no need for further hearings. This makes an even stronger case for the defeat of a motion to recommit.

Mr. President, only twice before in our history has there been a motion to recommit a nomination of a Supreme Court Justice to the Committee on the Judiciary. Once was in 1922, when Pierce Butler's name was before this body, and the other instance was in the case of Sherman Minton in 1946.

In both those cases, the motion to recommit was defeated by an overwhelming vote. I would say of the Senator from Florida, who has served here much longer than I probably will, and who has the great respect of everyone in this body, that he would not stand on this floor today and ask anyone to support Judge Carswell unless there was strong foundation for the request, and unless he really and truly believed, based on objective analysis, that Judge Carswell is qualified to serve and that he is a man of excellence.

So I say, as the Senator from Florida has said most eloquently, that it is our right, our privilege, and above all, our responsibility to face issues in the Senate, and not try to duck or dodge the issue by sending this nomination back to committee.

I would agree with one line in the Washington Post editorial of yesterday, wherein they quoted Robert Morris, at the time of the Constitutional Convention, to the effect that we in the Senate have a responsibility, in voting to be "open, bold, and unawed by any consideration whatever," or by any pressure which might be applied.

The Senator from Florida has made an excellent case this morning.

Mr. HOLLAND. I warmly thank my distinguished friend.

Mr. President, again, in closing, I would remind the Senate that Dean Maloney, a respected educator, is strongly supporting Judge Carswell; that Dean Morse of the State University Law School is doing the same; and that former Dean Ladd, who, before he came to Florida, was dean of the Iowa State Law School, is doing the same.

Are we to ignore the verdict of these outstanding men of this time?

Mr. President, I yield the floor.

THE RULE OF GERMANENESS

Mr. MANSFIELD. Mr. President, are we in the morning hour?

The PRESIDING OFFICER (Mr. STENNIS). The Senator is correct. Under the previous order, as the Chair understands, the Senate is now in the morning hour, with a 3-minute limitation on statements.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. Has the time been set for the Senate to meet at 10 o'clock on Monday morning next?

The PRESIDING OFFICER. The Senator is correct. It has been set.

Mr. MANSFIELD. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. A question arose today with respect to a ruling of the Chair with which I found myself somewhat surprised. Specifically, a ruling was made by the Chair earlier that the Pastore rule of germaneness is in effect even if a measure is taken up by unanimous consent and is noncontroversial. The effect of the ruling, I understand would be to allow speeches made that are not germane to the unfinished business even though they are delivered shortly after the unfinished business is laid before the Senate.

Based on prior interpretations of the words "pending business" contained in paragraph 3 of rule VIII, I must admit that the ruling of the Chair is the correct one. But before the precedents were cited to me, the Senator from Montana, as the majority leader, was acting under a misapprehension. Unless the matter is worked out, therefore, it will be the intention of the leadership, from this time forward, not to call up bills under a unanimous-consent agreement before or during the morning hour, because of the fact that, under the present rule and the precedents, the germaneness rule is operative as to any business, however noncontroversial, that happens to come before the Senate first in a given day.

I think it is most unfair and I think it is most inappropriate to operate on that basis, because as I have understood the term "unfinished business," and as I have tried to operate under the germaneness rule, it would apply to the first business on which there would be an extended debate. It is my intention to ask the Committee on Rules and Administration to review the present procedure with a view to changing the rule to apply to major pieces of legislation and not to noncontroversial legislation about which there is no argument and no debate.

Therefore, until further notice, it will be the intention of the leadership not to bring up these noncontroversial bills until sometime after time under the rule of germaneness has expired as to major items under debate. If other items are brought up under unsual circumstances, a special unanimous-consent request will be made to the effect that the Pastore rule of germaneness not apply.

I commend the Chair for the correct decision. I am sorry that I was not aware of just what "pending business" had been construed to mean. I did not realize that it applied to a noncontroversial bill. But with that explanation, I wanted to make my position clear, and to indicate how the leadership would operate from now on, on noncontroversial bills on which there would be no debate.

I would hope, however, that for today, with the consent of the distinguished Senator from Wyoming and the distinguished Senator from Florida, we would allow the rule of germaneness to operate. I do not think the full 3 hours will be taken, and the time allocated to those two Senators would then be taken up on the basis of the request granted earlier.

Mr. HANSEN. Mr. President, if I may, I ask unanimous consent that we may proceed for today as has been suggested by the distinguished majority leader. No one has been more generous, more kind, or more fair than he has been, and I am delighted indeed to acquiesce in his wishes.

I would hope that the Senate will agree that there may be a withholding of the implementation of the rule for today, until an appropriate time, so that the distinguished majority leader may be able to give the other Senators who would like to speak an opportunity to do so, before I speak and before the distinguished junior Senator from Florida (Mr. GURNEY) speaks.

I am very happy to accede to the wishes of the majority leader.

Mr. MANSFIELD. The distinguished Senator from Wyoming is always most understanding, gracious, and considerate. May I say that I do not expect the 3 hours to be taken up under the rule of germaneness, and as soon as we can, we will accommodate the distinguished Senator.

May I say also that it has been the intention of the leadership throughout this session, for Senators who have speeches of any length, to give them primary consideration before we get into morning business, so that they could proceed uninterrupted.

With that explanation, I shall take my seat. Again I commend the Chair and the Parliamentarian for making the correct decision. We will try to rectify the situation some time in the future.

The PRESIDING OFFICER. Is there further morning business?

THE NOMINATION OF JUDGE G. HARROLD CARSWELL

Mr. DOLE. Mr. President, the person who wrote that "a foolish consistency is a hobgoblin of little minds" may have had the Washington Post in mind, but I doubt it.

The Post lacks any consistency at all. Rather, it has developed to perfection the knack of making the argument fit the nominee.

What it likes, it argues for. What it does not like, it argues against, using the exact, same argument.

Yesterday was a prime example of this peculiar Washington Post syndrome.

First of all, the Post took a part—not all, but just a part—of a letter from the President to Senator SAXBE, and from this portion it deducted that the President had insulted the Senate and gone beyond the limits of constitutional propriety by insisting on his right to name a qualified man to the Supreme Court.

This, the Post says, must not be. The Senate, it says, shares the appointive power. In other words, it no longer has

the power to advise and consent, but it actually shares in the appointive process.

That is the Post's opinion today, because today the Post does not like Judge Carswell. But what about the past? Let us take a look.

On Friday, November 21, 1969, in an editorial, the Post said:

> But the right to put a name in nomination is given by the Constitution to the President. The Senate should not be in the position of asking whether the President could have chosen more wisely than he did but whether the man he picked is qualified to serve.

Note, Mr. President, not whether he is the best man, not whether his philosophy is properly liberal, but if he is qualified to serve.

The next day, November 22, the Post makes it even clearer:

> But we thought the appointment was his to make for better or worse—and in the absence of any plain evidence of wrongdoing on the Judge's part.
>
> Funny. That is what the President said.

Now, Mr. President, I would like to go to the Post's editorials dealing with the matter of Justice Fortas.

On Thursday, October 3, 1968, the Post said:

> None of this, however, can gloss over the ugly and spurious character of the main thrust against the Fortas nomination. Behind the attack was hatred of the President and a desire to discipline the court for libertarian decisions which protected the basic constitutional rights to freedom of expression and to due process in criminal proceedings.

In the Post's eyes, opposition to Judge Fortas had nothing to do with honor and ethics, only with hatred and desire to get even.

Let me continue, Mr. President. On September 6, 1968, the Post said the confirmation of Justice Fortas "is the most important obligation currently confronting the Senate. It is an obligation because only the crassest political partisanship could explain a failure to confirm the President's nomination of a man already confirmed as an Associate Justice."

Now, to make one final point about the vagaries of the Washington Post. September 16, 1968: "All we urge," the Post urges, "is that in the end the Senate vote the nomination up or down."

Mr. President, that is all many of us are urging. Vote the Carswell nomination up or down, not sideways.

It will be interesting to see where the Washington Post stands in the next controversial issue. We can be sure, I think, of only one thing—that it will not stand where it stood before, wherever that might have been.

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent that I may speak for 10 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

VIOLATION OF THE FOREIGN ASSISTANCE ACT

Mr. BYRD of Virginia. Mr. President, many times I have stood on the floor of the Senate and expressed my concern over continued free world shipping into North Vietnam.

Nations that are presumably our friends continue to allow ships flying their flags to carry cargo into the Port of Haiphong. In so doing, they give aid to a nation with which we are at war.

The United States has suffered 350,000 casualties in Vietnam. Of these, 50,000 have been killed. The casualties are continuing, and totaled 9,411 dead and wounded during the past 3 months—yes, during the past 3 months, 9,411.

We are asking our young men to sacrifice their lives; yet we cannot prevail upon our allies to stop shipping into North Vietnam.

Congress has taken notice of this problem before and has written into the Foreign Assistance Act provisions denying aid to those free world countries which allow ships flying their flags to trade with North Vietnam—and with Cuba.

Legislation on this subject was first introduced in 1966, when the Senate passed an amendment sponsored by myself and Senator DOMINICK.

The essence of this amendment has been part of both the authorizing and appropriating legislation for foreign assistance since that time.

It has come to my attention that the administrators of our foreign aid program have violated this legislation.

I speak specifically of the aid extended to the Somali Democratic Republic.

The Somali Democratic Republic is a country about the size of Texas on the East Coast of Africa. It has a population of about 2.7 million.

The country is made up of former Italian and British colonies and has been independent since July 1, 1960.

Somalia is currently governed by a Supreme Revolutionary Council of 25 members which seized power in October 1969. The governing constitution was abolished by the Supreme Revolutionary Council when they assumed control.

Somalia has pursued a policy of nonalinement and received economic aid from the United States, Russia, and Communist China. Russia has provided about $35 million in military assistance.

Since 1967, the United States has extended $24.7 million in aid to the Somali Republic. During the same period, she has allowed ships flying her flag to enter the ports of North Vietnam on 20 occasions. Somali registered ships have also stopped at Cuba 20 times during this same period.

To extend even $1 of aid to this country contradicts the mandate of Congress. The language is clear and unambiguous. Section 620-N of the Foreign Assistance Act states:

> No loans, credits, guaranties, or grants or other assistance shall be furnished under this or any other Act, and no sales shall be made under the Agricultural Trade Development and Assistance Act to any country which sells or furnishes to North Vietnam, or which permits ships or aircraft under its registry to transport to or from North Vietnam, any equipment, materials, or commodities, so long as the regime in North Vietnam gives support to hostilities in South Vietnam.

How, Mr. President, can we continue to give aid to the Somali Republic when she has clearly violated the terms of the basic foreign aid legislation passed by Congress?

How can our State Department completely ignore the expressed will of Congress embodied in clear and precise legislative language?

The fiscal year 1970 foreign assistance budget requests clearly point out the blatant attempt to ignore the legislative restrictions on our foreign aid program.

AID included an item for $2.5 million for grants to Somali. But in the first quarter of this year, Somali flag vessels have called on North Vietnam on three separate occasions.

I will say at this point that my attention was called to the Somali ships by one of the outstanding newspapermen in the United States who was writing a series of articles and was in Haiphong, in North Vietnam.

ORDER OF BUSINESS

The PRESIDING OFFICER, (Mr. STENNIS). Two hours having expired, I am sorry to have to interrupt the Senator from Virginia, but we are now at the point of taking up the pending business. The clerk will state the pending business.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from Virginia may proceed for an additional 3 minutes.

Mr. TOWER. Mr. President, will the majority leader include in his request 2 additional minutes, so that I may proceed?

Mr. MANSFIELD. I make that same request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

VIOLATION OF THE FOREIGN ASSISTANCE ACT

Mr. BYRD of Virginia. Mr. President, section 107(b) of the 1970 appropriations bill, now Public Law 91-194, clearly states:

> No economic assistance shall be furnished under the Foreign Assistance Act, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam.

Yet, not only does the aid continue for this year, there is also a request for an additional $2 million for fiscal year 1971.

The only conclusion I can draw from these facts is that the clearly expressed mandate of Congress has been violated and that our own Government will not utilize all of the tools available to it to make our so-called friends cooperate with our effort in Vietnam.

I invite the attention of the Senate to

this violation by the Agency for International Development.

More than money is involved. Of even greater concern is the complete disregard of a congressional mandate.

Mr. President, I ask unanimous consent to have printed in the RECORD an AID list of aid to Somali for the fiscal years 1965–70; also a list on the total aid provided for the Somali Republic for 1965–70 and the number of Somali-flag ships visiting or carrying commodities and cargo to North Vietnam and Cuba for the years 1965–70; and a table showing free world shipping to North Vietnam for the year 1969 and free world shipping to Cuba for 1969.

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

A.I.D. ASSISTANCE TO SOMALI REPUBLIC

[U.S. fiscal years—In millions of dollars]

Program	1965	1966	1967	1968	1969	1970
Loans	.6	0	13.2	0.1	0	0
Grants	3.8	4.0	2.0	3.4	2.57	2.0
Public Law 480	2.5	.2	.1	1.0	0	.5
Total	6.9	4.2	15.3	4.3	2.57	2.5

Year	Total AID assistance (millions)	Somali-flag vessels: North Vietnam	Somali-flag vessels: Cuba
1965	6.9	0	0
1966	4.2	0	0
1967	15.3	0	2
1968	4.3	9	11
1969	2.6	8	7
1970	2.5	[1] 3	(2)
Total	35.8	20	20

[1] 1st quarter.
[2] None.

FREE WORLD SHIPPING TO NORTH VIETNAM 1969

	British		Somali		Cyprus		Singapore		Japanese		Maltese		Total	
	Number	GRT DWT	Number	GRT DWT	Number	GRT DWT	Number	GRT DWT	Number	GRT DWT	Number	GRT DWT	Number	GRT DWT
January	8	34,597	2	8,973	1	2,137							11	45,707
		47,200		12,600		3,100								62,900
February	6	30,824			1	2,137	2	8,148	1	3,896			10	45,005
		44,300				3,100		11,000		6,000				64,400
March	6	27,870	1	8,997									7	36,867
		39,600		13,500										53,100
April	7	29,714	1	3,378					1	695			9	33,787
		50,000		5,000						717				55,717
May	9	45,802	1	4,534	1	2,137					1	5,333	12	57,806
		63,400		6,000		3,100						9,400		81,900
June	6	30,195	2	7,912	2	7,308	1	4,224					11	49,639
		47,100		11,000		12,200		6,500						76,800
July	6	31,660	1	3,378									7	35,038
		42,400		5,000										47,400
August	4	25,589			2	9,226							6	34,815
		41,100				13,200								54,300
September	4	16,714			1	2,137	1	4,880					6	23,731
		23,400				3,100		8,900						35,400
October	4	20,024			1	6,996			1	695			6	27,715
		27,500				10,900				717				39,117
November	7	33,889											7	33,889
		41,100												41,100
December	7	30,797											7	30,797
		40,400												40,400
Total	74	357,675	8	37,172	9	32,078	4	17,252	3	5,286	1	5,333	99	454,796
		507,500		53,100		48,700		26,400		7,434		9,400		652,534

FREE WORLD SHIPPING TO CUBA 1969

Flag	January	February	March	April	May	June	July	August	September	October	November	December	Total
British	3	4	7	8	2	7	2	4	3	2	3	5	50
Cyprus	7	7	4	8	14	7	8	14	16	11	9	11	117
French	1		1										2
Italian	1	1		2	2	1	2	1	1	1	2	1	15
Somali	1	1		3		1	1						7
Yugoslav			1	1	1	1		1			1		6
Maltese					1								1
Lebanese			1	1	1			1					4
Finnish			2										2
Total	13	13	16	23	21	17	13	21	20	14	15	18	204

S. 3671—INTRODUCTION OF A BILL TO RETURN TO FEDERAL DISTRICT COURTS THEIR ORIGINAL JURISDICTION IN UNFAIR LABOR PRACTICE CASES

Mr. TOWER. Mr. President, on Wednesday of last week, I took the floor of the Senate to announce that I would introduce legislation to return to Federal district courts their original jurisdiction in unfair labor practice cases. At that time, I explained that I believe this to be necessary, to reestablish the separation of powers which existed prior to establishment of the National Labor Relations Board and to reaffirm our commitment to this relationship in Government.

Our experiment with mixing legislative, executive and quasi-judicial powers in the same agency—at least in the case of the National Labor Relations Board—has demonstrated the wisdom of our forefathers who warned against unchecked political power. After 35 years of experimentation under the National Labor Relations Board, let us be frank enough to admit that the experiment has not been a success. Of all the regulatory agencies comprising the so-called fourth branch of Government, the Labor Board has established the worst reputation. It has ignored the intent of Congress. It has become a policymaking body and has not hesitated to rewrite the law to suit its own purposes. It has subordinated the rights of individual employees, small unions and employers through biased decisions favoring big unions. In no small measure our present persistent labor relations problems derive from the structure which we have set up.

There is no need to continue this past mistake. The Federal court system contains the apparatus to deal with unfair labor practice cases. We should take advantage of it.

Mr. President, I introduce this bill for myself, the Senator from Arizona (Mr. FANNIN), the Senator from Arizona (Mr. GOLDWATER), the Senator from Kansas (Mr. DOLE), the Senator from North Carolina (Mr. ERVIN), the Senator from South Carolina (Mr. THURMOND), and the Senator from Utah (Mr. BENNETT).

I ask unanimous consent that, in view of the separation of powers function involved, the bill be referred to the Senate Judiciary Committee.

The PRESIDING OFFICER (Mr. HOLLINGS). The bill will be received and appropriately referred; and, without objection, will be referred to the Committee on the Judiciary.

The bill (S. 3671) to insure the separation of Federal powers by amending the National Labor Relations Act to provide for trial of unfair labor practice cases in the U.S. district court, and for other purposes, introduced by Mr. TOWER, for himself and other Senators, was received, read twice by its title, and referred to the Committee on the Judiciary by unanimous consent.

ORDER OF BUSINESS

Mr. DOLE. Mr. President——

Mr. MANSFIELD. How much time does the Senator from Kansas want?

Mr. DOLE. Five minutes.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from Kansas be allowed to proceed for 5 minutes, and that after that, the unfinished business be laid before the Senate, when time will begin to run on the Pastore germaneness rule.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

NOMINATION OF JUDGE G. HARROLD CARSWELL

SOME OF THE OPPONENTS OF CARSWELL

Mr. DOLE. Mr. President, Michael E. Tigar, whose signature appears on page 15 of the petition dated March 12, 1970, opposes the nomination of Judge Carswell. Tigar appeared on the Martin Agronsky show, shortly after the nomination and confirmation of Warren E. Burger to be Chief Justice of the United States. He expressed some reservations about Burger during the program, but after the program, he made the following statement:

> What I wanted to say was that I considered the Burger appointment a disaster, a disaster. (The Washington Post, "Potomac," Sunday, June 22, 1969, page 11.)

Tigar does not oppose just Carswell, but Burger also. Does he oppose all conservative nominees?

Perhaps. Here is a list of some of his clients, as stated in the Potomac article of June 22, 1969:

> Since then Tigar has advised or represented clients whose names make up a partial roll call in the battalions of the New Left—Yippie leader Abby Hoffman (for conspiracy in the Chicago convention disorders), Karl-Dietrich Wolff (a German leftist who was summoned to testify before the Senate Internal Security Subcommittee); demonstrators arrested in the October, 1968, march on the Pentagon; ten George Washington University law students who allegedly took part in the seizure of the Sino-Soviet Institute and the members of the Students for a Democratic Society regional office in Washington. (Page 9.)

While in school, Tigar also worked for a radio station in Los Angeles.

> At one point, on principle, he quit the air for eight months because the station stopped carrying the shows of Herbert Aptheker, a member of the Communist party and a historian. ("Potomac", June 22, 1969, page 13.)

Tigar says:

> Since there are house counsels for large corporate interests skirting the edges of the antitrust laws, why shouldn't there be lawyers talking with people skirting the edges of disorderly conduct laws? ("Potomac", p. 12.)

Tigar, representing Abby Hoffman, one of the defendants in the Chicago conspiracy trial, was ordered arrested by Judge Hoffman and held in contempt of court on September 25, 1969, as a result of his failure to comply with the provisions of the rules regarding withdrawal of counsel—Washington Post, September 27, 1969.

Tigar was the attorney who incorporated the Washington regional chapter of Students for a Democratic Society.

I might say here, Mr. President, that I am very much pleased to know that this particular attorney opposes the nomination of Judge Carswell. I would hate to have him on the other side.

Let me take another name who opposes Judge Carswell and who signed the petition.

Thomas I. Emerson, a professor of law at Yale Law School, likewise signed the petition opposing Judge Carswell's confirmation. Mr. Emerson has had a long record of association with the far left. He is perfectly entitled to his political views, but one wonders whether he, any more than Tigar, could really approve any Court nominee other than a doctrinaire liberal.

Emerson was the candidate of the Independent Peoples Party for the governorship of Connecticut in 1948. In 1949, he was State chairman of the successor organization, the Peoples Party of Connecticut. He was prominent in the National Committee To Secure Justice for Morton Sobell, the convicted Communist spy. In the Smith Act trial brought in New York City against the second-string Communist Party leaders, Emerson represented 16 of the 17 defendants in pretrial matters. He was later a defense witness in the Smith Act trial of the Seattle defendants.

Mr. President, I invite attention to these facts because there has been so much discussion on the Senate floor by opponents of Judge Carswell that we should listen when any opponent speaks, that we should vote against the nomination of Judge Carswell based on advertisements in the newspapers signed by, as I stated before, three-tenths of 1 percent of the lawyers of this country—including the two specifically referred to.

It seems strange that we, as Senators, should abide by the wishes of this very, very small minority, when considering that there are some 300,000 practicing attorneys in America today and some 148,000 members of the bar.

I certainly recognize we all have the right to differ and the right to disagree. But it might be well to indicate, as I have in the past few minutes, two persons who oppose this nomination. I am pleased they do oppose the nomination. If they were supporting Judge Carswell, I would have second thoughts.

Mr. President, I yield the floor.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

APPROVAL OF LOAN FOR CERTAIN TRANSMISSION FACILITIES

A letter from the Administrator, Rural Electrification Administration, transmitting, pursuant to law, information relative to the approval of a loan to the Sho-Me Power Corp. of Marshfield, Mo., for the financing of certain transmission facilities (with an accompanying paper); to the Committee on Appropriations.

REPORT ON NATIONAL INDUSTRIAL RESERVE

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report on the National Industrial Reserve, dated April 1, 1970 (with an accompanying report); to the Committee on Armed Services.

LIST OF PRINCIPAL AND ALTERNATE CANDIDATES FOR THE 1970 REGULAR NAVAL RESERVE OFFICERS TRAINING CORPS PROGRAM

A letter from the Chief of Naval Personnel, Department of the Navy, transmitting, pursuant to law, a list of principal and alternate candidates selected for the 1970 Regular Naval Reserve officers training program (with accompanying papers); to the Committee on Armed Services.

REPORT OF THE SECURITIES AND EXCHANGE COMMISSION

A letter from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the annual report of the Commission for the fiscal year ended June 30, 1969 (with an accompanying report); to the Committee on Banking and Currency.

REPORT OF THE FEDERAL POWER COMMISSION

A letter from the Chairman, Federal Power Commission, transmitting, pursuant to law, the annual report of the Commission for the fiscal year ended June 30, 1969 (with an accompanying report); to the Committee on Commerce.

REPORT ON FEDERAL WATER RESOURCES RESEARCH PROGRAM FOR FISCAL YEAR 1970

A letter from the Chairman, Federal Council for Science and Technology, transmitting, pursuant to law, a report of the Council entitled "Federal Water Resources Research Program for Fiscal Year 1970," dated December 1969 (with an accompanying report); to the Committee on Commerce.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the examination of financial statements of the U.S. Government Printing Office for fiscal year 1969, dated April 3, 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 the examination of financial statements of the Commodity Credit Corporation, for fiscal year 1969, Department of Commerce, dated April 3, 1970 (with an accompany report); to the Committee on Government Operations.

SUSPENSION OF DEPORTATION OF ALIENS—WITHDRAWAL OF NAME

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, withdrawing the name of Mr. Git-Chuen Henry Wong from a report relating to aliens whose deportation has been suspended, transmitted to the Senate on February 1, 1969 (with an accompany paper); to the Committee on the Judiciary.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

Two letters from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders suspending deportation of certain aliens, together with a statement of the facts and pertinent provisions of law pertaining to each alien, and the reasons for ordering such suspension (with accompanying papers); to the Committee on the Judiciary.

ADMISSION INTO THE UNITED STATES OF CERTAIN DEFECTOR ALIENS

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

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATIONS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports relating to third preference and sixth preference classifications for certain aliens (with accompanying papers); to the Committee on the Judiciary.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

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

PROPOSED VIETNAM VETERANS ASSISTANCE ACT OF 1970

A letter from the Administrator of Veterans Affairs, Washington, D.C., transmitting a draft 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 (with accompanying papers); to the Committee on Labor and Public Welfare.

PETITION AND MEMORIAL

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate a petition and a memorial, which were referred as indicated:

A resolution of the Legislature of the State of Colorado; to the Committee on Post Office and Civil Service:

"SENATE MEMORIAL No. 1

(By Senators Gill and DeBerard)

"Memorializing the Congress of the United States to enact legislation to ensure an accurate enumeration of population in the 1970 census by requiring that the enumeration of students attending institutions of higher education be based upon their true residence rather than upon temporary residence.

"Whereas, The Secretary of Commerce of the United States in promulgating rules and regulations governing the taking of the 1970 census, has decreed that all students attending institutions of higher education shall be enumerated at the place where they reside while attending such institution, without regard to whether such residency is permanent or temporary, without regard to the age of the student, and without regard to legal residence under the statutory law of the state; and

"Whereas, Such procedure, if carried out, will result in inherent inaccuracies in the enumeration of the true population of the towns, cities, and counties of this state, with serious ramifications to the citizens of this state resulting from the fact that such matters as the boundaries of senatorial, representative, and congressional districts are dependent upon the official reports of the federal census; now, therefore, be it

"*Resolved by the Senate of the Forty-seventh General Assembly of the State of Colorado,* That the Congress of the United States is hereby memorialized to enact legislation and to take such other steps as may be within its power to ensure the accuracy of the enumeration of population in the 1970 federal census by requiring that the enumeration of students attending institutions of higher education be based upon the true residence of each such student, rather than upon residency which is only for the purpose of attendance at any such institution.

"*Be It Further Resolved,* That copies of this Memorial be sent to the President of the United States, the President of the Senate of the Congress of the United States, the Speaker of the House of Representatives of the Congress of the United States, the Secretary of Commerce of the United States, the Bureau of the Census, and the members of Congress from the State of Colorado.

"MARK A. HOGAN,
"*President of the Senate.*
"COMFORT W. SHAW,
"*Secretary of the Senate.*"

A letter, in the nature of a memorial, signed by certain editors and staff of the Howard University School of Law, Washington, D.C., remonstrating against the nomination of Judge G. Harrold Carswell to be an Associate Justice of the U.S. Supreme Court; ordered to lie on the table.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. CANNON (for Mr. ANDERSON), from the Committee on Aeronautical and Space Sciences, without amendment:

S. Con. Res. 49. A concurrent resolution to provide for congressional recognition of the Goddard Rocket and Space Museum (Rept. No. 91–756).

EXECUTIVE REPORTS OF A COMMITTEE

As in executive session, the following favorable reports of nominations were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

Vice Adm. John Marshall Lee, U.S. Navy, of Virginia, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency;

William C. Burdett, of Georgia, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary to the Republic of Malawi;

Walter C. Ploeser, of Missouri, to be Ambassador Extraordinary and Plenipotentiary to Costa Rica;

Arthur K. Watson, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary to France;

William D. Brewer, of Connecticut, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to Mauritius; and

David M. Abshire, of Virginia, to be an Assistant Secretary of State.

BILLS INTRODUCED

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

By Mr. TOWER (for himself, Mr. FANNIN, Mr. GOLDWATER, Mr. DOLE, Mr. ERVIN, Mr. THURMOND, and Mr. BENNETT):

S. 3671. A bill to insure the separation of Federal powers by amending the National Labor Relations Act to provide for trial of unfair labor practice cases in the U.S. district court, and for other purposes; to the Committee on the Judiciary, by unanimous consent.

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

By Mr. STEVENS (for himself and Mr. GRAVEL):

S. 3672. A bill to authorize the Secretary of the Interior to convey to the city of Anchorage, Alaska, interests of the United States in certain lands; to the Committee on Interior and Insular Affairs.

By Mr. McGEE (for himself and Mr. HANSEN):

S. 3673. A bill to authorize the Secretary of the Interior to convey certain water rights to the State of Wyoming; to the Committee on Interior and Insular Affairs.

By Mr. BENNETT:

S. 3674. A bill for the relief of Maj. Stanley E. Brereton, U.S. Air Force; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS OF A BILL

S. 2293

Mr. BYRD of West Virginia. Mr. President, on behalf of the Senator from Rhode Island (Mr. PELL), I ask unanimous consent that, at the next printing, the names of the junior Senator from Colorado (Mr. DOMINICK), and the senior Senator from California (Mr. MURPHY), be added as cosponsors of S. 2293, to authorize additional appropriations for the national sea grant college program.

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

ADDITIONAL COSPONSOR OF A RESOLUTION

S. RES. 375

Mr. GURNEY. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Idaho (Mr. CHURCH) be added as a cosponsor of Senate Resolution 375, to honor and commend Capt. Robert M. Wilbur and copilot, James E. Hartley, for their heroism.

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

ADDITIONAL STATEMENTS OF SENATORS

AIR-TRAFFIC SLOWDOWN

Mr. GOLDWATER. Mr. President, today marks the ninth day that a militant group of air traffic controllers, led by an unscrupulous, over ambitious attorney with nothing but his selfish interest at heart, has brought the finest air transportation system in the world to a virtual standstill.

Two hundred million Americans should not be made to wait for mail, or to circle airports in holding patterns, or to wait hour after hour for transportation to and from different cities of this country, or to and from loved ones with whom they might spend a few precious days of vacation.

The time has come in the minds of most citizens of this country, and I hope in the minds of many Members of Congress, that we must give serious consideration and discussion to whether or not a Federal employee may strike

against the people. I have always believed that the right to strike is really the only weapon that a worker has; but, when a person goes to work for the Federal Government, he is in effect working for the people, and in my opinion, he should be denied the right to strike.

Title 5, section 7311 of the United States Code says 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;

I have been a pilot for over 40 years and have kept abreast with most of the problems of aviation and its associated industries.

I have had great sympathy for the dedicated professional air traffic controllers and expressed my feelings before this body on February 25, 1970, during the airport/airways user bill debate. I would like to read into the RECORD a portion of my remarks at this time:

Mr. President, any of us who have been acquainted with radar knows that this is a very, very difficult assignment. It is difficult on their eyes. And it is difficult mentally. It is an extreme responsibility to place on one man, the responsibility for a dozen or more aircraft in a heavily congested part of the airway system. This would include both those controllers in centers and those controllers in the tower.

I am glad to see that in the pending legislation there is a recognition of this problem.

I do not go along with those who feel that the controllers should be allowed in effect to join a union so that they could threaten the system with strikes or even to strike. I think we should be ahead of them and provide all they are asking. We are long overdue on this. In that way, we could prevent another catastrophe from happening such as the sick-out we had before or a strike because the controllers justifiably think they should be getting more than they get today.

I cannot think of a job today that is more exacting or demanding on a man's physical ability than the jobs I am talking about.

The airways/airport bill was passed by both Houses of Congress last month and is now in conference committee. The major reason for my deciding long ago to support this legislation was that it recognized the long overdue needs of our airways system for additional controllers, improved working conditions and funds to upgrade and modernize air traffic control equipment.

In addition to the 2,000 new controllers that Congress authorized hiring last year, the new legislation in the forthcoming period of time and with assistance from funds provided in this bill the number of controllers in fiscal 1971 will be increased by 4,141; in 1972 we add another 1,075 new controllers; and in 1973 add another 1,380; in 1974 we add another 1,406; and in 1975 we add another 1,679, so that between today and 1980 we will provide funds to hire 19,109 additional air controllers.

It was made clear in debate on the airways/airport bill that in many instances controllers are operating with outmoded equipment and that certainly is not consistent with present-day technology and capability. But in the bill we provided a very substantial portion of the total funds for the purpose of upgrading the entire system.

Under subsection 2(b) of section 204 we have provided a provision for improving air navigation facilities which states:

The Secretary is authorized within the limits established in appropriations acts to obligate for expenditure not less than $250 million for each of the fiscal years 1970 through 1979.

This will permit the Secretary to upgrade air navigation facilities and the facilities with which the controllers do their job. We also provide in subsection (c) for additional funds available to assist in providing research and development. We recognize the need of getting up to date on the problems and finding better ways to solve them as they relate to safety and air navigation. This is the kind of attack this bill is going to make on a very serious problem.

The deliberate defiance by the controllers of their responsibility to the traveling public, to the Federal Government, and to the courts of our land is inexcusable. These controllers have refused to recognize that Congress is cognizant of their problems.

The controllers have disregarded the Federal court issued restraining order and subsequent injunction ordering them back to work. They have been so gullible as to be led by the "Pied Piper," F. Lee Bailey, who has only his own interest at heart. He has convinced 50 percent of the air traffic controllers to join his organization PATCO. He guaranteed these controllers that his competency as a criminal attorney enables him to protect them from any harm coming to them as the result of defying Federal law by walking off their jobs and then sweetened the pot by guaranteeing each controller shorter working hours, better equipment, and an increase in pay.

The controllers who have left their jobs have certainly lost my support. They are playing with the lives, safety, and well-being of all air travelers. This utter disregard for safety is inexcusable and cannot be tolerated. I have listened to and read with disgust the TV, radio, and newspaper coverage of F. Lee Bailey and his attempt to justify his irresponsible actions.

This morning Bailey gave a true indication in Federal district court of his attitude toward the injunction ordering the controllers back to work. He informed the court that if he was found in contempt of court he believed that the air traffic slowdown would worsen. He indicated that a fine against him would do nothing more than agitate the controllers that had stayed away from their jobs for the past 9 days. Bailey further showed his contempt for the law by requesting subpenas be issued to 90 controllers, from the Washington Center, to appear in court to substantiate his remarks regarding conditions.

Bailey has organized the most militant group of controllers into striking for additional benefits, shorter working hours, improved equipment, and more controllers. Bailey has finally indicated what his real goal is, the removal of air traffic controllers out of Government service into a quasi-public corporation such as the one proposed to operate the strife-torn postal service. Bailey would, as head of such a corporation, have all the dictatorial powers that many labor union leaders possess. There is little doubt in my mind that he proposes to expand his leadership to the Airline Pilots Association and ultimately become the "George Meany of Aviation."

The selfishness of the controllers has resulted in tragic financial losses to our already depressed airline industry. Executives of one airline informs me that the first week of the controllers slowdown has resulted in a loss in excess of $2½ million. They were forced to cancel 740 hours of revenue flying and the additional holding over airports waiting to land have totaled in excess of 730 hours of additional flying time.

It is my hope that Congress will voice unanimous support of the administration's ultimatum that those controllers who abided by the law be rewarded and those controllers who defied the responsibility they accepted when they became controllers be suspended or fired.

If we add to the two crippling strikes, whether they be called sickouts or what, the threatened strike of the Teamsters Union, this country can face total economic paralysis within the coming few weeks.

I think it is past time that the Congress conduct hearings to look into the problems involved relative to the complaints of the workers and to, at the same time, reassert the position of the Federal Government that it is illegal to strike against the Government, which in effect is striking against the people.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter from Chairman John H. Reed of the National Transportation Safety Board to Secretary of Transportation Volpe and the remarks of Secretary Volpe and Administrator of the FAA, John H. Shaffer regarding the air traffic controllers slowdown and fact sheet on PATCO.

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

DEPARTMENT OF TRANSPORTATION,
NATIONAL TRANSPORTATION SAFETY BOARD,
Washington, D.C., April 1, 1970.

Hon. JOHN A. VOLPE,
Secretary of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: This letter is to inform you of the Safety Board's concern and action regarding the safety of air traffic durthe current controller absenteeism prompted by recent PATCO actions.

The Board immediately alerted its Bureau of Aviation Safety staff, including our 11 field offices, to be watchful of any indication of safety problems during the current slowdown of air traffic movements in the national air space system, with particular emphasis on whether there were any serious operational incidents (near collisions or unsafe air traffic procedural practices) prompted by the Air Traffic Control system.

In addition to alerting each field office, the Board dispatched two air traffic control specialists from Washington to observe air

traffic control operations at New York, Chicago, and San Francisco. Our surveillance of air traffic control operations at these facilities was carried out from March 30 through April 1, 1970.

Our observations of the operations at these facilities reflect a sound operating policy. The FAA has adjusted the number of flights accepted into the system consistent with the reduced capability of the system to control traffic brought about by this situation. This reduction of traffic accommodated and the curtailment of optional services has enabled the system to function at its normal level of safety. In addition, we have received no reports of near collisions or unsafe air traffic control practices. As a result of our efforts we conclude that there is no evidence to date of any degradation of safety in the Air Traffic Control system.

We shall continue our general surveillance of the situation and shall continue to keep you advised.

Sincerely yours,

JOHN H. REED,
Chairman.

REMARKS BY SECRETARY OF TRANSPORTATION JOHN A. VOLPE FOLLOWING A MEETING WITH PATCO REPRESENTATIVES ON FEBRUARY 15, 1970

We have just concluded an informal meeting with representatives of the Professional Air Traffic Controllers Organization. This meeting was held to establish an agenda for a more formal meeting tomorrow at 10:30 a.m., to be held at the Labor Department.

Both parties today agreed that the meeting on Monday will concern improved communications between FAA management and the Professional Air Traffic Controllers Organization, and to develop fact finding procedures for the pending Baton Rouge personnel transfers.

At Monday's meeting, a representatve of the Federal Mediation and Conciliation Service will serve as mediator to develop procedures for further fact finding, if necessary.

Representing the Department of Transportation at tomorrow's meeting will be James M. Beggs, Under Secretary of Transportation. His alternate will be Edward V. Curran, the Department's Labor Relations Officer. FAA Administrator John Shaffer will repersent the FAA. His alternate will be Nathaniel Goodrich, FAA General Counsel.

I think the meeting we have just concluded was fruitful and significant. And I might add these meetings show that the Department of Transportation, the FAA, and PATCO are more than willing to maintain open lines of communication.

AFTER REMARKS BY F. LEE BAILEY FOR PATCO, SECRETARY VOLPE ADDED

I will meet shortly with the representatives of the Air Traffic Controllers Association, the National Association of Government Employees and the National Association of Air Traffic Specialists.

STATEMENT BY SECRETARY OF TRANSPORTATION JOHN A. VOLPE, FEBRUARY 15, 1970

I have met with representatives of the Air Traffic Control association, the National Association of Government Employees and the National Association of Air Traffic Specialists.

We advised them that the Department of Transportation is more than willing to maintain open lines of communication.

I firmly believe that we can resolve any differences that may exist between the FAA and the air traffic controllers if discussions are continued in a spirit of goodwill.

This afternoon's meetings will be followed by a meeting of all air traffic control organizations on February 26.

STATEMENT BY JOHN H. SHAFFER, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION AT A NEWS CONFERENCE IN WASHINGTON, D.C., MARCH 26, 1970

Let me begin by giving you a brief rundown on the situation as it stands right now. On the three shifts yesterday, about 17 per cent of our journeymen controllers stayed off the job. This is about 12 per cent more than normal. Today, the situation is about the same. Certainly it is not spreading.

We have had a few trouble spots—New York, Cleveland, Minneapolis, Oakland. But we also have numerous bright spots. At the Atlanta, Jacksonville, Memphis and Indianapolis Centers, to name just four, we have been running close to 100 per cent in staffing. As for our airport control towers we have had very little trouble there. Only about a dozen of our 350 towers have reported unusual absenteeism.

I think you can see from these figures that those people who have tried to shut down the system have fallen flat on their collective faces—and we know whose face that is. Traffic is moving—with some delays in some parts of the country to be sure—but it is moving. Not a single air traffic facility was closed.

In this respect, I would like to emphasize how very proud Secretary of Transportation Volpe and we in FAA management are of the great majority of our air traffic controllers and other employees who have responded magnificently in the present crisis and kept the traffic moving both safely and with amazing efficiency considering the circumstances. I don't believe that there is a more dedicated, a more loyal or a more selfless group of employees either in Government or private industry.

It's most unfortunate, therefore, that the irresponsible and illegal actions of a small minority—and believe me they are a small minority—have reflected discredit on the entire profession. As for those who have stayed off the job, let me add that I have a certain sympathy for them as well. I think these people have been ill advised and misled by a handful of men whose actions have been characterized consistently by a thirst for power and an utter disregard for the law.

And let me say a word about FAA's systems maintenance and flight service station workforce. These are the people who keep the radars, communications and other equipment operating with such a high degree of reliability in our centers and towers. These people have consistently demonstrated their loyalty to the agency by refusing to engage in any kind of work demonstration.

Another point which I think needs to be made here today concerns the operation of the air traffic control system when we are faced, as we are now, with a shortage of personnel. There is no truth whatsoever to the allegations being circulated that the system cannot function safely because we never put more aircraft into the system than can be handled safely. Traffic flow is always matched to system capacity. We never sacrifice safety in an effort to cut delays. In fact, delays are the safety valves we use to insure safety.

Another allegation which we cannot ignore concerns the use of trainees and/or supervisory personnel on control positions which they are not qualified to man. In rebuttal, let me say simply that we have not and will not use any man on any control position if he cannot do the job. Statements to the contrary are a deliberate effort to frighten the public. As for the charge that some controllers are on tranquilizers or other drugs, this hardly warrants an answer, but for the record let me say we've checked it out and found it has absolutely no foundation.

Let me add here as well that the agency has *not* relaxed any of the regulations insofar as the controller's work requirements were concerned. They are permitted to work a 10-hour day, with overtime pay, and authorization has been given for them to work a 12-hour day, but strictly on a volunteer basis. No controller will be directed to work a 12-hour day. Moreover, we have no plans to implement a seven-day work week. We believe six straight days on the job is enough, especially in the present situation.

A great many statements also have been made on the whole subject of the air traffic controller's working conditions, pay, career opportunities, etc. If you listen to these statements, you get the impression that FAA is on one side of the fence and the unions on the other. This is not the case at all. Actually, we're very close together in our general aims for improving the controllers' career. It's a shame that one particular union wastes so much time fighting battles already won and slaying dragons already dead. With a little cooperation on their part, I think we could move ahead much faster. As Secretary Volpe said yesterday in Boston, "You don't correct the problems by staying off the job."

Let me give you just a few examples of what has been done for controllers in recent years to make this a more desirable career.

To ease the workload, we requested and received authorization in our 1970 Fiscal Year budget for 3,800 new positions for air traffic control. This is in addition to the more than 3,000 controllers authorized in the 1968 and 1969 Fiscal Year budgets. Moreover, we're asking for another 2,265 in our 1971 budget. Add these up, and you'll see that over this four year period we will have added some 9,000 persons to the controller work force—a virtual doubling of that workforce.

With regards to pay, the agency succeeded in getting civil service approval for reclassification and promotion which eventually affected more than 11,000 controllers. Each was promoted to a higher grade. Our journeymen controllers in our busiest facilities are now GS–13s who have a base pay of $15,812 and this doesn't include the various premium pay differentials which normally accrue to shift workers.

As for overtime, which is a continuing source of complaint, we have made considerable progress in reducing scheduled overtime. Only a handful of our 350 towers—less than 10, I believe—are still on regular overtime. Center overtime also has been reduced by 11 per cent and only 12 of our 21 centers in the continental U.S. are still using regular overtime.

And before us lies the passage of a landmark piece of legislation—the Aviation Facilities Expansion Act which will provide some $2.5 billion in the 70s for hardware improvements in the airways system. This along with our automation program currently being implemented in all the domestic centers as well as in the busiest towers should cure many of the complaints about equipment. This automation program, by the way, chalked up a historic first last week: An American Airlines flight from Philadelphia to Los Angeles was processed entirely across the nation by computers.

As for further improvements, we have the recent report of the Corson Committee to guide us. And if you believe the allegations that we plan to ignore the recommendations in this report, I think all I need to say by way of rebuttal is that we hired the staff director of the Corson Committee—Bert Harding—as our new Associate Administrator for Manpower. He's already taken a number of steps to implement various recommendations in the report. For example, a new Office of Labor Relations has been established reporting directly to Mr. Harding. A number of action groups also have been established to develop implementation programs in such areas as recruitment and selection, training,

career progression, alternate employment or retirement management relations and so on. Employee organizations will be given an opportunity to participate fully in the development of these programs.

I don't want to go on too long here today, but I think a few words about the situation which purportedly sparked the present walkout are in order—that is, the transfer of three controllers from Baton Rouge to other facilities. I'm not going into the long history of this. Suffice it to say that the transfers were ordered in an effort to upgrade the professional level of the Baton Rouge facility and improve overall morale there. The transfers were handled in full accord with Civil Service regulations. PATCO has challenged the transfers in three courts without success to date. They were not punitive in nature and there was nothing vindictive about our actions. We merely wanted to get some new people in the facility who had a broader range of experience than the incumbents. People with complex motives may find this hard to believe, but it's true nonetheless.

In conclusion, let me emphasize that FAA is not "out to get" PATCO or any other employee group. Nothing irritates me more than to read in the newspaper or hear on the radio or television that the agency is engaged in a running feud with PATCO. We have tried diligently and conscientiously to treat all employee groups fairly and impartially, as we are required to do by law. Moreover, we shall continue to follow this policy in accordance with the new Executive Order 11491. However—and this is a big however—we will not hold any discussions of any kind with PATCO officials while its members are still out on strike.

I am ready for your questions.

FEDERAL AVIATION ADMINISTRATION,
Washington, D.C., March 30, 1970.

To: ATC personnel who have stayed on duty in towers and centers:

The President, the Secretary, the public, an the industry have told me to their great admiration for the tremendous job you have been doing in handling during this critical time the increased work caused by others who have deliberately stayed away from work I share that admiration and am delighted to pass it on to you. Your performance has been without equal in the history of the FAA. We intend to recognize your extraordinary contributions in a tangible way. Instructions are being issued to provide cash awards appropriate to your situation and to the additional workload you have been handling, and for special recognition in your personnel files which will be taken into account in future promotion and other actions.

J. H. SHAFFER.

FEDERAL AVIATION ADMINISTRATION,
Washington, D.C., March 30, 1970.

To: All ATC employees who have been away from work:

As you know, we have issued notices of proposed dismissal tc all employees who did not comply with the message from your facility chief giving 24 hours in which to return to work. These notices were issued in accordance with Civil Service laws and regulations. We suspected, at the time, and our subsequent discussions with controllers have confirmed, that most of you have been misled by strike organizers and, in such cases, the ultimate penalty of dismissal is not appropriate.

Our policy for those who now want to return to work is as follows: You will be charged for being absent without leave for those days you have missed. That means, you will lose pay for those days. In addition, you will be suspended without pay at some time in the future for a number of days equal to the number of days you stayed away from work. The longer you stay out, the greater the penalty you incur. The sooner you return, the less penalty you risk.

Of course, if you were genuinely ill during the past week or on authorized annual leave, the penalties stated above will not apply.

Unfortunately, some employees led or actively encouraged other employees to stay away from work. For them, the penalties must be more severe.

J. H. SHAFFER.

OPENING STATEMENT BY SECRETARY OF TRANSPORTATION JOHN A. VOLPE AT A PRESS CONFERENCE, MARCH 30, 1970

Let me say that what we are faced with what amounts to a strike situation— a strike called for by the leaders of PATCO and joined by a few militant members of that organization. For the most part, the vast majority of our air traffic controllers—who are represented by a total of six employee organizations—have remained on the job and have remained loyal to their oath of service to the United States government.

Since the beginning of the episode—and despite the subsequent call for a walkout by PATCO attorney F. Lee Bailey on Thursday night—some 90-percent of the total air traffic control workforce have remained true to their professional standards by staying on the job. These men have already been commended by President Nixon for their dedicated public service and will be further rewarded by the Federal Aviation Administration.

For those few who have participated in this strike against the Federal government—against the American public—appropriate action as outlined in FAA regulations and Civil Service laws will be taken if they do not return to work immediately. Those men have been so informed by telegram and by telephone.

Let me stress that our airways system is safe. I am certain that professional pilots would not take off if they did not think this were so. True, flights have been cut back. This has been done to insure the ultimate in flying safety. Our system is the safest in the world—as evidenced by the fact that American aviation had its lowest accident rate in ten years during the year 1969.

The problem we are faced with has two major aspects. A strike—an *illegal* strike—and safety. The safety of the flying public is our major concern. Safety will not be compromised—in any way. This means some delays—delays which are the result of an illegal action.

REMARKS PREPARED FOR DELIVERY BY SECRETARY OF TRANSPORTATION JOHN A. VOLPE AT A MEETING WITH EMPLOYEE ORGANIZATIONS, APRIL 1, 1970

First, I want to expres my sincere appreciation to the members of your organizations who have so steadfastly remained at their post of duty during this strike. May I also express my appreciation to each of you for your support.

The events in connection with the Air Traffic Controllers' strike of the past few days have been hectic and accompanied by a great deal of misinformation. I thought I should ask you to come in so I could explain the situation as it really exists. The important point I want to make is that we have not been negotiating with PATCO, F. Lee Bailey or any of the PATCO officers.

The strike started on March 25, Wednesday. On the same day we went into court and obtained a temporary restraining order or injunction against PATCO and its officers or anyone else participating in the strike. The order expires on April 6, 1970. Based upon the temporary restraining order, we contacted each employee who was absent, advised him of the contents of the order as it affected him, and told him that if his absence continued for more than 24 hours after receipt of this telegram or if he failed within that time to furnish adequate medical proof of his illness, adverse action would be initiated against him. Telegrams or registered letters were then sent to employees as quickly as possible. Those employees who complied with the provisions of the telegram or letter and were absent on other than a bona fide leave were carried in an absent without leave status for the period of absence in duty. Those employees who did not comply with the provisions of the telegram or letter were served with a notice of proposed removal.

On Monday, after confirming our suspicions that most of the controllers had been deluded by strike organizers, we advised that in such cases the ultimate penalty of dismissal would not be appropriate. Those who want to return to work now will be charged with absence without leave for the days that they were out. In addition, at some future date, they will also be suspended for the number of days equal to the number of days they stayed away from work. Those who were genuinely ill or were authorized annual leave, of course, will not be penalized. Those who led or actively encouraged employees to stay away from work will receive more severe penalties, including removal.

We have obtained temporary restraining orders against PATCO officials throughout the country. We have also obtained a show cause order against Bailey and the national officers. The hearing on the show cause order to give the national officers an opportunity to prove they were not in contempt of court was scheduled for Wednesday; it has now been postponed for 24 hours. During this period of time a determination will be made as to whether or not PATCO officials have complied with the temporary restraining order. This determination will be based upon the extent to which PATCO members return to work and the efforts of PATCO in this period. Action on the show cause order will take place on Thursday, April 2. Again, I want to express my sincere appreciation to the members of your organizations who have so steadfastly remained at their post of duty during this strike. I'm sure you're aware of the recognition given them by the President and the industry, and of the tangible recognition the FAA Administrator and his managers plan to give.

AIR TRAFFIC CONTROLLERS: ISSUES

One of the problems in dealing with the present air traffic controller work stoppage is that PATCO has never really defined the issues involved. Ostensibly, the work stoppage was called because of the transfer of three controllers from the Baton Rouge combined station/tower to other facilities. This issue is rarely mentioned by PATCO spokesmen, however, who talk as if the work stoppage is over staffing shortages, working conditions, overtime, low pay, poor equipment, union recognition, etc. With regard to all these issues, FAA long since has recognized the problems involved and taken correction action. PATCO is fighting battles that already have been won.

A summary of the issues follows:

BATON ROUGE TRANSFERS

FAA ordered transfers in September 1969 in an effort to upgrade professional level of the Baton Rouge facility and improve overall morale there. A grievance inquiry was initiated subsequently, and the grievance examiner submitted his report to the appeals official in December. The appeals official (the FAA Deputy Administrator) upheld the original transfer order for one controller but offered the other two alternate locations within the State of Louisiana after each claimed out-of-state transfers would be a hardship. When the decision was announced

in mid-January, PATCO threatened a national walkout if the action were not rescinded within 30 days. Secretary Volpe tried to head off a crisis by appointing a factfinding panel under the Federal Mediation and Conciliation Service to investigate the charges of bias and prejudice in the transfers. When the panel was not able to come up with any evidence to support this charge, the Secretary on March 13 affirmed the transfers. This decision was subsequently upheld by the U.S. District Court in Baton Rouge which found nothing in the record other than some obvious self-serving generalizations by the three controllers themselves to backup their contention they were transferred because of their membership in PATCO. (Their replacements are also PATCO members.) The transfers were to have taken effect on March 30.

STAFFING SHORTAGES

There was a five-year period, Fiscal Years 1963–1967, when FAA did not increase its workforce, despite substantial increases in air traffic. In FY 1968, this policy was reversed and we got money for 1,500 controllers in the budget that year. In FY 1969, the figure was 2,000 and in FY 1970, it was 3,800. We've requested an additional 2,265 in the FY 1971 budget. Thus, over the four year period—FY 1968 through 1971—we will have added over 9,000 controllers. This represents a virtual doubling of the controller work force and indicates pretty conclusively that FAA, especially under the present Administration, has recognized the problem of controller shortages and responded accordingly.

PAY

In 1968, the agency succeeded in getting Civil Service approval for reclassification and promotion which eventually affected more than 11,000 controllers. Each was promoted one grade. Our journeymen controllers in the busier facilities are now GS–13s who have a base pay of $15,812 in the first step and actually make considerably more due to premium pay differentials which normally accrue to shift workers. In the final step of a GS–13, a controller receives $20,555 plus premiums.

OVERTIME

Substantial progress has been made in reducing scheduled overtime as more and more controllers have been coming into the system. Only a handful of towers—less than 10—are still on regular overtime. Center overtime also has been reduced by 11 per cent and only 12 of our 21 centers in the continental United States are still using regular overtime. On the general subject of overtime, it might be mentioned that late in 1968, Congress action on FAA's request, authorized controllers to be paid for overtime at a true time-and-a-half rate. They are probably the only white collar workers in Government to be compensated at such a rate.

EQUIPMENT

Agency has been proceeding with automation program for all its centers in the continental United States and its 60 busiest terminal areas. Only a week ago, we recorded an historical first in this program when an American Airlines flight was processed entirely across the country by computers. An even more significant action is the impending passage of the Aviation Facilities Expansion Act which will provide some $2.5 billion in the 1970s for hardware improvements in the airways system.

CAREER OPPORTUNITIES

For further improvements in controller career opportunities, working conditions, etc., we have the report of the Corson Committee to guide us. FAA already has hired the staff director of the committee—Bert Harding—as its new Associate Administrator for Manpower and begun establishing machinery for implementation of the most pertinent recommendations in the Corson Committee report.

RECOGNITION

FAA no longer has authority to grant PATCO or any other employee group national exclusive recognition. Under Executive Order 11491, this is now handled by the Department of Labor. PATCO presently has a petition pending before that Department.

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION

The Professional Air Traffic Controllers Organization was organized in January 1968, when the two founding controllers met with criminal attorney F. Lee Bailey. By May they had held organizational meetings in the major air route traffic control center locations, and had made their first formal contact with the Federal Aviation Administration.

Formal recognition as a professional society was first sought in June 1968, with a request later that month for a dues withholding agreement, which would deduct $4 per pay period for a GS–10 or higher, and $3 for a GS–9 or lower—a dues structure that includes both journeyman and developmental controllers. The organization at that time claimed 5,000 members, well over the 10% required for formal recognition under the then-current Executive Order number 10988.

In mid-July, controllers John Maher and Michael Rock, both from the New York Air Route Traffic Control Center, were given a year's leave of absence by the FAA to work fulltime for PATCO.

The first Constitutional Convention was held in July in Chicago, Illinois. It was at this convention that the newly-formed Safety Committee called for "Operation Air Safety"—their words for a call to controllers not to "compromise" separation standards specified by the regulations. They claimed in various letters and in statements to the press that the Administration was forcing controllers to cut corners—to bring aircraft closer together than the agency's own regulations allowed—in order to keep up with rapidly-growing traffic demands.

The charges were, of course, untrue, but the system was being taxed to its limits, and one of the most critical of these was the lack of major airports.

In July, at the peak of the summer travel season, the system virtually ground to a halt in some portions of the country. In those days before the agency had instituted its advanced flow control procedures—before it had set up its central command post here in Washington to meter traffic on a nationwide basis—there was simply too much traffic for the airports to handle and for some of the control facilities.

PATCO claimed that virtually all of the July 1968 transportation crisis resulted from its members "slowing down."

The facts indicate otherwise. Three controllers were removed from their posts for slowing down traffic, but an extensive investigation by air traffic specialists in the FAA facilities, as well as in the cockpit, failed to show any real problem with controller dereliction of duty. The breakdown belonged to the system, and no plans were made to take any action against PATCO, despite their obviously opportunistic grab for headlines.

During August, there were frequent meetings and exchanges of correspondence with PATCO, and it was made plain that any future "slowdown" would not be tolerated.

In early September 1968, the Administration agreed to withhold dues for PATCO, despite the fact that it had no formal recognition status, and spelled out the conditions under which dues withholding would continue. Among them was the agreement that PATCO would abstain from advocating, causing or participating in strikes against the Government. Such a provision, incidentally, had been written into the PATCO Constitution at the Chicago convention.

At about the same time, the first issue of the PATCO Journal was published, and it contained an outright solicitation for contributions, advertisements, corporate memberships and other support from organizations and businesses providing services to the Federal Aviation Administration, or seeking business from the FAA.

On September 4, letters were sent to all employee organizations representing controller and related occupations in the Federal service, citing the conflict of interest provisions of employee agreements, and the policy of the Department of Transportation of barring any similar conflicts between employee organizations and the business community. The letter stated that any violation of the policy would result in cancellation of dues withholding agreements. Meetings had been held with representatives of all employee organizations in October and November on the subject.

Despite this clear policy statement, PATCO continued to urge controller-members to solicit corporate advertising and corporate memberships.

On December 17, 1968, the DOT warned that further violations would result in cancellation of the dues withholding agreement.

At this time the question of supervisor authority over controllers also was being made an issue. Newsletters published by PATCO instructed members to disregard orders of their superiors if, in the controller's personal opinion, air safety would be affected.

The organization therefore was informed, in a letter from Secretary Volpe on April 17, 1969, to stop selling advertising and corporate memberships and to adhere to the limitations as set forth in Executive Order 10988, or lose the dues withholding agreement.

Another "issue" at this time were the increasing charges by PATCO of hiring of "Mediocre" trainees, and increasing overtime work.

In the fall of 1968, when the FAA had begun a cost-cutting program to reduce overtime, PATCO criticized the move as placing a greater burden on the controller.

At one location—Weir Cook Municipal Airport, Indianapolis—controllers engaged in a mini-slowdown in early January 1969, in reaction to the reduction in the use of overtime.

The organization also strongly criticized the agency's first proposal for limiting operations at the five high-density airports—the major three airports in New York, Chicago O'Hare and Washington National—claiming the FAA was "misleading" the public.

Abuses on corporate membership and advertising solicitations continued.

The disagreements came to a head in June, when the widely-publicized "sickout" of some 500 controllers took place.

Following the "sickout," because of the obvious connection between the organization and the stoppage, the PATCO dues withholding agreement was cancelled. FAA levied three- and five-day suspensions against approximately 100 controllers involved in the sickout.

In September 1969, the proposed transfer of four controllers from the Baton Rouge airport combined tower and flight service station provided another PATCO cause celebre. The transfers were being made to improve the efficiency of the facility, but PATCO viewed it as an attempt to break the organization's strength there. It is important to point out here that the controllers coming in to take their places at

Baton Rouge are all PATCO members—hardly a gain for FAA's side—if that is the goal.

Summing up the infinite and intricate details of the case, we find that the controllers who had no right to challenge their reassignment under their employment agreement, were given extensive opportunities to be heard, and reheard. Exceptional extensions of deadlines were provided. An unusual tripartite factfinding meeting was held, with an impartial third party in attendance. Finally, the controllers were ordered to duty at the new work locations.

The case has been appealed three times to the courts which upheld the FAA.

PATCO continues to make vague claims about working conditions, equipment, and air safety, mostly through Mr. Bailey, in what has certainly become for some a surfeit of press conferences. He refuses to be pinned down. He ignores the substantial progress already made on almost all fronts—the massive reequipment with computerized automation systems—the increase in pay for all Government employees and a special raise for most controllers—the massive infusion of new trainees into the air traffic control system's veins—the continuing improvements being made in the little things like soundproofing, lighting, seating and general comfort in the facilities.

He has been, as have all of PATCO's officers, notably silent on the improvements which can be made when the airports and airways modernization legislation now being polished by a joint House-Senate Conference Committee is finished, and signed by the President.

AIR TRAFFIC CONTROL

Mr. DOLE. Mr. President, I take this opportunity to comment on the current "sickout" by the Professional Air Traffic Controllers Organization. This action is clearly an illegal strike against the Federal Government.

The American public, which has been greatly inconvenienced by the irresponsible actions of the PATCO strikers, deserves to have the facts in this case.

PATCO has offered a smoke-screen series of grievances which have no basis in fact. The strikers at first claimed that pay was the issue in their illegal walkout. That position was quickly abandoned, however, when the public learned what base pay for air traffic controllers was.

Then the strikers claimed that the issue was safety; yet not one experienced airline pilot has refused to fly since the illegal walkout began. On Wednesday, April 1, 1970, the National Transportation Safety Board announced that after extensive inspection and observation of air traffic control activities:

> There is no evidence to date of any degradation of safety in the Air Traffic Control system.

Let us examine some of the other issues in this problem. Staffing: In the 1970 fiscal year budget, the Department of Transportation requested and received authorization for 3,800 new positions for air traffic control. This is in addition to the more than 3,000 controllers authorized in 1968 and 1969. In 1971, the Department is asking for an additional 2,265 controller positions. Clearly, the Department is moving as quickly as possible to provide the necessary staff, consistent with system requirements.

In the last 4 years, a total of some 9,000 persons will have been added to the authorized controller work force.

The issue of overtime has been raised. Before this strike, only three centers in the country were on a regularly scheduled 6-day workweek. Seven centers were on a 5½-day workweek. Of the remaining centers, six were averaging between 2 and 3 hours of overtime per controller per week. The rest were under that figure.

Prior to the strike, there were only three terminals on a scheduled 6-day workweek. There were five on a 5½-day workweek. The remainder were averaging 2 hours or less of overtime per controller per week.

Thus, we see that the total percentage of air traffic controllers working overtime, and the amount of overtime worked, is very small, indeed.

System improvements: More improvements have been made in the air traffic control system in the last 14 months than in any other similar period. And more improvements are planned. The administration's airport-airways legislation, which was passed by this body and by the House, is now in conference. But I am confident that it will soon be ready for the President's signature.

That legislation provides nearly $15 billion, including Federal, State, and local funds, to improve existing airports, buy new equipment, and construct nearly 900 new airports. PATCO was aware of the many recent improvements in the system, and they knew of the improvements contained in this new legislation.

The Department of Transportation has taken an entirely appropriate stance in this matter. Secretary Volpe has followed the letter of the law in dealing with PATCO. He has taken every precaution to insure that the safety of the airways is not compromised. He has made every effort to maintain maximum airways service.

And it is to the credit of the majority of air traffic controllers, including most PATCO members, that the system has continued to function efficiently and safely.

I ask unanimous consent to have printed in the RECORD several tabulations showing the increase in need for air traffic controllers, past and projected increases in air traffic controllers, and overtime compiled by air traffic controllers; and also an article entitled "Sympathy for Air Tie-Up Ebbing," published in the New York Times of April 3, 1970.

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

AIR TRAFFIC CONTROL SPECIALISTS OVERTIME—ATC CENTERS

Total hours worked	Number of controllers—1970 Jan. 11–17	Jan. 18–24	Jan. 25–31	Feb. 1–7	4 week total	Percent
Less than 41 hours	3,608	3,581	3,672	3,615	14,476	67
41–44	209	296	233	252	990	4.5
45–49	1,555	1,508	1,462	1,530	6,055	28
50–54	21	17	21	19	78	.005
55–59		−1	1		−2	
60						

INCREASE IN NEEDS ATC—1966–71

	Fiscal years— 1966	1971	Percent increase
Air carrier passenger-miles (billions)	57.6	105.9	83.9
Air cargo ton-miles (billions)	2.1	4.0	90.5
FAA airport operations (millions)	41.2	58.7	42.5
IFR aircraft handled (millions)	13.2	24.2	83.3

Increases in air traffic specialists

Fiscal year:	
1966	−29
1967	98
1968	1,580
1969	2,064
1970	3,492
1971 (forecast)	2,215

[From the New York Times, Apr. 3, 1970]

SYMPATHY FOR AIR TIE-UP EBBING

(By Richard Witkin)

Aviation leaders are a lot more outraged by the current airtraffic disruption than they were when F. Lee Bailey's controllers engaged in two previous slowdowns. In the past, despite the loss of dollars, industry officials quietly felt a good deal of sympathy for what the controllers were doing. This was particularly true during the summer travel rush two years ago when the controllers' superstrict adherence to traffic rules, plus bad weather, caused horrendous delays. They sympathized because years of experience had shown that it took a crisis (a slowdown or—worse—a catastrophic mid-air-collision) to produce any noticeable improvement in an air-traffic system that was blatantly overstrained.

For the most part, the improvements had been limited efforts financed by one-shot appropriations from a temporarily shocked Congress. But they were better than nothing.

Today, with the same group of controllers (they watch planes on radar and issue traffic instructions by radio) having concluded nine days of a wholesale "sick call," the aviation community is showing them much less support, even privately.

The protesting group, the Professional Air Traffic Controllers Organization (PATCO) was formed a little over two years ago, and is one of three major groups representing the nation's 9,000 controllers. The Government says less than one-fourth of PATCO's membership have been calling in sick.

SWITCH IN ATTITUDE

Why the general switch in the aviation community's attitude toward the group's activities?

First, prospects for long-term financing of a thorough air-traffic modernization program have never appeared better. Bills establishing aviation user charges that would be ear-marked for the program have been passed by both houses of Congress, and a joint version is expected to be reported out of conference soon.

One airline official lamented:

"I don't see how PATCO could have done anything better calculated to destroy important support in Congress, just when we seemed on the verge of getting the kind of long-range financing we've always dreamed of."

In addition, the Nixon Administration has taken some initial steps to implement recommendations made by a distinguished panel for improving working conditions and career opportunities for the controller force.

In view of all this, a majority of qualified observers contend, it cannot be said this time that a crisis had to be manufactured to get significant action initiated on urgent needs of the long-deficient control system.

The logical conclusion, the majority maintains, is that the "sick call" has been essentially the outcome of a power struggle. The two key figures are Mr. Bailey, the PATCO leader who has pursued a similarly tempestuous career as a criminal lawyer, and John H. Shaffer, head of the Federal Aviation Administration, whose treatment of PATCO has been variously described as "refreshingly hard-nosed" and "unnecessarily antagonistic."

JIMMY HOFFA COMPLEX

A widely heard view is that Mr. Bailey, who had contempt proceedings against him dismissed yesterday and agreed to try again to get PATCO members back to their radar scopes, "has a Jimmy Hoffa complex." He wants to become czar of air travel, it is said, by winning the right to represent all controllers, exclusively, and perhaps add other employe groups to his union.

PATCO filed a petition in mid-1969 for a Labor Department election aimed at winning exclusive recognition by the F.A.A. as representative of the controllers. But there are many procedural steps still to be negotiated before such a vote can be held.

And some close observers to the situation say PATCO might be found ineligible on the ground that it has violated the rule against strike by Government employes.

Last summer, the aviation agency withdrew the limited recognition already accorded PATCO, as well as the vital privilege of having dues automatically deducted from members' pay checks. These actions were an outgrowth of a three-day "sick call" that snarled air travel in June.

The F.A.A. stand is cited by PATCO as evidence that Mr. Shaffer has been trying to "bust" the controller group. So is the transfer of three PATCO members from the Baton Rouge, La., control facility, which union spokesmen said was "the final straw" that precipitated the current wave of "sick calls."

Even some officials who have no sympathy for Mr. Bailey and who think any provocations fell far short of justifying the slowdown, think Mr. Shaffer could have handled PATCO more diplomatically over the last year or more.

The report of the panel on controller careers, dated Jan. 1, 1970, contains a plague-on-both-your-houses paragraph saying:

"The Committee found that employe-management relations within F.A.A. are in a state of extensive disarray, due to ineffective internal communications, to failure on the part of F.A.A. management to understand and accept the role of employe organizations, and to ill-considered and intemperate attacks on F.A.A. management by certain employe unions."

PROGRESS REPORT ON THE ACTIVITIES OF THE CAPITOL HILL TENNIS CLUB

Mr. HOLLINGS. Mr. President, last year, following the famous tennis match between Members of Congress and staff personnel of the Capitol Hill Tennis Club, our friend from the other body, the Honorable ROBERT MCCLORY, of Illinois, placed in the RECORD a résumé of that afternoon's play. At that time, the Capitol Hill Tennis Club was just getting started; I believe it would be appropriate that Representative MCCLORY's report on the activites of the CHTC should be updated.

I have just learned from the officers of the club that the membership has soared to 169 active Capitol Hill tennis players.

Among that imposing number quite a few of our colleagues claim membership, including: Senators JAVITS, PELL, TYDINGS, and myself. From the other body, Representatives ADAMS, BUSH, CONYERS, FINDLEY, KASTENMEIER, MCCLORY, PREYER, RUPPE, TUNNEY, VAN DEERLIN, and WEICKER make up the "Members contingent" of the CHTC. Part of the purpose of my remarks today is to urge other tennis-playing Members to join our ranks. This year we expect to win the second annual Member-staff match.

In fact, I have it on good authority that the Vice President and Senators BAKER, BROOKE, MCCARTHY, MONDALE, PERCY, PROXMIRE, SPONG, and THURMOND are tennis players of great repute, so I urge them to join us in Capitol Hill's most active amateur athletic organization.

I think all will agree that the representation of Senators and Representatives cuts across party and ideological lines and brings together a truly outstanding group of Member athletes.

Plans for the 1970 tennis season are well underway, as I have just learned from the club's monthly newsletter. The CHTC annual meeting will be held on April 17. At that time officers will be elected, and the schedule for the year's activities will be announced. The club's report also revealed that the group has been accepted as a class "C" member of the U.S. Lawn Tennis Association, which includes membership in the Middle Atlantic Lawn Tennis Association and the Washington Tennis Association. Members of the CHTC board of directors have entered the club in the WTA interclub competition in the Washington area this year and, naturally, expect to win their division.

Considering some of the tennis players from the club whom I faced in competition last year, I have no doubt that the club will carry home those honors in its first year of competition. The club boasts some very impressive tennis backgrounds in its roster of Members from the Senate, House, and Library of Congress staffs.

The CHTC has arranged lessons for Capitol Hill employees who wish to learn the fundamentals of the game; an intraclub tournament will be held again this summer; and I have been assured that Democratic versus Republican, Senate versus House matches will be scheduled for this year's activities.

Reviewing last year's season, Robert Wager, chief counsel of the Senate Reorganization Subcommittee, was the winner of the summer tournament; Frederick B. Arner, Chief of the Education and Public Welfare Division of the Legislative Reference Service was the runner-up. Miss Virginia Leake, of Representative KUYKENDALL's staff, was the women's summer tournament champion; Miss Randy Bean, of Senator MCGOVERN's staff, was the runner-up. The staff team won the first annual Member-staff match but Representative RICHARDSON PREYER, of North Carolina, was the "Player of the Day," having won three matches that afternoon. The club played one "outside" match last year and handily defeated the Salisbury, Md., tennis team.

From the above, I believe it is easy to conclude that the CHTC is one of the most active groups on Capitol Hill and promises to become even more active. Also, it has been demonstrated that the Senate side has contributed to the high quality of tennis play by the club. I am hopeful that other Members of the Senate will join me this year in helping to make the Capitol Hill Tennis Club even more successful.

POPULATION CRISIS—III

Mr. TYDINGS. Mr. President, a provocative editorial entitled "Abortion: Whose Right To Decide?" was published in the Washington Post on March 6. It reexamines our society's compulsory pregnancy laws.

Statistics on illegal and unsafe abortions, many of which are performed by incompetent persons under deplorable conditions, reveal that abortion is a major public health problem which can no longer be ignored. Approximately 15,000 persons undergo illegal abortions in the District of Columbia metropolitan area annually; national estimates of women undergoing illegal abortions range from 800,000 to over a million annually.

It is worth considering whether our Government has the right to require any woman to bear a child she does not want. A recent survey by Dr. Charles Westoff of Princeton University's Office of Population Research reveals that 22 percent of all legitimate births in the United States are unwanted by either the husband or the wife. Among the poor, 42 percent of all legitimate births were unwanted. In view of the population explosion, there is little doubt that we require a national family planning policy to eliminate all unwanted fertility. Such a family planning policy necessitates a review of our archaic abortion laws.

The editorial correctly questions the Government's prerogative to give abortion an unqualified stamp of approval, and it suggests instead that maintaining the State's neutrality—a situation which places the decision to have a child on a personal, private level of the person most directly concerned—would best maintain the individual's fundamental right to decide whether to terminate an unwanted pregnancy. The State's neutrality would neither compel a woman to have an abortion nor constrain her under the law. This is a personal moral decision best left to the individual free from government intervention.

The editorial's suggested revision of existing abortion laws, a vital component of any national family planning policy, also raises the larger question of women's role in society.

For no matter how advanced the state of the contraceptive art and no matter what technological breakthrough research shall provide, the population crisis will continue as long as women believe child bearing to be their primary function. Until discrimination in education and employment opportunities is eradicated, women shall continue to define themselves primarily as mothers—a situation which can only guarantee too many people.

To all persons concerned with the vital questions of family planning and population growth, I recommend this thoughtful editorial. I ask unanimous consent that it be printed in the RECORD.

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

ABORTION: WHOSE RIGHT TO DECIDE?

Few subjects of public policy are so intertwined with questions of morality and religion as is that of abortion. Strongly held and sharply conflicting convictions about the relationship of law to morals and the meaning of life itself have always been an important part of discussions of abortion, of society's attitude toward it, and of laws affecting it. Thus it is surprising this week that there was little debate or dissent when a key committee of the Maryland House of Delegates recommended passage of a bill to repeal that state's abortion law and that a large majority of the Virginia House of Delegates voted for liberalization of *that* state's abortion law.

The Virginia Senate or the full Maryland legislature, of course, may not concur in these actions. But the fact that they have occurred is an impressive illustration of the change in society's attitudes toward abortion, the morality of it, and the law. It was only three years ago that the Maryland legislature rejected liberalization of its abortion law and only two years ago that it accepted, after a sharp debate, the changes now being considered in Virginia. In that three-year period, 10 other states have enacted similar laws legalizing abortion in broadened categories of cases and one, Hawaii, has made almost all abortions legal. This seems to demonstrate that this issue has lost some of its political dynamite. If it has, the reasons range from the changing attitudes about sex and its natural result, through the much publicized use and problems of "the pill," to what we believe is an increasingly widespread belief that moral, ethical and religious standards are personal matters that should only rarely be imposed by law on those who do not share them.

It seems time then to face the really basic question about abortion which is flatly posed by the pending Maryland legislation and by proposals now before Congress which would affect the District of Columbia. These would treat abortion as a purely medical problem, eliminating statutory restrictions and allowing its performance when pregnant women and their doctors think it advisable. The arguments in favor of such legislation involve a host of contemporary factors—a world rapidly becoming over-populated, a society plagued by crime often committed by unwanted babies grown up, a death rate increased by illegal abortions incompetently performed, the availability of safe abortions, legal or illegal, primarily only to women who can afford to pay handsomely for them, and an increasing insistence by women on the right to control their own reproductive careers.

While some arguments against repeal of abortion laws have puritanical overtones—repeal, it is contended, would remove fear of pregnancy and thus encourage sinful conduct—the most difficult to answer is that which equates abortion with murder. Either upon conception, or upon birth, or at some point in between, a fetus does become a human being. Abortion does kill it. From this arises the deeply held belief of many in our society that the intentional destruction of fetal life is immoral, even when such a step is necessary to save the life of the mother; in this context, even the most restrictive abortion laws, which limit legal abortions to that one situation, sanction what some consider an immoral act.

But other segments of our society hold with equal sincerity widely differing moral convictions about abortion. Who is to say which is more moral: to destroy an embryonic life or to require the birth of a deformed child? Or a child conceived in incest or rape? Or a child whose mother is a child herself? Or, for that matter, to require any woman to bear a child she does not want? Why is it an invasion of personal privacy for government to bar the use of devices to prevent conception and not an invasion of that privacy for governemnt to bar an operation if those devices fail?

These problems of conflicting standards of moral conduct are, in our judgment, properly resolved only by the individuals who confront them. Moral standards are learned from parents and religious advisers, developed through experience and introspection; they cannot and should not be legislated, particularly in a society so diverse as our own.

This does not mean that abortion should be legalized in the sense that government should stamp it as approved conduct. To treat abortion purely as a medical problem, as the Maryland proposal does, is to make the state neutral, neither sanctioning nor forbidding it, neither compelling women to have abortions nor compelling them to bear children, neither requiring doctors to use certain procedures nor refusing to let them do so. Legislation, like that on the books now, which authorizes some abortions and forbdis others, attempts to answer the moral questions raised in each abortion. Legislation which treats abortion as a medical problem takes those questions out of the public realm and places the responsibility for answering them squarely where it belongs—with the individuals most directly concerned, and, indirectly, with those who have taught them the moral standards by which they live.

THE PRESIDENT AND THE SCHOOLS

Mr. DOLE. Mr. President, the National Observer of March 30 contained an exceptionally clear-sighted analysis of President Nixon's message to the Nation on racial problems in our educational system. The editorial pointed out the comprehensive, straightforward approach the President took in appraising the difficulties confronting public education today, and it attached special significance to the pragmatic and realistic proposals set out in the message.

The change from rhetoric and promise to study and rational analysis is refreshing in this area of national concern.

Mr. President, 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:

THE PRESIDENT AND THE SCHOOLS

President Nixon's statement last week on the race problem and the schools is the most important public document on the subject since the Supreme Court's 1954 decision declaring "separate but equal" schools inherently unequal.

Unlike his recent predecessors, Mr. Nixon invented no slogans, made no Utopian promises, and eschewed the language of labels that does so much to thicken the lines that divide Americans. He reviewed sensibly and dispassionately many hoary assumptions and explained with eloquence and sincerity why he believed them ready for discard. The President's statement was timely, comprehensive, and uncommonly wise. We strongly urge our readers to acquaint themselves with the full text.

Because the pronouncement was so comprehensive, it's impossible for us to address our remarks to the whole of it. We shall instead comment on two of its significant points; that special financial aid should be given to the poorest school systems, and that the segregation of teachers should be eliminated.

One of our editors, writing on this page Sept. 13, 1965, declared: "The Federal Government could offer special aid to schools with largely Negro student bodies, chiefly to pay attractive salaries to teacher-specialists who would offer wide-ranging teaching and counseling services to children denied the benefits of an orderly home life."

What makes Mr. Nixon's proposals important is not that they are new, because they aren't but because they reflect a pragmatism—an awareness of the realities—that was conspicuously lacking when Presidents Kennedy and Johnson attempted to confront the problem of race and schools.

Nor did the President stop with his promise of financial aid. He added: "I am not content simply to see this money spent, and then to count the spending as the measure of accomplishment. For much too long, national 'commitments' have been measured by the number of Federal dollars spent rather than by more valid measures such as the quality of imagination displayed, the amount of private energy enlisted or, even more to the point, the results achieved."

The quality of Mr. Nixon's reasoning is high. He believes that while *de jure* school segregation is illegal and intolerable, attempts to integrate schools artifically, by busing and the like, represent a misuse of schools and school children. Our youngsters should not be pawns in any community-rupturing social experiment. And the very notion that black children need white children beside them in order to be decently educated smacks of the most patronizing backhanded racism.

Indeed, it is frequently racism wedded to hypocrisy. As the President said: "Not a few of those in the North most stridently demanding racial integration of public schools in the South at the same time send their children to private schools to avoid the assumed inferiority of mixed public schools."

Schools are generally the poorest where people are the poorest, regardless of race. That's why Mr. Nixon has singled out for special Federal help "those districts that have the furthest to go to catch up educationally with the rest of the nation."

But as the President has not been afraid to substitute pragmatic proposals for the litany of old assumptions, so has he remained ready to make intelligent distinctions. While it is misguided, he declared, to try to achieve an arbitrary racial mix in schools segregated because of housing patterns, it is entirely proper that teachers within a school system should receive their assignments without regard to race.

Here is how Mr. Nixon articulated the distinction: "Pupil assignments involve problems which do not arise in the case of the assignment of teachers. If school administrators were truly color blind and teacher assignments did not reflect the color of the teacher's skin, the law of averages would eventually dictate an approximate racial balance of teachers in each school within a system."

What counts, then, is the quality of teaching and not the racial makeup of the students. What counts, too, are the financial resources of the school systems, and not the color composite of the children they serve.

By setting forth these truths, together with much more, President Nixon has opened the door to a better public understanding of the race-and-school problem. And by so doing he has paved the way for wider and wiser solutions.

MILITARY ESCALATION

Mr. FULBRIGHT. Mr. President, on March 4 the biannual meeting of the Baptist Joint Committee on Public Affairs adopted a statement concerning Laos. The statement was drawn up by a committee headed by Dr. Ralph A. Phelps, Jr., who was for many years the distinguished president of Ouachita Baptist University in my State. It is a fine statement, and I commend it to Senators and other readers of the RECORD. I ask unanimous consent that it be printed in the RECORD.

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

MILITARY ESCALATION

The Baptist Joint Committee on Public Affairs expressed its position on the military involvement of the United States in overseas operations as follows:

1. We affirm our continuing Christian concern that peace will become a universal condition among nations.

2. We commend President Nixon's publicly stated commitment to the principle of peace.

3. We express our deep alarm at recent reports, including those on the floor of the United States Senate on February 26 and 27, of escalated U.S. military involvement in Laos and are afraid that we may discover at some future date that this nation has become involved in Laos as it is now in Vietnam.

4. We urge the President and the Congress to be honest and open with the American people in regard to this nation's military involvements and commitments in Laos and elsewhere, especially when war could result from these involvements and commitments.

5. We earnestly request that constitutional courses of action be scrupulously followed in regard to Laos and other areas in which we might become involved militarily.

Adopted in Washington, D.C., March 4, 1970.

THE ENVIRONMENT OF ALASKA

Mr. STEVENS. Mr. President, concern for the protection of our environment in the face of population growth and the technology necessary to handle added population is nationwide.

The discovery of huge oil reserves in my State of Alaska has prompted a growing realization throughout the entire country that every new action by industry, Government, or individuals affects the environment.

Serious ecological study is underway in the northern regions of Alaska to discern the methods to remove oil which are least disturbing to the Arctic environment. Alaskans cherish clean air, clean water, and the environmental beauty of our State. We intend to keep what we have and avoid pitfalls and problems which have destroyed parts of the "lower 48." One of the most intensive ecological studies of the North Slope ever taken was made by Angus Gavin, a former senior vice president of Ducks Unlimited of Canada and chief ecologist for the Atlantic Richfield Co. in Alaska. He is planning additional studies this year.

I ask unanimous consent to have printed in the RECORD the text of a talk which he recently delivered at a town hall meeting in Los Angeles.

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

THE ENVIRONMENT OF ALASKA

(Speech by Angus Gavin)

There has never been a period in history when public interest in conservation has been more intense or directed than it is today.

As an ecologist, I am, of course, delighted that this is so. It makes me very happy to know that so many Americans share my interest in protection of wildlife and its environment. But I am also gratified by the opportunity that this interest has afforded me to study an area about which very little was known until recently—the North Slope of Alaska.

The North Slope is a 70,000 square mile area frequently referred to as Arctic wasteland. Sizeable portions of the North Slope have been set aside by the federal government as a Naval petroleum reserve and a wildlife range. Between these two preserves, both state and federal acreage has been opened for petroleum exploration and production. In this area, at Prudhoe Bay, near the Beaufort Sea, Atlantic Richfield (as operator for itself and Humble) made the sensational discovery that has drawn dozens of oil companies to the Arctic.

Atlantic Richfield quickly became aware of the delicate balance of nature on the Slope and sought my services to help them prevent the kind of environmental damage incurred from earlier Arctic attempts to find oil. Having surveyed the oil field area by helicopter, airplane and on foot, I would like to share the results with you. Let's begin with a general description of the North Slope.

The oil development area on the North Slope, and the focus of present studies, is one of continuous permafrost soil with varying depths of tundra vegetation. The topography is very flat, broken by occasional pingos, which are low mounds formed by water being collected under the tundra during the summer and freezing in winter, causing upward pressure between the permafrost and the upper layers of tundra.

Thousands of small ponds and lakes dot the plain. Numerous streams and rivers braid it. Alluvial flats on most of these streams hold extensive quantities of sand and gravel. Vegetation over much of the Slope is typical of tundra, with lichens, grasses and sedges being the most dominant. Along some rivers, such as the Colville, there are extensive stands of willows, snow berry and dwarf birch.

The whole North Slope, which extends some 500 miles east to west and 50 to 200 miles north to south from the Brooks Range to the Arctic Ocean, is the summer range of two large herds of caribou known as the Arctic and Porcupine. It is also the nesting grounds of several different species of waterfowl and other winged wildlife. Many of the streams within this area provide spawning grounds for Arctic Char and Grayling.

Of most concern to conservationists—and to us—is the tundra itself. This delicate vegetative layer is in so critical a balance with nature that any disruption or break in its surface could leave unhealed scars for years and become a focus for erosion.

Despite this delicate nature, countless thousands of caribou have roamed the tundra for hundreds of years, and lemming by the millions in cyclic periods have devoured tons of grasses and roots, without leaving any noticeable or lasting damage. The machines of man, however, could quickly ravish the terrain if care were not exercised.

Continuous permafrost covers the whole of the North Slope extending to a depth of more than a thousand feet near the Arctic Ocean. During the short Arctic summer the upper layer, including the vegetation cover, thaws to depths varying up to three feet.

The terrain then becomes so soft and boggy that transportation over it is almost impossible without tearing the surface. This problem does not exist in winter when the ground is frozen solid. Movement over the tundra is limited to winter when it can do little or no damage, although the bitter cold is hard on men and machines.

Temperatures during the winter will drop as low as 65 below zero, with the average for the winter period being about 25 below. There is an old saying about the Arctic which tells us that it has 10 months of winter and the two months which the Lord did not know what to call. While this may be somewhat exaggerated, it is quite true that snow can fall in July in this area. On the average, there are about 280–290 days in which temperatures fall below freezing during the year. Annual precipitation amounts to about six inches, with snowfall around 30 inches. Daylight during the short summer lasts 24 hours a day gradually decreasing until by midwinter there is no sun and only about three hours of semi-daylight.

Break-up of the ice on lakes and rivers occurs towards the end of May, although sea-ice will hold tight until the beginning of July. Freeze-up can start in August, although normally this does not occur until September.

With this basic concept of the type of terrain, seasons, weather and the various ecosystems involved in operating within the Alaskan North Slope, we get a better perspective of the challenge facing the oil industry in the extraction of oil from this area and its eventual transportation to the outside world. First, we must recognize that any comparison between transportation in the lower 48 and that of the Alaskan North Slope does not exist. There are no all-weather roads to this area, so the major portion of all equipment, supplies and materials must either be flown in or transported by barge from Seattle up through the Bering Sea around Point Barrow and east to Prudhoe Bay. This in itself is no easy task since Arctic ice conditions can be extremely dangerous and the slightest mistake in navigation could mean a lost tug or barge.

Few people outside the oil industry realize the enormous quantities of supplies and materials needed in the operation and drilling of a well in the Arctic. Apart from the rig itself and all its attendant facilities, upwards of 4,000 gallons of fuel per day and tons of cement and drilling mud are required to keep it in operation.

When you have a number of rigs operating within an area, the amount of supplies and materials reaches enormous proportions and the problems of transportation become difficult. With no roads or airfields in the area during the initial exploration period, all supplies and materials had to be flown in to winter landing strips on frozen lakes or transported by cat-train over the frozen tundra. Once the announcement was made that oil had been discovered, more modern facilities had to be constructed to handle the increased volume of traffic. Today, airfields capable of handling large Hercules and jet transports have been built at several locations on the North Slope. Docking facilities for barge unloading and a network of excellent roads have been constructed between the various camps and other facilities. A permanent camp housing 200 men near Prudhoe Bay will have a more modern waste disposal system than most municipalities in the United States.

Fully aware of the environmental damage that could occur to the ecosystem in this harsh yet fragile land, ARCO and other members of the oil industry are exercising every precaution to ensure a minimum of disturbance consistent with operations necessary to extract the oil from beneath the surface of the frozen land. Movement of vehicular traffic across the tundra during the thawed period is not permitted.

Drilling rigs are supported on piles and the whole base covered with four to five feet of gravel to prevent thawing of the tundra below. Buildings are set on piles drilled into the permafrost and elevated about four feet above ground. Roads and airstrips are constructed by using gravel placed on top of the tundra without breaking the tundra surface thus preventing erosion and thermokarst. Around each drilling site, dykes are constructed as a precaution against oil spillage or blow-outs. When a well is completed and the rig moved off, the site is completely cleared and leveled to as near its natural state as possible.

Experimentation with grasses and other seeds is being carried out, and all disturbed areas will be reseeded when a suitable grass has been found. To protect the tundra during the summer, all rigs and outlying camps are supplied by helicopter or twin Otter aircraft. And if it is necessary to move a drilling rig during the summer, sky-cranes are used. These huge helicopters can lift 10 tons at a time, and it takes about 20 lifts to move a rig. This becomes expensive at $3,000 per hour, but it illustrates the care and precautions being taken by the industry to prevent undue disruption and disturbance on the North Slope.

When we talk about the oil find in Northern Alaska, most people believe that all the lands north of the Brooks Range are now under development. However, of the 70,000 square miles that comprise this area, only a very small portion is now under exploration and development. This area is in the central part of the vast plain between the Colville and Canning rivers, and much of the present activity is confined to the coastal sections of the area.

What effect has the present activity had on the ecosystems and wildlife of the North Slope? So far very little.

Caribou which have used this tundra plain for thousands of years still do so. They wander between the rigs, camps and crossroads without the slightest indication of disturbance. They frequently have been found sleeping on drilling pads during periods of light activity, apparently because the gravel pads are dry and warmer than the open wet tundra. During periods of activity when drilling operations are in progress, animals approach quite close and graze unconcerned within a hundred yards, moving off only when a closer approach is attempted by humans. Incidentally firearms are forbidden at our permanent camp and other North Slope locations.

Low flying aircraft have little effect on the animals. When an aircraft approaches, some caribou take off at a crisp gait, but only for a short distance. Others, if lying down, will remain so, showing little or no concern. Other animals frequently seen in the area are lemming, Arctic fox, and ground squirrel. Apparently, the Arctic fox and a few wolves use the area for denning sites. Since hunting is forbidden at the widely separated oil sites, these animals can coexist with the oil men.

The North Slope also plays host to several different species of waterfowl during the summer nesting season. Migratory birds include eider ducks, lesser Canada geese, white fronted geese, American pintails, whistling swan, and Brant geese. These waterfowl are mainly confined to the coastal sections. Present operations do not interfere with their normal activities.

Commercial oil activities in the Central Plain of the North Slope have resulted in only relatively minor damage to a very limited area of the environment. These early mistakes can be corrected and further damage can be avoided by good housekeeping practices which have already been established.

Although much more scientific data will be gained from further study, I believe that action already taken and commitments already made by oil companies on the North Slope demonstrate a unique partnership of conservation and petroleum.

Our plans call for more detailed studies of the North Slope during the spring, summer and fall of 1970. These studies will have a twofold benefit. They will help to establish guidelines for further petroleum operations there. They will also provide new scientific data about a part of our nation which has long been neglected.

SENATOR RALPH SMITH, OF ILLINOIS

Mr. DOMINICK. Mr. President, our newest Member of the Senate, the distinguished junior Senator from Illinois (Mr. SMITH), arrived in Washington with the major task of trying to fill the shoes of our late minority leader, Everett Dirksen. It was a tough act to follow. RALPH SMITH admitted at that time he had no intention of trying to be another Ev Dirksen, but would be RALPH SMITH. We who have had the opportunity to work closely with him since he has come to Washington have developed strong friendships with him and a deep respect for him.

For Senators who have not yet had the opportunity to become well acquainted with Senator SMITH, I invite their attention to an article on the Senator, written by Michael Kilian, and published recently in the Chicago Tribune Sunday magazine. Since this was written, Senator SMITH has won a resounding victory in the Republican primary on March 17. I wish him all the best in the general election this year.

Mr. President, I ask unanimous consent that the article, entitled "In the Wake of the Marigold," be printed in the RECORD.

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

IN THE WAKE OF THE MARIGOLD

(By Michael Kilian)

Ev Dirksen's was a tough act to follow. But Sen. Ralph Tyler Smith so far has gotten good reviews from the Nixon administration, and between now and November he'll know how he rates with the ultimate critics—the voters.

In one of those saloon conversations traditional among newsmen, Chicago radio announcer Hal Starck recently was reminiscing on his student days in Granite City High School. He recalled a lad who was considered that institution's leading problem student.

The boy looked like a waif, smaller and younger than most of the others. He also wore knickers. But he infuriated the teachers. He never seemed to pay any attention to them; for most of his classroom hours he just stared into space. One day the school's mathematics teacher could stand it no more.

The teacher wrote a remarkably difficult equation on the blackboard, one beyond the class' level of work. Then he turned without warning to the boy in knickers and told him to come up and solve it.

"He was sitting in the back of the room staring out the window," Starck said, "He marched to the blackboard, tossed a piece of chalk into the air, and wrote out the answer to the problem. Without a word he went back to his desk and resumed staring out the window. The teacher was devastated."

Starck remembered somthing else about the boy. After winning a high school debating contest, he told his friends that he would one day become a United States senator.

This was all back in the early 1930s. Starck is now middle-aged, and the teacher is long dead. Ralph Tyler Smith, the small boy in knickers, is now thru the grace of God and Governor Ogilvie, United States senator from Illinois.

One hesitates to drag the Deity into politics, but in this case He was undeniably involved, Sen. Everett Dirksen died, and Ogilvie, repaying a political debt and meeting the exigencies of the moment, appointed his friend Ralph Tyler Smith to the vacancy. It was the fulfillment of an American dream, perhaps, but without the satisfaction of an election.

Prior to Dirksen's death, Smith was speaker of the Illinois House. As far as Cook county was concerned, he was simply a pleasant, smooth-talking downstater, a face that sometimes appeared on television to talk about legislative doings in far-off Springfield. Downstate, he was known as a successful lawyer, and a Republican in good standing. Beyond that, farmers in southern Illinois couldn't tell you too much about him.

Smith was greatly pleased with the fulfillment of his dream, and in his efforts to extend his satisfaction to the voters, he has become one of the Senate's most enthusiastic applauders of President Nixon. He stumped for the administration's Viet Nam withdrawal plan; he called for sweeping reforms in welfare; he jabbed at the Democrats in Congress for failing to pass the President's law and order bills; and he opposed an amendment to the tax reform measure which would have increased individual income tax exemptions from $600 to $800.

Smith also opposed justice department involvement in local civil rights disputes, provided the Lincoln park zoo with a new American bald eagle, and voted for Clement Haynsworth for the United States Supreme court after indicating he wasn't going to do so.

All this was duly noted, in headlines and on editorial pages, but revealed little about the man. Because of the Haynsworth business much of the electorate became more curious about its new senator. Who was he?

In the midwestern sense of the term, Smith is peculiarly American. His grandfathers immigrated from Ireland and Germany. His grandmothers came from pioneer families. He is an Elk, an Optimist, a Moose, and past president of the Alton Shrine club. He is chairman of the board of the Bank of Alton and a member of the Alton chamber of commerce. He is a devoted husband [to wife, Mary] and loving father [of daughter, Sharon], a World War II veteran and an elder of the Presbyterian church. His middle name is Tyler because one of his ancestors was John Tyler, 10th President of the United States.

The image is of flags, courthouse speeches, and Fourth of July picnics. Rightly so. Smith feels strong allegiance toward the flag; he has made his share of courthouse speeches; and he enjoys picnics. So far he could be your local American Legion post commander. But Smith is far more than that.

Charisma has become a rather silly word, applied to everybody from ballerinas to football players. In the political sense of the term, Smith has some, perhaps even a great deal.

Admittedly, he is no Bobby Kennedy. He is 54, hardly an age to send college girls running about the streets. But in a Republican sort of way; he is handsome and charming enough so that co-eds talk about him a lot—even very liberal, very young co-eds.

I recall one day last fall when Smith was introduced to two co-eds from Northwestern university, girls apparently more enamored of Sen. Eugene McCarthy's philosophies than

Smith downstate "moderate-conservatism."

It didn't matter. The girls blushed and flushed, caught in the spell of his warm and melodius tones. They could only stare spellbound into his eyes as he shook their hands. Perhaps "charisma" should more rightfully be replaced with "sex appeal."

But that would hardly explain Smith's considerable appeal among men. Those same warm and melodious tones have made him one of the most commanding figures in politics. He can talk, articulately, expansively, and convincingly, on almost any subject and in almost any circumstance.

In the green or purple suits he sported in Springfield, or the neatly tailored gray ones he has preferred since going to Washington, in hardware stores and on farmers' fences, at the Alton Chamber of Commerce or in the Chicago club, he can chat, breeze, argue, orate, plead, and chastise, and—in nearly every encounter—make friends.

He is without his predecessor's theatrics, but has all of Dirksen's persuasiveness, and more. Would you buy a used car from this man? You would buy two.

Smith has much in common with another Illinoisan named Abraham Lincoln though the analogy would cause many of his Springfield colleagues to blink. Perhaps he is not Lincoln the folk hero and Great Emancipator, but he is Lincoln the consummate politician of whom it was once said, "Any man who underestimates him is soon to find his back against the bottom of a ditch."

In the closing hours of the last legislative session the Republicans had a measure on the floor calling for an investigation of the Chicago board of education. The Democrats, who opposed it, had been lulled into thinking the bill required at least 89 "aye" votes to pass. When the electronic tote board in the House showed the final vote, the measure had more ayes than nays but not 89 votes. On the speaker's platform, Smith declared the bill passed.

"Mr. Speaker! Mr. Speaker!" came an anguished cry, and Smith recognized one of the Democratic state representatives from Chicago.

"Do you mean to say, Mr. Speaker," said the man, "that this doesn't require 89 votes?"

"That's exactly what I mean to say, sir," said Smith. "I have checked the law and that is the case."

He thumped his gavel, the measure went into effect, and there were the Democrats with their backs against the bottom of a ditch. It was a position in which they found themselves frequently during the session, as program after program of Governor Ogilvie's went through.

More than a few of these bills owed their ultimate passage to Smith. To him fell the difficult duty of steering Ogilvie-sponsored legislation through the politically complex byways of the Illinois House, where the G. O. P. had only the shakiest of majorities and where the danger of defeat was greatest. [The Senate, by contrast, gave far easier passage to such bills. There, under the leadership of Evanston's W. Russell Arrington, the Republicans were fully in command and in support of the governor.]

Despite the many trips to the ditch, the Democrats, even minority leader John Touhy [D., Chicago], had to admit that Smith was exceptionally fair in his running of the House. He carried his fairness to the point of inviting Democratic leaders into his office to settle disputes. Frequently he ruled in their favor when, in terms of parliamentary procedure, they appeared to be right. This irritated many in the Republican ranks, but Smith remained unbothered.

Smith was indeed "Mr. Cool" up on the speaker's rostrum, chain-smoking his cigarets, making dry remarks about some legislator's bright blue suit, turning to confer with aids, and pushing the whole legislative machinery along without ever raising his voice.

Sometimes, when the hour becomes rather late, the House of Representatives resembles a kindergarten with pizza parties going on in the aisles. Legislators wander about the floor. Some even blow tin horns. Smith ruled this kindergarten much like a stern but kindly school teacher, threatening to keep offenders after class in a Saturday session. This ended much of the horseplay.

Once, when Smith was absent from the chambers, two reporters sailed paper airplanes from the press gallery. There is much speculation as to what he would have done had he been there. He has always been a bit distant with the news media, and may well dislike them very much.

In the last legislative session, he assiduously avoided any watering place where newsmen were known to gather. I recall one night when he walked into one of his favorite saloons, saw four reporters at a table, and, with a quick greeting, he turned and fled.

He would never be deliberately rude. If cornered, he would answer questions politely. But if a reporter hesitated too long between questions, Smith would disappear. He made few friends in the fourth estate.

Liberal newsmen quickly wrote him off. Even one relatively right-wing television commentator greeted the news of Smith's Senate appointment by saying:

"He's not a senator. He's a hick lawyer with a green suit and slicked down hair."

Smith may be from downstate, but, as anyone who has ever debated him will attest, he is no hick. Still, he needed a bit of time to realize the full scope of his new responsibilities—to comprehend that as a United States senator he represents more than just Madison county, Ill.

I remember one encounter with Smith in a Marina City office. He was being his charming self, sipping coffee, and smoking cigarettes, and smiling at secretaries. At the same time, he was complaining that a justice department action had frozen federal highway funds in Madison and St. Clair counties. He talked of carrying his complaint to the President and the press.

I reminded him that he had responsibilities of far greater magnitude than the highways of Madison county. Now he had to look after Cook county as well, where, among 5.4 million citizens only negligibly concerned about downstate roads, there was considerable ill will over his sponsorship of a bill that would have effected massive cutbacks in welfare payments.

Smith said he was very much aware of Cook county and was spending a lot of time in it. As to the welfare bill, he said, "The taxpayers seemed to like it."

A few hours later, Smith apparently had given the welfare bill matter more thought. Asked about it in a radio interview, he spoke at great length about how the bill and his part in it had been misunderstood.

He probably would deny any contradiction in the two remarks—to him they comprise precise speaking rather than confusion; they are points being scored in the conversational arena. He is still very much the high school debating champion, and one often has the impression he feels the ghosts of old debating judges are peering over his shoulder and keeping score.

However consummate a politician Smith might be, he is firmly committed to the Puritan ethic—church and family, home and work. His mother was a devout Presbyterian, and made certain of his regular attendance in Sunday school until he was 18. Even now, his only visible vice is an occasional glass of whiskey (bourbon only).

Once, Smith and I were climbing the stairs to an elevated platform in the Loop. Smith was waxing nostalgic about lonely nights riding the "L" to visit an uncle in Oak Park, when I interrupted to ask how he voted on a conservation bill.

He said he had voted for it. I asked if he could be called a conservationist.

"Now come on," he said. "I voted for the bill and I'm all for conservation. But don't go calling me a conservationist. I'm a working stiff."

The senator claims a fondness for hard work; he should be used to it. He grew up during the depression. As a small boy he sold magazines on street corners. In high school he became a distributor for other magazine boys, a job that kept him up late at night. Even so, he participated on the debating team, played the lead in his senior class play, quarterbacked the school football team, and graduated with honors at 17.

That was in 1933. He earned his way thru Illinois college in Jacksonville working as a janitor, a waiter, a laborer in steel mills, and a barrel maker. Graduating in 1937, he entered law school at Washington university in St. Louis, this time taking a job as night clerk in a hotel.

His labors seemed about to bear fruit when he finally received his law degree in 1940. An old friend of the family took him into his law office; then he was hired as assistant to the general counsel of the Chicago & Illinois Midland railroad in Springfield. The next year, his father died. The Federal Bureau of Investigation offered him a job as agent. Then the Japanese bombed Pearl Harbor.

At this point the story of Ralph Smith fairly vibrates with All-American ideas. He enlisted in the navy and entered midshipman school. On a short leave he came home to Alton to marry Mary Anderson, his college sweetheart. [Ralph Smith and Mary Anderson—they had known each other since childhood when their families were neighbors.] Then he kissed his bride farewell and returned to the great war effort.

The war took him into the Atlantic as executive officer of a patrol vessel. Later he was transferred to the Pacific and given command of a gunboat. His ship took part in the Okinawa campaign and the invasion of Japan, but he said he saw only routine action and called his service nothing special. He was one of the most senior lieutenants in the navy when released from active duty in 1946.

It might be said that the draft resisters and the unemployed are people Ralph Smith doesn't really understand.

After the war, Smith started his own law practice in Alton and began joining all those clubs. He can't recall what got him interested in politics, but in any event it was not until 1952 that he tried for public office, a seat in the Illinois House of Representatives.

He lost by 38 votes on his first attempt, but a year later, he won. Working his way up thru the party's burdensome seniority system, he became majority whip of the House Republicans and then speaker in 1967.

Success on the banks of the Sangamon may be a heady thing, but it is a far different world from that on the banks of the Potomac. Smith complained when people kept asking him about the transition.

"There hasn't been any," he said. "In the Senate I'm handling labor, education, welfare, stuff I've been working with all my life."

Nevertheless, things were different. Undeniably, he was awed by the presence of so many powerful and well-known men—and somewhat astonished at their open friendliness.

The Haynsworth matter was something which undoubtedly would never have happened to Smith in Springfield. As everyone remembers, he originally called a news conference and said he didn't think he could vote for Haynsworth because even the slightest suspicion of impropriety would be damaging to the court. A few weeks later, Smith said he still had "an open mind" on the subject. Then he voted for Haynsworth's confirmation.

Smith is not fond of discusing the subject. Again, he says he was misquoted and misunderstood. [The high school debater in him still doesn't communicate with newsmen.] It is obvious that he was apprehensive about the mood of his home state following the recent scandal in the Illinois Supreme court.

It has been rumored that Smith was erroneously informed that Nixon was going to withdraw Haynsworth's name. The rumors cannot be substantiated, but he did try to contact the President several times before calling his fateful press conference. The President, as many congressmen have discovered, could not be reached. When he could, it was too late and too bad for Smith.

He has denied that the President pressured him into his affirmative vote, but it is obvious that Nixon exerted his executive influence on every senator he thought could be budged. Smith does not deny that he was greatly influenced by a heap of mail, most of it angry and nearly all of it demanding that he vote for Haynsworth's confirmation.

But the Haynsworth incident occurred early in the game, and Smith is still out there running around with the ball. He has learned to maneuver most adroitly; it was a significantly different Smith who attacked the Democratic-sponsored tax reform bill.

Sen. Albert Gore [D., Tenn.] introduced an amendment increasing individual tax exemptions from $600 to $800. His fellow Democrats called it an advantage to the taxpayer. Smith called it a fraud.

He noted that while the amendment increased the individual exemption, it cut the tax bill's proposed basic deduction from $2,000 or 15 percent down to $1,000 or 10 per cent. Also, he said, it removed other possible deductions to the point where anyone earning between $6,000 and $15,000 a year would pay more taxes than before.

The Gore amendment lost and was replaced with one that increased individual exemptions by $150 over a period of years and left the deduction provisions just as they were.

But altho Smith has many admirers in Washington, his political fate is about to fall into the hands of the voters. By law his appointment is temporary. If he is to serve out the four years remaining in Dirksen's term, he must run for reelection—first in the March 17 primary, then in the Nov. 5 election against Adlai Stevenson III.

Should he lose, it could be the last the political world sees of the Senator. Certainly it would be an irrevocable termination of his school boy dream. Should he win, he will be provided a future in which to dream further. Perhaps he will ascend to the power and influence of his predecessor, perhaps even to a "higher office." I once asked him if he would like to be Vice President. He replied automatically that his place is in the Senate, but when he did so he grinned.

The odds are against him, but, characteristically, he is confident. There is a bit of the cocky kid in this, the small town boy in knickers who went up to the blackboard and tossed the chalk into the air.

But then, the small boy solved the equation.

TRAN NGOC CHAU

Mr. FULBRIGHT. Mr. President, last week, several news stories appeared which cast new light on the case of Tran Ngoc Chau. These stories, apparently obtained within the executive branch, raised serious questions concerning the role of our Saigon Embassy in the Chau affair.

I urge that Senators read these articles, and I ask unanimous consent that they be printed in the RECORD at the conclusion of my remarks. They were written by Mrs. Flora Lewis of Newsday, Mr. Murray Marder and Mr. Robert G. Kaiser of the Washington Post, and Mr. James Doyle of the Washington Evening Star.

On Saturday, Mr. Tad Szulc of the New York Times reported that "administration sources" had acknowledged the substance of the earlier stories, including the fact that the Embassy had delayed from December 22 to February 7 in intervening with the Thieu regime regarding the Chau case. I ask unanimous consent that Mr. Szulc's article also be printed in the RECORD.

The more we have learned about the Chau case the more deplorable and significant it becomes. I would hope that the administration and the Senate would give serious thought to the implication of the case as presented in the articles mentioned.

Our Embassy in Saigon appears to have misread and misinterpreted President Thieu's motives at every point in the Chau affair. At no time does the Embassy appear to have concerned itself with the substance of the case. Instead, the Embassy seems to have been obsessed with appearances and the maintenance—at any price—of good relations with the Thieu regime.

One may well ask, toward what end are we so solicitous of Thieu? He has corrupted the constitution we are supposed to be defending and he is prosecuting an anti-Communist Vietnamese nationalist for espousing views on ending the war which appear to be closer to President Nixon's than President Thieu's are. Perhaps this is the answer. If it is, how great a veto power does the administration intend to give President Thieu over matters affecting how the war is to be ended? What price do we pay to maintain Thieu in power? It is time this was made clear to Congress and to the American people.

It still may not be too late for the administration to salvage something from the Chau affair. The Vietnamese Supreme Court has already ruled that the original petition used to prosecute Chau was illegal.

Appeals on two other critical points in the case are still before the court. If the court also rules against the government on these remaining points there will no longer be any vestige of legality in Thieu's actions. Should the court rule against Thieu but refrain from ordering Chau's release out of fear of a direct confrontation, it will not detract from the fact that Thieu has acted illegally throughout.

The U.S. Government has every right to tell President Thieu that we expect him to observe all the provisions of the Vietnamese constitution, not just those which he chooses to observe. If it should be argued that this would constitute unwarranted intervention in Vietnamese internal affairs, then it would follow that there is no basis whatsoever for our involvement in every other aspect of Vietnamese internal administration.

We are told that the war in Vietnam is being fought to allow the Vietnamese people the opportunity to determine their own future. Presumably this implies that they should have the protection of a political system which guarantees individual rights and political freedoms.

In this respect I would mention a very pertinent statement, reported in the March 27 New York Times, made in the course of the court martial proceedings of a young American Army officer accused of murdering a Vietnamese civilian. According to the Times, the assistant trial counsel said:

What the hell are we fighting for here anyway? . . . We are fighting so that the people here can have the same rights we do—so that a man cannot be tried, sentenced, and executed by one other man. If we didn't believe these principles we wouldn't be here.

The parallel to the case of Tran Ngoc Chau is obvious.

Finally, there is the matter of official acknowledgment of our Government's prior dealings with Chau. In a press conference following Chau's trial, a minister of Thieu's government had the temerity to say that prosecution might have been averted if the Embassy had confirmed its relationship with Mr. Chau. While I would not believe this for a minute, there is no reason why the public record should not be set straight. The embassy and the Thieu regime already know the truth of the matter.

The PRESIDING OFFICER. Is there objection to the unanimous consent requests of the Senator from Arkansas?

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

[From the New York Times, Mar. 27, 1970]

OFFICIALS SAY BUNKER DELAYED CHAU PLEA

(By Tad Szulc)

WASHINGTON, March 26.—Administration officials acknowledged today that despite instructions from the State Department, Ellsworth Bunker, the United States Ambassador in Saigon, had delayed in pressing for dismissal of criminal charges against Tran Hgou Ngoc Chau.

Mr. Chau, a member of the National Assembly, was sentenced on March 5 to 10 years at hard labor on charges of maintaining contacts with North Vietnam through his brother, Capt. Tran Ngou Hion, who was sentenced last year as a spy for North Vietnam.

In response to questions, Administration officials confirmed reports from congressional sources that Under Secretary of State Elliot L. Richardson sent cablegrams to Mr. Bunker last Dec. 22 and again on Feb. 7 instructing him to intervene directly with President Nguyen Van Thieu to urge him to drop the charges against M. Chau. The deputy had supplied to United States Embassy and intelligence officials, information on Communist intentions.

The officials also conceded that Mr. Bunker took up Mr. Chau's case with President Thieu on Feb. 10, after criminal proceedings had already begun in a Saigon military court. Mr. Chau contended in his trial that his meetings with his brother had taken place with the knowledge and backing of the United States Embassy.

EARLIER REPORTS

A detailed article on Mr. Bunker's position, and on the reported dispatch of the two cablegrams from Mr. Richardson to Mr. Bunker in Saigon, appeared today in The Washington Star.

Earlier this week, Flora Lewis, a syndicated columnist, wrote that Mr. Bunker, acting to protect President Thieu, had suggested making a public statement denying that any American ambassador had been involved in Mr. Chau's meetings with his brother.

The State Department, Miss Lewis wrote, ordered Mr. Bunker not to do so because such a statement would have conflicted with secret testimony given by John Vann, head of the United States pacification program in the Mekong Delta, in a Senate Foreign Relations Committee hearing.

The State Department's spokesman, Robert J. McCloskey, refused today for the second day in a row to comment on any aspect of the Chau case and the role the United States may have played or attempted to play in it.

Under questioning, Mr. McCloskey said that "it is our decision not to comment." He refused further elaboration.

Senator J. W. Fulbright of Arkansas, chairman of the Foreign Relations Committee, has denounced Mr. Chau's arrest and trial as persecution. Mr. Fulbright indicated on Feb. 5 that the United States Embassy in Saigon was disregarding Washington's instructions to intervene in the deputy's behalf.

Officials indicated today that Mr. Bunker's apparent failure to act according to his instructions included softening in talks with Vietnamese officials the Nixon's Administration's expressions of concern over the implications of the Chau trial.

It was reported that Mr. Bunker told the State Department that in his Feb. 10 meeting with President Thieu he had confined himself to the comment that the Congress and the press in the United States were upset over the trial.

It was also reported that Mr. Bunker had delegated the task of discussing the Chau case with South Vietnamese authorities to middle-level officials in the embassy despite Mr. Richardson's cable on Dec. 22 instructing him to handle the matter personally. It was only after Mr. Richardson's second cable, on Feb. 7, that Mr. Bunker arranged to see President Thieu on the case, the officials said.

It could not be ascertained today whether Mr. Richardson's instructions to Mr. Bunker included recommendations that the South Vietnamese Government be informed by the Mr. Chau had maintained close contacts with high diplomatic and intelligence officials at the American mission in Saigon.

The day after Mr. Chau was sentenced, the liaison minister with the National Assembly, Cao Van Tueng, said then that prosecution might have been averted if the United States Embassy had confirmed publicly that Mr. Chau had worked with the Central Intelligence Agency.

[From the Washington Post, Mar. 26, 1970]

U.S. SILENT ON BUNKER'S ROLE IN VIETNAMESE SPY CASE

(By Murrey Marder)

The State Department refused yesterday to discuss reports that Ellsworth Bunker, ambassador to Saigon, frustrated American intercession in South Vietnam's Tran Ngoc Chau case.

Chau, once a favorite of U.S. officials in Vietnam, was sentenced to 10 years in prison earlier this month for pro-Communist activity.

His prosecution is regarded by many U.S. sources as a calculated warning to South Vietnamese against private contacts with Americans, and a warning to those who favor broadening the Saigon government in order to seek a compromise settlement of the war.

What is really at issue, these sources contend, is Saigon's determination to gain veto power over any war settlement.

Apparent support for these suspicions came in another set of spy charges in Saigon last week. South Vietnamese police displayed a photo showing an alleged spy, Bui Van Sac, talking to an American official identified as Harold Colebaugh, former political officer at the U.S. Embassy.

DEFENDANT'S STORY

In the first case, against Chau, the defendant claimed at his military trial that he kept U.S. officials informed of his contacts with his brother, a confessed North Vietnamese secret agent.

Several U.S. sources have confirmed these contacts, including John Paul Vann now a senior pacification official in Vietnam. Vann, now a senior pacification before the Senate Foreign Relations Committee last month about his association with Chau.

The American Embassy, to the private chagrin of many of Chau's American friends, remained publicly silent about the Chau case, however. Chau bitterly protested that he was being sacrificed by the U.S. government to avoid offending South Vietnamese President Nguyen Van Thieu, who was determined to convict him.

In the subsequent spy case involving Bui Van Sac, however, the U.S. Embassy evidently regarded the implication about American contacts to be so blatant that embassy officials felt compelled to speak out.

In defense of Colebaugh's contacts with Sac, the embassy said last Sunday that Colebaugh and other U.S. officials had met with Sac "in connection with carrying out their official responsibilities."

BUNKER ACCUSED

Ambassador Bunker, in a published report yesterday, was charged with "misinforming" Washington about the Chau case. Flora Lewis, columnist for Newsday, reported that Bunker, one of President Thieu's strongest supporters, had planned to issue a statement intended to disassociate the American Embassy from Chau.

Bunker, Miss Lewis reported, planned to say publicly that "no American ambassador directly or through any intermediary suggested or encouraged Mr. Chau to initiate or continue his contacts with Capt. Hien" (Capt. Tran Ngoc Hien, the Hanoi agent and Chau's brother).

The State Department, Miss Lewis reported, advised Bunker not to issue the statement because it would conflict with testimony given by Vann at the Senate Foreign Relations Committee hearing.

Other sources said yesterday that the Bunker statement was carefully phrased to be technically accurate, but it would have exposed the Nixon administration to questioning of its credibility.

These sources said no one had claimed, as the Bunker statement denied, that an "American ambassador" had "suggested or initiated" Chau's contacts with Hien. Chau instead was said to have kept officials informed of the contacts and was also credited with helping alert U.S. officials to a Communist threat to Saigon, which later turned out to be the Tet offensive of early 1968.

State Department press officer Carl E. Bartch said yesterday, "I will have no comment on that matter," declining to discuss the Chau case, the Lewis report or any other aspect of the affair.

President Nixon was asked about the Chau case on Saturday during his impromptu news conference. He replied that "this was a matter which Ambassador Bunker has discussed with President Thieu" but it "would not be appropriate" to say anything further.

[From the Washington Post, Mar. 26, 1970]

COURT FINDS ILLEGALITY IN CHAU CASE

(By Robert G. Kaiser)

SAIGON, March 25.—The South Vietnamese Supreme Court ruled today that a House petition originally used to allow prosecution of Deputy Tran Ngoc Chau was unconstitutional. But the decision is not expected to have any effect on Chau's conviction and ten-year prison sentence.

The petition was allegedly signed by 102 deputies of the House of Representatives—exactly three-fourths of the membership. The government claimed that this authorized prosecution of Chau on charges of helping the Communists, despite Chau's parliamentary immunity.

The constitution says that a member of the National Assembly can be prosecuted with the approval of three-fourths of his colleagues. But the Supreme Court ruled today that this sentiment had to be expressed in a floor vote, not a petition.

But the government may have seen this decision coming. For when Chau came to trial before a military court the prosecution had abandoned the petition and found a new basis for its case.

The prosecution said Chau had been caught "in flagrante delicto," or in the act of helping the Communists. The constitution says a National Assemblyman caught in the act can be prosecuted regardless of the sentiments of his colleagues.

The evidence against Chau came from statements by his brother, a confessed North Vietnamese spy. Chau's lawyers have noted that Chau was not accused of any crime for many months after his brother gave his statements, which in turn came a year or more after the allegedly incriminating acts—conversations Chau had with his brother.

How, the lawyers have asked, could the government say Chau was caught in the act?

The Supreme Court has been asked to rule on that question. It has also been asked to pass on the legality of the special military court that tried Chau. The constitution says all such special courts should have been abolished by last fall.

[From the Washington Star, Mar. 26, 1970]

IN SAIGON, BUNKER'S IN THE MIDDLE

(By James Doyle)

A ruling yesterday by the South Vietnamese Supreme Court has placed American Ambassador Ellsworth Bunker squarely in the middle between the Thieu regime and the State Department.

The court, which has shown some independence from President Nguyen Van Thieu, ruled that the arrest of Assemblyman Tran Ngoc Chau was carried out in an unconstitutional manner.

The ruling lent support to the heavy pressure that has emanated from lower levels of the American Embassy, and higher levels of the U.S. government here, to see that Chau is freed from his sentence of 10 years at hard labor on charges of aiding the enemy.

In a cable to his superiors some weeks ago, Bunker defended the South Vietnamese government action in prosecuting Chau and suggested that judgment against it be suspended until Saigon's Supreme Court ruled on the constitutionality of Chau's arrest.

Chau is a former army colonel and province chief who was in communication with his brother frequently in Saigon, although his brother was an agent of North Vietnamese government.

Aside from the fact that a number of the South Vietnamese government have family members fighting on the other side, Chau's case has caused much criticism for the other reasons.

He painstakingly passed on to the U.S. government information he gained from conversations with his brother.

And at one point, in 1966, he undertook to set up a meeting between his brother and then U.S. Ambassador Henry Cabot Lodge, with the knowledge and cooperation of the American Embassy. Before the Paris peace talks, this kind of contact with North Vietnam was sought.

The 1966 meeting never came off because Lodge wanted to send a lower official and Chau's brother, North Vietnamese Captain Tran Ngoc Hien, refused to meet with anyone except the ambassador.

But agents of the Central Intelligence Agency and members of the U.S. mission in Saigon knew about Chau's dealings with his brother, and implicitly approved.

In fact, Chau's recommendations before the Tet offensive of 1968 were taken most seriously by some military and civilian officials, and turned out to be a proper response to the North Vietnamese tactics that subsequently came during Tet.

The Chau case has caused great anxiety

in U.S. diplomatic circles—especially suggestions that Bunker is responsible for not heading off Chau's prosecution.

Bunker received a cable from Undersecretary of State Elliot L. Richardson on Dec. 22 instructing him to do whatever necessary to convince President Thieu that the U.S. wanted the Chau case squashed.

The cable said that lower level members of the government knew Chau and considered him loyal to South Vietnam and an invaluable aid to the United States.

Beyond that, Richardson said, high level government officials were concerned that an adverse press reaction to Chau's trial would hurt support for Nixon's Vietnam policy.

The cable pointed out that Chau's background was well known in the United States, and any attempt to imprison him for aiding the enemy would be viewed as unjust.

BUNKER'S DECISION

Bunker was told to "leave no doubt of our concern in the mind of President Thieu," and to point out that prosecuting Chau would be harmful to United States' interest.

The ambassador chose not to see Thieu himself, but to have the instructions from Washington handled on a lower level in a very low-key manner. He reported back to Washington assurances that Chau would not be imprisoned, but that he might be prosecuted "in absentia" for seeing his brother.

Despite the fact that President Nixon has said he would accept a coalition government in Saigon if it were the peoples' wish, Bunker also cabled the State Department that they should understand that Chau was guilty of a crime under South Vietnamese law because he had advocated a coalition government.

In fact, say Chau's supporters, he never advocated allowing Communists to serve in the cabinet but only to allow an accommodation of members of the National Liberation Front on the province level through negotiations. Presidential adviser Henry A. Kissinger has advocated the same thing in published articles.

A DINNER PARTY REMARK

There are various theories on why Bunker decided to downplay the State Department's cabled wishes in the Chau case. But one clue came at a Saigon dinner party in early December, before the cable traffic started to flow on Chau.

Bunker told his guests that night in early December that he had "irrefutable proof" that Chau was a Communist.

Among those present who heard the remark were Dong Van Sung, leader of the government bloc in the South Vietnamese Senate and a strong anti-Communist.

Also on hand was a staff member of the National Security Council during the Johnson administration and the early Nixon administration. Richard Moos, who was in Saigon on a fact-finding trip for the Senate Foreign Relations Committee, confirmed today that he had heard Bunker make the remark, and that Sung heard it too.

It was after this that Thieu began a concerted move against Chau, and Bunker began to downplay the cables from Washington.

No member of the Vietnam action group at the State Department professes to believe that Chau is a Communist. No other member of the U.S. Embassy in Saigon has ever suggested it. Many in both groups have said, on the contrary, that Chau is not a Communist.

Bunker has never charged it in writing or within official channels, and he has never disclosed his "irrefutable proof."

THIEU'S REASON

The suspicion of Chau as a Communist is not really an issue in the case. Thieu has said that he found it necessary to prosecute Chau not because he suspected he was a "Communist." (In fact, Thieu and Chau are old friends and former roommates during military service together.)

Thieu told Bunker he had to prosecute Chau so that his constituency, the generals and other strong anti-Communists, would not think he was wavering or in any way showing sympathy to the idea of coalition government.

The more accepted analysis at the State Department is that Thieu has succeeded in removing from the National Assembly for political accommodation with the enemy at the province level, and for negotiations between North and South.

"The real significance of this case is a theory of government for South Vietnam," said one official.

This point has been recognized, apparently, at lower levels of the State Department and the Saigon Embassy. There is said to be a minor rebellion going on at both places over Bunker's unwillingness to rescue Chau from Thieu's grips.

At higher levels, the fear seems to be more one of public relations. This has been expressed in cables signed by Rogers and Richardson. And Kissinger, who takes an active interest in all foreign policy matters that he deems important, has viewed the Chau case "with sympathy, from a distance," according to one source.

There is still another aspect of the case which some members of both the Senate and the State Department have found disturbing: Reports from low level officials get reversed in meaning before they reach high officials here.

BUNKER'S NEW ORDER

Even as Ambassador Bunker was assuring Washington that Chau would not be imprisoned, he was getting reports from his own subordinates indicating that there seemed a strong likelihood that Thieu was planning to stage demonstrations against the assemblyman, and to coerce three quarters of the assembly to sign a petition removing Chau's immunity from arrest.

Finally, on Feb. 7, Richardson cabled Bunker reminding him of the Dec. 22 cable and saying it was now imperative that Bunker speak to Thieu directly and convey the strong dissent of the United States government.

Richardson instructed Bunker to try to get the charges dropped, and if he could not to press for a trial in a civilian court and to get Thieu's agreement that there be no imprisonment even if Chau were found guilty.

Bunker saw Thieu Feb. 10, at which time Thieu informed him the case was already before a military court and the decision was irreversible.

By his own account, Bunker did not express the deep concern of his superiors, but told Thieu only the U.S. press and the Congress were upset.

Bunker added that it was his own opinion that the charges alone had ruined Chau's political career and there was no need to make him a martyr by imprisoning him.

In Bunker's remarks, as he recounted them to the State Department, there was no indication of concern over the issue of a need for broad based support of the South Vietnamese government. The tone, which the State Department seems to have assented to, was one of simple support for a government of our own creation in what was deemed a minor embarrassment.

CANCELING A DENIAL

One mystifying element in all of this is the fact that the embassy never informed the South Vietnamese that Chau was on the closest terms with a number of officials in the embassy.

In fact, Bunker at one point cabled Washington that he planned to deny that Chau had American approval in setting up a meeting between his Communist brother and Ambassador Lodge.

The department hurriedly cabled back that another official, John Paul Vann, the top civilian in the Mekong Delta, had told the Senate Foreign Relations Committee the whole story of the attempted meeting in a private session last month.

Vann had been a close contact of Chau's when Lodge was ambassador, and had introduced Chau to other high-level Americans. He also kept Bunker fully informed of his dealings with Chau.

In September 1967, Chau presided at a briefing for Vann, Ambassador Bunker, his first assistant, Deputy Ambassador Samuel Berger, and the commanding general of the U.S. forces around Saigon, Frederick C. Weyand.

Chau forcefully argued that the so-called "blue areas" on the pacification maps, the big cities and population centers that were listed as secure, needed much more military protection against the possibility of wide scale attacks by the North Vietnamese.

Weyand was said to have been very impressed, possibly because Chau was in constant contact with his brother at this time.

General William C. Westmoreland, then commander of U.S. troops in Vietnam and Deputy Ambassador Robert Komer were at this time publicly boasting about the extent of the secure area, and seeking to push their efforts further and further from the cities.

STRATEGY WORKED

Weyand persuaded Westmoreland to let him concentrate his troops closer to Saigon. As a result, the Communists were unable at Tet to interdict the runways at the two major airports near Saigon and troop airlifts from these spots not only held the major southern cities, but sped reinforcements to the northern areas as well.

A marine general at the time told a reporter that if Tan Son Nhut and Flen Hoa airports had been overrun, many major cities would have fallen within a few days after Tet.

This alone seemed reason enough to support Chau against Thieu's attacks, but there was no such support.

President Nixon was asked about it at his new conference Saturday, and said that it had been the subject of discussion between Bunker and Thieu.

[From Newsday, Mar. 24, 1970]

U.S. DECEPTION IN SAIGON

(By Flora Lewis)

(EDITOR: Flora Lewis reports exclusively that U.S. Ambassador to Saigon Ellsworth Bunker misinformed Washington about developments surrounding the arrest of a South Vietnamese lawmaker. She explains its considerable significance to U.S. relations with the Thieu government.)

NEW YORK.—A recent series of cables between the State Department and U.S. Ambassador Ellsworth Bunker in Saigon indicates that Bunker is, to say the least, misinforming Washington and that Washington knows it.

The situation has come to a head over the case of Tran Ngoc Chau, a Vietnamese assemblyman who was tried and sentenced to 10 years at hard labor on a charge of being in touch with a Hanoi agent. Chau testified at his trial that the contacts were made with the knowledge and backing of the U.S. Embassy. But the U.S. has never commented publicly, one way or the other.

The Chau case is of the greatest importance because its implications are central to U.S. relations to the government of President Thieu, and to the question of whether or not Thieu has the power to veto any efforts to negotiate a Vietnam settlement with Hanoi. It reflects Thieu's efforts to manipulate the U.S. and his own people

into a box, without challenge from the U.S. ambassador.

The cables show that Bunker proposed to make a public statement after Chau, whose trial Washington asked him to prevent, had been convicted. Bunker told State that Chau's testimony was "false and misleading" and that he planned to say publicly that "No American Ambassador directly or through any intermediary suggested or encouraged Mr. Chau to initiate or continue his contacts with Capt. Hien." (Capt. Tran Ngoc Hien, the Hanoi agent, is Chau's brother. He was arrested last April and is now jailed in Saigon.)

The Department told Bunker not to say anything of the sort because it was "in conflict" with testimony given to a secret hearing of the Senate Foreign Relations Committee last month by John Vann, top U.S. civilian official in the Mekong Delta region, and thus would provoke awkward questions.

That was a diplomatic way of saying the Department knew Bunker's proposed comment was untrue, and was aware that Bunker also knew it was untrue.

Bunker wanted to include in his statement that Chau "on several occasions in conversations with American officials associated with him in the pacification program made veiled references to an important political cadre from Hanoi with whom he was in contact."

But Vann testified to the Senate committee that he received detailed descriptions from Chau of his brother and their relationship and how the Americans might contact Capt. Hien directly, if they chose. That was at a meeting in July, 1966.

Vann sought to arrange a meeting between Hien and then U.S. Ambassadors Lodge or Porter. But Lodge finally decided against it and authorized Vann to talk to the agent. That talk never took place because Hien answered Vann's request, sent through Chau, that he would see the men at the top, or no American official at all.

Vann's testimony made clear that Chau acted with the encouragement and backing of the U.S.

The record also shows that Chau played an important role in what became U.S. strategy before the 1968 Tet offensive, which may have prevented the fall of Saigon and a communist victory at that time.

Chau gave a long briefing on his understanding of coming events to Ambassadors Bunker and Samuel Berger, Lt. Gen. Frederick C. Weyand, Vann and others in September, 1967. Bunker does not deny this session.

Chau had learned from his brothers that the Vietcong planned big attacks on populated areas, although he did not have precise information about the timing and place of the Tet offensive. Nonetheless, on the basis of his knowledge of the situation, he urged the U.S. to strengthen defenses of those areas instead of shifting most of its forces out to border regions.

Chau's combination of information and reasoning convinced Vann and Gen. Weyand, the commander of the III Corps area which includes Saigon. Weyand then urged the strategy on Gen. Westmoreland, then U.S. commander in South Vietnam.

That was in November, 1967. Westmoreland, who in that period announced that the war was nearly won, had issued orders to move the great bulk of U.S. forces in III corps to the border provinces in pursuit of what he believed was a disintegrating enemy. The shift was to take place by January 1, 1968.

Weyand argued intensely against that strategy and finally won from Westmoreland a compromise delaying the movement for 6 months. At that time, the enemy was provoking battles near the border, notably at Dak Tho and Loc Minh, which with hindsight can be seen as an effort to draw U.S. troops away from the capital in preparation for the Tet attacks. The big Tet offensive came at the end of January.

Some top Americans who were in Vietnam at that time are convinced that if Westmoreland's orders had not been challenged, the big airports at Saigon and nearby Bien Hoa could have been overrun, preventing reinforcements and thus possibly leading to the loss of the Vietnamese capital.

President Thieu's government, in the course of the prosecution of Chau, has issued statements that it was unaware of Chau's connection with the Americans. (Vann testified to the contrary.)

Another official statement was made on Feb. 22, the day before attempts began to arrest Chau. It charged that the U.S. was in collusion with the Vietcong at the time of the Tet offensive and deliberately removed the South Vietnamese army's ammunition to weaken its defenses at the time of the attack.

American Vietnam experts interpreted this as a warning from Thieu to the Embassy against supporting Chau, lest it give some credence to this outrageous lie. The statement was made by Thieu's special assistant Nguyen Van Thang, whose position with Thieu is often compared to Henry Kissinger's role in the Nixon administration. The charge was repeated by prosecutor and judge in the public trial.

Bunker asked Thieu about it, reporting to Washington, "I said I was frankly amazed. Everybody knows about Chau's efforts to involve the U.S. in this case. Now the court seems to have fallen in the same trap." He accepted Thieu's bland denial of any involvement.

In the period before Chau's trial, Bunker kept relaying without comment South Vietnamese assurances that Chau would not be prosecuted, although the preparations for his arrest were public knowledge. Bunker repeatedly told Washington, which asked him to head off the trial, that everything was being done according to due process and strict legality. At the same time, however, his Embassy was reporting that Thieu's agents were bribing many deputies to remove Chau's parliamentary immunity and secretly organizing and paying for demonstrations against Chau.

Bunker, whose cables are read by top officials, took no note of these embassy reports which often contained a contradictory version of the facts to the State Department.

The case has caused immense concern among American officials below the top level in both Saigon and Washington, partly because they know and respect Chau and feel the U.S. has betrayed his trust, partly because they think Thieu's intricate maneuvering in this case has put him in a position to block any real efforts to negotiate a peace.

The U.S. still has issued no formal comment on the case, nor permitted release of Vann's testimony, presumably because it would be too embarrassing to appear to confirm Thieu's back-handed charges that the U.S. had secret dealings with the communists, and that they affected defenses during Tet.

Vann also testified that, despite Thieu's disclaimers, the South Vietnamese government was informed about Chau and the whole affair in July 1969. Vann himself told South Vietnamese Prime Minister Khiem about it at that time, on the authorization of his superiors in the U.S. establishment in Saigon.

Bunker's cables ignore all this and protest instead at Chau being represented in the U.S. press as a "patriotic nationalist." He told the State Department that Chau had called for a coalition government, which is a crime in South Vietnam although President Nixon has said he would not oppose such a government.

The record shows, however, that Chau has publicly opposed admitting communists in the government, though he favors negotiations, a cease-fire, and the communists' right to participate in elected bodies such as the National Assembly.

Bunker, 75, is a traditional type of New England Yankee with a record of high personal integrity. However, it was he who picked Thieu as America's favorite candidate for presidency and, in effect, created the Thieu government. He is deeply committed to its maintenance in power.

The upshot of all this pettigoggery has been, as one Saigon Embassy cable reported, to "defame the U.S."

It also indicates that Thieu is working to prevent the U.S. as well as any South Vietnamese from being able to negotiate a settlement to the war, which Nixon has said is the first aim of his Vietnam policy. So far, Thieu is getting away with it and Bunker is justifying him to Washington.

VA MEDICAL CARE

Mr. DOLE. Mr. President, recently the President signed legislation that raises pay for those who are taking training under the GI bill and other educational programs administered by the Veterans' Administration.

More than 777,000 persons currently taking training will benefit and countless thousands of others to come will have added incentive to claim the valuable educational rights they have earned. I can think of no better way to invest our resources, in terms of benefit to the veteran and his dependents and the good that will come to the Nation.

Now the President has taken action on another front that recognizes in a material way the great and continuing obligation that we have to the veterans of our armed services.

He has announced his approval of an increase of $50 million in the Veterans' Administration's medical care budget request for fiscal year 1971. He has also authorized VA to seek from Congress an additional appropriation of $15 million for the remainder of this fiscal year.

These requests, if granted, will go a long way toward improving medical care for all veterans and are of special significance, I think, because they will provide financial surety that programs of treatment for men returning from Vietnam are the best that the American people can supply.

I am certain that the addition of these funds will have the approval of this body—and I am equally certain that all citizens look with favor on whatever expenditures are required to help restore and sustain the health of those who serve and have served in this cruel and lonely war.

Aside from the surface humanitarian aspects of these requests, however, there is a great deal more to consider. Like the additional money to be spent on the GI bill and other VA educational programs as the result of the new pay scales now going into effect, more money in VA's medical program is an investment that strengthens our Nation and helps all citizens—veterans and nonveterans.

The Veterans' Administration operates a system of 166 hospitals—the largest hospital system in the free world. It is a national resource in which we can all

take pride and in which we can all find comfort.

The system is a symbol of our care, our respect, and our love for those who have served and love their country. It says that our civilization does not abandon or neglect those who have defended it.

The system of hospitals is also a symbol—and I hope a true symbol—of the best medical care that can be provided. It has been, and must continue to be, a standard setter for all hospitals and health care institutions.

I do not think we have ever lacked generosity in voting funds for the Veterans' Administration and its vast medical programs.

I think the President has shown his interest in VA medicine and his concern that it be properly funded, and I think the record is clear that he intends VA to have whatever money and whatever manpower are needed to carry out its mission.

Last September he raised VA's personnel ceiling by 1,500 jobs even though employment authorizations were being reduced in other Federal agencies. This was recognition that the needs of Vietnam veterans and other veterans had priority over other needs.

The President also approved VA's fiscal 1971 request for 2,100 additional medical employees—again at a time when stringency in Federal employment was being exercised.

And the 1971 budget request submitted prior to today for VA medical care was some $160 million more than the approved appropriation for fiscal year 1970.

Against this background of recognition of need and generous consideration of that need, however, there now emerges the fact that what we have provided—and what we have been requested to provide—will not be enough.

Men and women are returning from service in Vietnam and elsewhere in ever larger numbers and this exodus from service will increase in months and years ahead. Their needs are often more complicated and call for more sophisticated help and equipment than that needed by the average prior patient.

Veterans of World War I, World War II, and Korea are getting older and requiring more care.

While medical treatment is getting better, it is also getting more expensive and our ability to save lives and restore health must not be restricted by budgetary deficiencies.

The Veterans' Administration has, in recent years, attained an honored and deserved reputation as a place of training for doctors and other medical personnel. This service to all Americans could be endangered by lack of funds.

Research that broadens total American—and world—medical knowledge and is life-sustaining has become an integral function of VA hospitals. This research must not be allowed to weaken or diminish at a time when new frontiers are being pierced and when the needs of a growing world population are greater than ever before.

The Veterans' Administration hospitals are competing in a tight labor market for hard-to-get doctors and other medical personnel and those who administer VA health care programs must be able to get and keep the personnel they need.

For all these reasons, the requests of the President for additional VA hospital funding should be appreciated and commended. It is an act of responsibility on the part of the administration, a vote of confidence in a great Federal agency and a manifestation of understanding of need and deserved support.

ENVIRONMENT PROBLEMS

Mr. ALLOTT. Mr. President, for several weeks I have been delivering a nine-part series of statements on various aspects of the environment problems that afflict America.

Today I am delivering the final installment of this series. Therefore, today is a good day to sum up my thinking on these matters.

My first conclusion is that nine statements are not enough to cover the many facets of our many environment problems. Thus I will continue to address myself to these problems in the coming weeks and months. I am proud to be a cosponsor of the President's legislative package dealing with environment problems and I intend to give strong support to the President's imaginative proposals.

Beyond this primary point—that there is much more to be said about our environment problems—I would emphasize these 10 points:

First. It is proper and understandable that environment should be an important issue for Americans. We have been singularly blessed with a beautiful and richly endowed nation. And we have been singularly important in proving that popular government can be responsible government. The environment issue brings together our blessings and our responsibilities.

Second. It is appropriate that the Republican Party is taking the lead in coping with environment problems. As I said in my first statement in this series:

> Our environment problems are problems stemming from the fact that we are the world's foremost industrial nation. It was under almost exclusively Republican leadership, in the decades from the Civil War until the First World War, that America changed from a predominantly rural and agricultural nation into a modern industrial giant. Moreover, it was at the end of this half century of unprecedented progress that concern for the American environment was put on the national agenda of pressing public business. It was put there by a great Republican President, Theodore Roosevelt.

Third. Many of our problems stem from our great national success as a productive people. We should not decide that our success is really a failure just because it poses some problems.

Fourth. As the cartoon character Pogo says:

> We have met the enemy and they is us.

Or, as the President says:

> The fight against pollution is . . . not a search for villains.

We have all contributed to our environment problems, we all suffer from them, and we will all have to make some sacrifices to solve them.

Fifth. Many of the choices we now face are not choices between good and evil. Rather, they are choices between competing goods. For example, the airport facilities we need for better service may require the disruption of areas of natural beauty. And we should not be afraid to choose beauty over convenience.

Sixth. The choices we face are especially awkward when they involve a collision between environmental problems—such as air pollution, and thermal pollution of water—and our growing need for energy, and especially for the production of electric power.

Seventh. We must recognize that our most serious long-term environment problems cannot be solved just by more strict enforcement of existing laws, or even by passing more severe laws. We do need stern laws. But we also need a lot of new knowledge concerning everything from cleaner cars and better power production through recycling of solid wastes. This means we need to invest in many areas of research.

Eighth. The Government should be alert to the existence of "hidden environment policies." A "hidden policy" exists when a policy designed for one social problem has important ramifications on another social problem. For example, a policy which encourages reliance on automobile transportation into cities may be a "hidden"—and detrimental—environment policy because automobiles aggravate air pollution problems. As cosponsor of the National Environmental Policy Act of 1969, I fully supported the provision requiring all departments and agencies of the Government to examine the environmental impact of proposed actions, and to consult with the Council on Environmental Policy.

Ninth. The Government also should be alert to the opportunity for "cross-commitment." Cross-commitment is the policy of designing two policies which aim at different goals, but which interact in such a way that each promotes the achievement of the other program's goal. For example, the policy of fighting air pollution is helped by the policy of promoting urban mass transit which curtails the reliance on automobiles in congested city centers. Thus cross-commitment can be the Government's way of killing two birds with one stone—by attacking two problems with one appropriation.

Tenth. We must not allow extremists to seize control of the environment debate. Two bad consequences can come from any debasement of the debate. On the one hand, extremists can use these issues to divide and polarize the community, thereby increasing the disharmony on which extremists thrive. On the other hand, extremists—with their absolute inability for moderation and restraint—can confuse the environment debate with scare tactics. Already, we are being inundated with dire prophecies about the total—and imminent—destruction of our living environment. Such prophecies make our task seem unmanageable, thereby discouraging practical action. Further, when extremists are shouting at the top of their lungs, it is doubly difficult for moderate men to be heard. There is no reason why we cannot lower our voices while increasing our efforts on behalf of a better world.

Mr. President, the preceding points are

among the most important conclusions I have come to in the process of surveying our environment problems.

But before concluding this series of statements, I want to do two things: First, I want to call attention to a form of environmental decay that is sometimes overlooked; second, I want to stress the fact our fight for a better living environment is a moral fight with very high stakes.

Mr. President, I want to call attention to the problem of noise, and to the general problem of ugliness in our lives.

In the year 1560 residents of London complained to their Government about the noise created by husbands beating their wives late at night. As a result Queen Elizabeth passed a law prohibiting wife beating after 10 p.m.

It will not be long before American Governments are called upon to show a similar solicitude for their constituents' desire for peace and quiet.

America is too noisy now, it is getting noisier all the time, and if it is not already so noisy we cannot think, we should think about this problem.

The way to begin thinking about the problem is to understand that it is part of the general decay of our environment.

It is quite reasonable to speak of "noise pollution."

Noise—understood as unwanted sound—is a form of environmental contamination. It leads to rising tempers and declining property values.

According to Theodore Berland, writing in "The 1970 World Book Year Book"—the annual supplement to the World Book Encyclopedia:

> We are up to our ears in noise. Noise is increasing at an alarming rate. It invades our privacy and interrupts our conversations. It even affects our health by causing eye pupils to widen, blood vessels to narrow, stomachs to turn, and nerves to jump. It can destroy some of the most important cells of the inner ear and cause permanent hearing loss.
>
> Yet we cannot escape it. The noise of radios, television sets, stereo systems, food blenders, garbage disposal units, power tools and vacuum cleaners fills our homes. The roar of aircraft, motorcycles, air conditioners, power lawn mowers, trucks, and thousands of other noisemakers surrounds us out-of-doors. The once-quiet stillness of a winter day in the forest is shattered by the deafening whine of snowmobiles. Outboard motors reverberate across lake waters, driving away fish and fishermen. Rock music is amplified to such high levels that there is danger of widespread hearing loss among youth.

There are moments when the noise from imported transistor radios and small motorbikes almost makes one believe that our friends the Japanese are gaining revenge for our late misunderstanding by trying to make us all deaf. But we are doing an astonishing job of making noise with no outside help.

According to Mr. Berland:

> The high-noise area around John F. Kennedy International Airport in New York, for instance, is 23 square miles. It contains 35,000 dwelling units, 108,000 residents, 22 public schools, and several dozen churches, all regularly startled and annoyed by the 80- to 90-db screams of jet airplanes.

Clearly, modern conveniences, which bring us many blessings, also bring us a colossal avalanche of decibels. As Mr. Berland explains:

> The kitchen is probably the noisiest room in any house because of its many mechanized noisemakers, and because the hard surfaces of walls and cabinets create more reverberating noises by failing to absorb sound.

Dr. Lee E. Farr of the California Department of Health says:

> We are inadvertently turning our kitchens into miniature simulators of old-fashioned boiler factories.

He found that a kitchen may reach the noise level of a subway or an airport—in the 100-decibel range.

The only proper response to this problem is to work to reduce the noise level in the home and in the reverberating out-of-doors.

In recent years the noise level of our cities has been rising at the rate of a decibel a year. If this continued, all city inhabitants would be deaf by the year 2000.

Transportation is the primary source of permanent increases in noise levels. The automobile is the source of an estimated 75 percent of city noise. The largest concentration of noise in urban areas is around airports. Citizens in New York, Chicago, and Atlanta are currently conducting lawsuits to fight airport noise.

In New York City, Mayor Lindsay's task force on noise control has concluded:

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

The task force noted that 85 decibels is the threshold at which permanent impairment of hearing can result. But noise above that level is not uncommon. The New York City subway often produces noise over the 100 decibel level.

Worse still, air compressors and hammers used in construction can produce noise over 110 decibels. Relatively quiet air compressors are being manufactured but they cost 30 percent more than the regular noisy kind. Thus the quiet models are not selling well and will not sell well until they are required by law.

Things are so bad in some areas that accoustical experts—and improvising city dwellers—are suggesting the use of noise to drown out noise. The theory is that the world is hopelessly noisy, and the most we can do is pick our own background noise.

In noisy New York City, one man runs a fan all night, even in the dead of winter, just to drown out street noise. Another man plays a Barbra Streisand record almost constantly.

You can now buy a machine which purrs along all night emitting the noise of an air conditioner—just enough noise to blanket the noise of passing trucks.

Another machine—price, $19.50—makes a noise like "a breeze in the trees"—that is the manufacturer's description—and a third machine—price, $120—gives you a choice of three sounds: falling rain on a wood-shingled roof, the rustle of the wind, or ocean surf. Again, the descriptions are sound emitted by the manufacturers.

In some office buildings loudspeakers have been installed to broadcast the sound of waterfalls on the assumption that such noise is more soothing than normal office clatter. As one person explains this technique:

> Introducing a not unpleasant noise into buildings is like dumping rose water into the air conditioning at Madison Square Garden when the elephants are on. It doesn't make the elephants smell any better, but it gives you a somewhat pleasanter environment.

But clearly such measures are not the ideal answers to the problem of noise. The real answer lies not in fighting noise with noise, but in adding to the public stock of peace and quiet by eliminating unnecessary noise.

We have more to gain from this than just a more pleasant environment—although this is not a negligible benefit. Our health is at stake.

According to the American Health Foundation Newsletter:

> Noise pollution affects virtually every bodily function, including blood pressure and heart beat. It probably has much to do with emotional ailments, and persistent exposure to high noise levels can cause permanent deafness.

Mr. Berland has provided a remarkable survey of the ongoing research concerning the effect of noise on our health:

> Noise affects more than the ears. It can affect other parts of the human body as well, particularly the cardiovascular system. Research in both the United States and Europe indicates that noise increases the level of people's cholesterol in the blood and raises blood pressure. German and Italian medical researchers have found that even moderate noises cause small blood vessels to constrict. This vasoconstrictive reflex is the body's automatic way of responding to the stress of noise. It occurs also during sleep, as shown by Dr. Gerd Jansen of Essen, West Germany. He measured vasoconstriction that occurred in the fingers of sleeping subjects when he played recorded noises at only 55db, the level of nearby traffic. The vasoconstriction took place even when the noise exposure lasted only a fraction of a second. Even with this limited exposure, the blood vessels took minutes to return to normal. Jansen concluded that the sound of traffic at night, heard by sleeping individuals, can endanger their hearts and arteries.
>
> In Italy, Dr. Giovanni Straneo found that noise not only causes the blood vessels in fingers and eyes to constrict, but also has the opposite effect on the blood vessels of the brain. The dilation in the brain could be a reason noises cause headaches. He also found that noise threatens the heart itself by directly altering the rhythm of its beat. In addition, it makes the heart work harder by thickening the blood while constricting its flow in the peripheral vessels. One of his associates at the University of Pavia found that noise also increases the stomach's flow of acid.
>
> Other experiments, conducted in West Germany by Jansen, and at the University of Southhampton in England, show that even mild noises cause the pupils of the eye to dilate. This helps to explain why watch-makers, surgeons, and others who do close work are especially bothered by noise. Because of the effects of sound, eyes are forced to change focus, thereby causing eyestrain and headache.

It is estimated that between 6 and 16 million industrial workers suffer some form of occupational hearing loss. It is probable that the majority of Americans are exposed to very high noise levels several times a day.

When the noise level rises above 52 decibels, it interferes with normal human speech. It would be reasonable to work toward conditions in residential areas such that the noise level did not rise above 40 decibels in the daytime and 30 decibels at night. But that is a distant goal.

Still, we can encourage research into ways of dampening the noise of our world.

We can encourage research into the effects of noise on the human organism.

We can require airlines to make every effort to quiet their operations.

We need research into construction techniques that result in quiet buildings which do not transmit noise from one room to another.

Most of all, we should encourage the American people to include "noise pollution" on their list of serious environment problems. We can do this if we can make ourselves heard over the din of daily life.

Mr. President, while there are some humorous aspects of the "noise pollution" problem, I have examined this problem to make two serious points.

The first point is that "noise pollution" is a real and pressing environment problem that deserves prompt attention.

The second point is that there are many more facets to a comprehensive environment policy than meets the eye—or ear. The decay of our physical environment involves more than just the so-called big three pollutions—air, water, and solid waste pollutions. And the decay of our physical environment has a deleterious effect on our moral environment.

Our environmental vocabulary should accommodate the idea of "esthetic pollution." This is the problem of plain ugliness.

Tasteless architecture, unsightly advertising, needless noise, and hundreds of other environmental abuses take their toll on the quality of American life.

Of course we can and do learn to live with such abuses—more of them every year. But we are too tolerant of such abuses. We would have a better nation, and we would be better people, if we did not put up with them.

I see no reason to doubt that unpleasant surroundings make for unpleasant social relations and, in the end, unpleasant people. It goes without saying that the American people are the most precious part of America.

This brings me to the end of this series of environment statements, and to the most important point that can be made about the issue of our national environment.

Every nation has a moral environment that is as important as its physical environment. Indeed, Americans have always understood that the health of the physical environment contributes to the health of the moral environment.

We understand that people are happier—people are more noble—when they are living in harmony with the natural world. People are ennobled by living around beauty.

We must protect and cultivate the floral environment of America as assiduously as we protect and replenish our physical environment.

In addition, we must continue to recognize that these are related tasks.

Finally, we must all recognize the crucial responsibility we have to protect and promote a healthy environment for the conduct of our civic affairs. We must respect the traditions of civility in conducting the affairs of popular government. We must respect the desires and motives of those who disagree with us.

If we preserve a tolerant and reasonable moral environment in America, we will never lack the ability to cure the problems of our physical environment.

There is no better way to conclude these remarks than by citing the words of Abraham Lincoln. No one has ever matched the clarity and precision with which Lincoln spoke of the relation between the physical and moral words.

Speaking in Milwaukee, on September 30, 1859, Lincoln spoke words that should guide us in the difficult years ahead:

It is said an Eastern monarch once charged his wise men to invent him a sentiment to be ever in view and which should be true and appropriate in all times and situations. They presented him the words, *"And this, too, shall pass away."* How much it expresses! How chastening in the hour of pride; how consoling in the depths of affliction! "And this, too, shall pass away." And yet, let us hope, it is not *quite* true. Let us hope, rather, that by the best cultivation of the physical world, beneath and around us, and the intellectual and moral worlds within us, we shall secure an individual, social and political prosperity and happiness, whose course shall be onward and upward, and which, while the earth endures, shall not pass away.

FORMER CHIEF JUSTICE EARL WARREN SPEAKS ON THE IMPORTANCE OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, the protection of human rights on an international basis is a mission of the utmost importance for all of mankind.

The people of the world must join together to insure that the basic freedoms outlined in the United Nations Universal Declaration of Human Rights are guaranteed for men of all nations. This is a far-reaching and difficult goal. However, its urgency and importance make it imperative that we set our sights on its fulfillment.

Former Chief Justice Earl Warren has for many years been an eloquent spokesman for the international efforts to secure the protection of human rights. His active participation in the Center for World Peace through the Rule of Law has been of tremendous importance to the movement to understand and implement the rule of law in shaping a peaceful world in which human rights are respected.

Mr. Warren's legal and moral leadership for this country place added importance on his comments on the progress that we have made in this area, and on the vital nature of the work that lies before us. I invite the attention of Senators to an address that Mr. Warren delivered on December 4, 1968, to the conference on continuing action for human rights.

Mr. Warren places special emphasis in this address on two crucial areas in human rights—the absolute necessity of international cooperation and the serious consequences to this effort that will result from a "parochial outlook" on the part of the United States. His points are extremely well taken, and his admonishments as to the fearful price of failure in protecting human rights make even clearer the importance of the work that we must do in this area.

I ask unanimous consent that several excerpts from this inspirational address by former Chief Justice Earl Warren be printed in the RECORD.

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

EXCERPTS FROM AN ADDRESS BY CHIEF JUSTICE EARL WARREN TO THE CONFERENCE ON CONTINUING ACTION FOR HUMAN RIGHTS, DECEMBER 4, 1968

We are here not just to celebrate human rights but also to advance them. To do that we must better understand them, we must constantly seek to learn more about them and their impact on our world here at home and abroad, and we must add our voices to the growing chorus of demand for the promotion of human rights in all aspects of government policy at both the federal and local levels.

* * * * *

How far then have we come in developing this international law of human rights? Over twenty major human rights conventions have been adopted by the United Nations, the International Labor Organization, and UNESCO. A few of them are in force among the parties which have acceded to them. Unfortunately the United States is a party to only two of them and this status has been reached only in the last year. We are still not a party to such major conventions as the Convention on the Abolition of Forced Labor, the Convention on the Political Rights of Women, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Elimination of all Forms of Racial Discrimination. Nor have we as yet even signed no less ratified the two Conventions on Civil and Political Rights and Economic, Social and Cultural Rights which grow directly out of the Universal Declaration.

We are a nation of minorities—minorities which have confirmed major problems of war and peace, and self-government as a majority. The majority respects our pluralistic nature—we have even made of our heterogeneous origins a national strength and a point of national pride. We feel a natural sympathy and understanding for oppressed groups, we seek to preserve elements of our varied cultural heritage and weave them into our national fabric. Nevertheless, we have failed ourselves in not ratifying two conventions which were drafted as an expression

of man's readiness to recognize the special protection which the minority deserves and needs. We as a nation should have been the first to ratify the Genocide Convention and the Race Discrimination Convention. Instead we may well be near the last to ratify the Genocide Convention which has about 80 parties to it already and the Race Discrimination Convention will probably enter into force without the United States having made any serious move to accede to it.

This sad record and the responsibility for it lies squarely with those who have a parochial outlook on our world problems. They have failed to measure the climate of change in the world. They have failed to recognize that men and their institutions do not stand still in the face of great changes. We are not so uncertain of ourselves and our future that we cannot make our institutions conform to our needs as a progressive people.

* * * * *

I would urge that we rely on the authority of the Universal Declaration and that we consider the usefulness of placing the urgency of achieving respect for human rights in the total framework of peace—peace in the community and peace in the world. It is specious to talk about peace unless we have peace at home and that means compliance with just laws. The objective of all our institutions should be to bring about compliance and respect for law through understanding and not just the exercise of police power. This is of course crucial in the understanding of the United Nations and of universal human rights.

FINANCIAL STATEMENT OF SENATOR CASE

Mr. CASE. Mr. President, I ask unanimous consent to have printed in the RECORD a combined statement for my wife and myself of our assets and liabilities at the end of 1969 and our income for that year.

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

STATEMENT OF SENATOR CASE, APRIL 3, 1970

ASSETS

Cash in checking and savings accounts (after provision for Federal income tax for '69), approximately $30,000.

Life insurance policies with the following insurers (currently providing for death benefits totaling $138,500): U.S. Group Life Insurance, Aetna Life Ins. Co., Conn. General Life Ins. Co., Con. Mutual Life Ins. Co., Continental Assurance Co., Equitable Life Assurance Society, Provident Mutual Life Insurance Co. of Philadelphia, Travelers Insurance Co.: Cash surrender value $45,827.

Retirement contract with Federal Employees Retirement System (providing for single life annuity effective January 3, 1973 of $28,236 per annum.) Senator Case's own contributions to the Fund total, without interest, $34,272.

Annuity contracts with Teachers Insurance and Annuity Association and College Retirement Equities Fund. As at 12/31/69 these contracts (estimated to provide a life annuity effective January, 1973 of $1443) had an accumulation value of $12,459.

Securities as listed in Schedule A, $409,947.

Real estate: consisting of residence building lot on Elm Avenue, Rahway, N.J. and house in Washington, D.C. (original cost plus capital expenditures) $72,200.

Tangible personal property at Rahway apartment and Washington house, estimated, $15,000.

Share in estate of Senator Cases's mother, estimated undistributed balance, $5,000.

Contingent interest in a small trust fund of which Chase Manhattan Bank of N.Y. is Trustee. 1969 Income, $18.

LIABILITIES

None.

INCOME IN 1969

Senate salary and allowances, $40,649, less estimated expenses allowable as income tax deductions of $7,147 (actual expenses considerably exceed this figure) $33,502.

Dividends and interest on above securities and accounts, $16,553.

Lectures and Speaking Engagements: Cornell; The Brookings Institution; The University of the Pacific, $1,900.

Net gains on sales of property, $4,260.

SCHEDULE A

SECURITIES

Bonds and Debentures of the following, at cost (aggregate market value somewhat lower) $50,205:

	Principal amount
American Telephone & Telegraph Co	$11,000
Cincinnati Gas & Electric Co	4,000
Consolidated Edison Co. of New York	5,000
Consumers Power Co	5,000
General Motors Acceptance Corp	5,000
Iowa Electric & Power Co	5,000
Mountain States Telephone and Telegraph Co	5,000
South Western Bell Telephone Co	5,000
Toledo Electric Co	5,000

Stocks (Common, unless otherwise noted) at market, $359,742.

Corporation:	*No. of shares*
American Electric Power Co	919
American Natural Gas Co	548
American Telephone & Telegraph Co	200
Cities Service Co	144
Combined Insurance	29
Consolidated Edison Co. of New York	400
Consolidated Edison Co. of New York, $5 Pfd	50
Continental Can	25
Detroit Edison Co	100
DuPont	40
General Electric Co	120
General Motors Corp	270
Gulf Oil	140
Household Finance Corp. $4.40 Cum. Conv. Pfd	100
International Business Machines Corp	128
Investors Mutual, Inc	2,633
Kenilworth State Bank	21
Litton Industries	86
Madison Gas & Electric Co	275
Marine Midland Corp	563
Merck & Company, Inc	200
Mid-Continent Telephone	80
Morgan, J	22
Owens-Illinois	80
Reynolds Tobacco	100
Tri-Continental Corp	1,378
Union Carbide	48
Union County (NJ) Trust Co	1,101
Warner-Lambert Pharmaceutical Co	260

PRESENTATION OF CREDENTIALS BY AMBASSADORS

Mr. FULBRIGHT. Mr. President, some time ago I was attracted by a newspaper picture of the Colombian Ambassador as he presented his credentials to President Nixon. A note accompanying the picture said that the Ambassador had to wait 51 days before the President arranged to see him. This seemed to me an inordinate time, and I asked the State Department for the date of each Ambassador's arrival in Washington over the last 3 years and the date on which he presented his credentials to the President. This information has now been received and analyzed for the period December 31, 1966, to February 3, 1970. The analysis showed that in 1967 the average delay between an Ambassador's arrival and the presentation of his credentials was 13 days. In 1968, it was 16 days. In 1969, it was 29 days, and in 1970, it was 27 days. The longest waits were encountered by the Ambassador of Gabon, who was kept waiting 58 days in 1967; the Ambassador of El Salvador, who had to wait 54 days in 1968, the Ambassador of the Dominican Republic, who had to wait 84 days in 1969; and another Ambassador from Gabon, who had to wait 29 days in early 1970.

I wonder what the reaction in Washington would be if the American Ambassador to the Dominican Republic, or El Salvador, or Gabon had to wait this long to present his credentials.

Certainly the average delay of 29 days in 1969 must be a source of embarrassment and humiliation to the smaller, poorer countries. I very much hope that the President would find it possible to arrange his schedule so as to accept diplomatic credentials more expeditiously.

In fairness, I should note that in transmitting to me the information on this subject, Acting Assistant Secretary of State H. G. Torbert, Jr., noted that the practice of former administrations, whereby Ambassadors were received by the President in groups, has been abandoned in favor of the internationally accepted ceremony of individual presentation. I commend the President on this change, but its advantages could largely be lost by delaying the individual ceremony unduly.

I ask unanimous consent that Mr. Torbert's letter to me and the tabulation which he enclosed be printed in the RECORD.

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

DEPARTMENT OF STATE,
Washington, D.C., March 9, 1970.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter dated February 9 requesting ambassadorial arrival and credentials presentation data.

The enclosed tabulation covers the period from December 31, 1966 to February 3, 1970.

In any attempt to compare average periods of time from arrival to presentation of credentials, it should be noted that the increase in time in the year 1969 is comparable to the increase during the first year of prior administrations. In some instances delays were caused by the fact that an ambassador was not prepared to present his credentials immediately upon arrival. In addition, the practice of the former administrations whereby ambassadors were received by the President in groups has been abandoned in favor of the internationally-accepted ceremony of individual presentation. The latter practice naturally is more time consuming.

I hope the foregoing information will be helpful to you.

Sincerely yours,

H. G. TORBERT, Jr.,
Acting Assistant Secretary for Congressional Relations.

FOREIGN AMBASSADORS ACCREDITED TO THE UNITED STATES, 1967—FEB. 3, 1970

Country	Name of ambassador	Date of arrival Washington	Presentation of credentials
Haiti	Arthur Bonhomme	Dec. 31, 1966	Jan. 13, 1967
Colombia	Hernan Echavarria	Jan. 5, 1967	Do.
Indonesia	Suwito Kusumowidagdo	do	Do.
Turkey	Melih Esenbel	Jan. 6, 1967	Do.
Vietnam	Bui Diem	Jan. 16, 1967	Jan. 19, 1967
Malta	Dr. Arvid Pardo	Jan. 25, 1967	Feb. 7, 1967
Yemen Arab Republic	Abdulaziz Al-Futaih	Jan. 30, 1967	Do.
Sierra Leone	Christopher O. E. Cole	Feb. 13, 1967	Do.
Afghanistan	Abullah Malikyar	Mar. 13, 1967	Mar. 17, 1967
Singapore	Dr. Wong Lin Ken	do	Do.
Zambia	Rupiah Banda	Apr. 1, 1967	Apr. 7, 1967
Burundi	Terence Nsanze	Apr. 30, 1967	May 10, 1967
Dahomey	Maxime-Leopold Zollner	May 1, 1967	Do.
Morocco	Ahmed Osman	May 4, 1967	Do.
Iran	Hushang Ansary	May 15, 1967	May 26, 1967
New Zealand	Frank Corner	June 11, 1967	June 14, 1967
Italy	Egidio Ortona	do	Do.
Japan	Takeso Shimoda	June 20, 1967	June 28, 1967
Togo	Dr. Alexandre Ohin	June 13, 1967	July 27, 1967
Romania	Corneliu Bogdan	July 13, 1967	Do.
Jordan	Abdul Hamid Sharaf	Aug. 15, 1967	Aug. 30, 1967
Yugoslavia	Bogdan Crnobrnja	Aug. 19, 1967	Do.
Jamaica	Egerton R. Richardson	Aug. 20, 1967	Sept. 12, 1967
Poland	Jerzy Michalowski	Aug. 21, 1957	Do.
Ecuador	Carlos Mantilla-Ortega	Aug. 28, 1967	Do.
Greece	Christian Xanthopoulos-Palamas	Sept. 14, 1967	Sept. 25, 1967
Malawi	Nyemba Wales Mbekeani	Sept. 15, 1967	Do.
Ghana	Ebenezer Moses Debrah	Sept. 26, 1967	Oct. 9, 1967
Korea	Dong Jo Kim	Oct. 30, 1967	Nov. 9, 1967
Gabon	Leonard Antoine Badinga	Nov. 22, 1967	Jan. 19, 1968
Thailand	Bunchana Atthakor	Dec. 11, 1967	Do.
Sierra Leone	Adesanya K. Hyde	Jan. 12, 1968	do
Maldive Islands	Abdul Sattar	Jan. 14, 1968	do
Somali Rep	Yusuf O. Azhari [1]		Mar. 5, 1968
Israel	Major General Yitzhak Rabin	Feb. 19, 1968	do
Nigeria	Joseph T. F. Iyalla	Feb. 20, 1968	do
Panama	Jorge T. Velasquez	Feb. 25, 1968	do
India	Nawab Ali Yavar Jung	Feb. 26, 1968	do
El Salvador	Colonel Julio A. Rivera	Jan. 20, 1968	Mar. 15, 1968
Paraguay	Dr. Roque J. Avila	Mar. 4, 1968	Mar. 15, 1968
Philippines	Salvador P. Lopez	Apr. 5, 1968	Apr. 23, 1968
Indonesia	Soedjatmoko	Apr. 25, 1968	May 7, 1968
Senegal	Cheikh Ibrahima Fall	May 15, 1968	June 5, 1968
Burma	U. Hla Maung	June 15, 1968	June 27, 1968
Chile	Domingo Santa Maria	June 28, 1968	July 1, 1968
Mauritius	Pierre Guy Girald Balancy	July 5, 1968	July 17, 1968
Costa Rica	Luis Demetrio Tinoco	July 21, 1968	Aug. 22, 1968
Swaziland	Dr. S. T. Msindazwe Sukati	Sept. 4, 1968	Sept. 18, 1968
Chad	Lazare Massibe	Sept. 13, 1968	Sept. 26, 1968
Hungary	Janos Nagy	Sept. 26, 1968	Oct. 7, 1968
Ethiopia	Dr. Minasse Haile	Oct. 11, 1968	Oct. 31, 1968
Argentina	Dr. Eduardo Alejandro Roca	Oct. 18, 1968	Do.
Lebanon	Najati Kabbani	Oct. 24, 1968	Nov. 12, 1968
Peru	Fernando Berckemeyer	Nov. 24, 1968	Jan. 1, 1969
Tanzania	Gosbert M. Rutabanzibwa	Dec. 6, 1968	Jan. 3, 1969
Colombia	Misael Pastrana Borrero	Jan. 4, 1969	Jan. 17, 1969
Singapore	Dr. Ernest Steven Monteiro	Jan. 18, 1969	Jan. 31, 1969
Germany	Rolf Pauls	Jan. 12, 1969	Do.
Uruguay	Dr. Hector Luisi	Jan. 22, 1969	Do.
Panama	Roberto Aleman	Jan. 2, 1969	Feb. 21, 1969
Brazil	Mario Gibson Barboza	Feb. 6, 1969	Do.
Great Britain	The Right Hon. John Freeman	Mar. 3, 1969	Mar. 17, 1969
Botswana	Chief Linchwe II Molefi Kgafela	Mar. 4, 1969	Apr. 17, 1969
Nepal	Kul Shekhar Sharma	Mar. 18, 1969	Do.
Philippines	Ernesto V. Lagdameo	Mar. 22, 1969	Do.
Lesotho	Mothusi Thamsanga Mashologu	Apr. 8, 1969	Do.
Guinea	Fadiala Keita	Apr. 17, 1969	May 6, 1969
Kenya	Leonard Oliver Kibinge	Apr. 24, 1969	Do.
Austria	Dr. Karl Gruber	June 9, 1969	July 1, 1969
Dominican Republic	Dr. Mario Read-Vittini	July 10, 1969	Oct. 2, 1969
Sierra Leone	John J. Akar	July 15, 1969	Do.
Venezuela	Julio Sosa-Rodriguez	Aug. 1, 1969	Do.
Rwanda	Fidele Nkundabagenzi	Aug. 16, 1969	Do.
Luxembourg	Jean Wagner	Sept. 2, 1969	Do.
Barbados	Valerie T. McComie	Aug. 28, 1969	Oct. 10, 1969
Thailand	Sunthorn Hongladarom	Sept. 9, 1969	Do.
Congo	Justin-Marie Bomboko	Sept. 10, 1969	Do.
Netherlands	Baron Bernhard van Lynden	Sept. 11, 1969	Do.
Mali	Seydou Traore	Sept. 8, 1969	Do.
Iceland	Magnus V. Magnusson	Sept. 30, 1969	Oct. 16, 1969
Czechoslovakia	Dr. Ivan Rohal Ilkirt	Oct. 5, 1969	Do.
Iran	Amir-Asian Afshar	Oct. 6, 1969	Do.
Greece	Bash George Vitsaxis	Nov. 8, 1969	Nov. 18, 1969
Belgium	Walter Loridan	Nov. 25, 1969	Dec. 18, 1969
Tunisia	Slaheddine El-Goulli	Dec. 10, 1969	Do.
Zambia	Mathias Mainza Chona	Dec. 6, 1969	Feb. 3, 1970
Colombia	Dr. Douglas Botero-Boshell	Dec. 14, 1969	Do.
Gabon	Gaston Bouckat-Bou-Nziengui	Jan. 5, 1970	Do.
Malagasy Republic	Jules Alphonse Razofimbahiny	Jan. 9, 1970	Do.

[1] In Washington as Chargé.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Maine (Mr. MUSKIE) be recognized for not to exceed 10 minutes and that at the conclusion of his remarks the unfinished business be laid before the Senate.

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

ERA OF NEGOTIATIONS?—PART II

Mr. MUSKIE. Mr. President, I thank the distinguished majority leader for his consideration.

Mr. President, the day before yesterday the French Cabinet expressed its grave concern about the widening war in southeast Asia and urged an effort to negotiate a settlement in Indochina. Yesterday, the Paris Vietnam peace talks went through the motions of their 61st session with no meaningful response to the French proposal. Later reports in Washington indicate that the Nixon administration is cool to the French proposals. In short, Mr. President, while the war in Vietnam continues and spills over in Laos and Cambodia, our Government offers no initiatives to bring about the "era of negotiation" and it is reluctant to respond to the initiatives of others.

One week ago, yesterday, Mr. President, I began a series of speeches in the Senate on the unanswered questions about U.S. policy in southeast Asia, particularly as those questions relate to the question of a negotiated settlement of the conflict in South Vietnam and the growing conflict in Laos and Cambodia. My questions were not answered, and I raise them again:

What is the administration trying to convey by the unfortunate symbolic protocol gap in Paris.

The administration has now allowed 133 days to go by—more than 30 percent of the time it has been in office—without replacing Ambassador Lodge with a representative of like rank. For more than 4 months, second-rank representation from the United States has led to second and third-rank representation from the Communists, and similar representation from Saigon. If this was to be the "era of negotiation," as President Nixon premised in his inaugural address, why is the administration downgrading the tools of diplomacy?

How does the administration propose to deal with the instability and conflict in Laos and Cambodia, which is directly related to the war in Vietnam?

The impossibility of ending the war by Vietnamization, which I have pointed out before, has been further underscored by events across South Vietnam's ill-defined Western borders. In Laos, 67,000 North Vietnamese troops continue to operate, despite occasional countermoves and continuing U.S. air attacks. In Cambodia, upward of 40,000 North Vietnamese and Vietcong troops now appear to be involved, in the midst of growing evidence of the risk of civil war.

I do not think the American people will tolerate widened intervention by U.S. ground forces in these cross border areas. While the South Vietnamese are incapable of settling the situation, they may well succeed in dragging us in to protect them. Laos and Cambodia cannot be expected to deal militarily with the present instability by themselves.

It should be obvious to anyone familiar with Southeast Asian affairs that we ought to be trying to halt the new, dangerous, and wider conflict in Indochina by a negotiated agreement. There is considerable merit in the suggestion that the Geneva conference be reconvened to consider all aspects of the Southeast Asia situation. There are substantial reasons for exploring the French proposal. But until the United States shows, by the level of its representation and the extent of its initiative in Paris, that it is seriously interested in a negotiated settlement, even the possibility of a Geneva conference will go begging.

Mr. President, I ask again the questions I raised last week:

Is the administration so certain, in the face of some contrary evidence, that Hanoi's position in Paris is one of total intransigence? Even if the administration is so convinced, does this mean it has no obligation to probe and to try?

Does it believe the tough bargaining necessary to achieve a negotiated end to the war is not worth the time of a top-level appointment as our chief negotiator in Paris?

Has the administration written off negotiations? If not, what are the preconditions for resuming meaningful negotiations? Is it, in effect, asking North Vietnam to surrender?

Is the administration playing a game where the next move can be made only by the other side?

Have we given up the initiative toward peace to the other side?

So far, Mr. President, the President's avowed policy of negotiations while we Vietnamize the war has not led to meaningful negotiations and it has not ended the war. It has been carried out against the uncomfortable and threatening backdrop of a widening war. It has reached the point where there are serious reports of an effort to slowdown, or temporarily halt, the removal of U.S. troops for the next 6 months, in order to let our forces complete the pacification process in certain key areas in South Vietnam. How often have we heard similar requests in the past? How much longer will we talk of pacification in South Vietnam while the rest of Indochina goes up in smoke?

The fact is, Mr. President, that while we let the empty gestures at Paris go on—and yesterday was the 61st meeting—the war goes on, and spreads. The administration seems to be debating not how much faster we can withdraw, but how much slower. And we have allowed the Thieu-Ky regime to continue on the assumption that we will support them indefinitely. And, to add insult to injury, we have stood by silently while the Thieu regime jailed a South Vietnamese political leader who had been helpful to us. Mr. Chau's offense was alleged "neutralist" sentiments in contacting his brother, a North Vietnamese intelligence operative.

Remember, Mr. President, that this act was carried out by Mr. Thieu, who said last July 11:

> There will be no reprisals or discrimination after the (promised free) elections.

Those words, which President Nixon hailed, have a hollow ring, today.

Mr. President, what possible justification is there for this administration to refuse to speak out publicly in opposition to this action by the Thieu regime. The arrest and subsequent conviction of Chau without public protest on our part completely erodes the pretensions of the Saigon government of magnanimity toward its own people, unless they are all-out supporters of the Thieu-Ky administration.

Ambassador Bunker apparently did as he pleased on the case, in spite of State Department instructions. President Nixon has refused comment on this case. The State Department has refused comment. But questions will continue to be asked until there is a satisfactory response. We cannot and must not be subservient to the Saigon regime.

President Thieu's every word and action in recent months indicates that he places his trust in winning the war by force and not by negotiations. In his press conference at the beginning of the year Thieu predicted, as he has done many times before, that the Communist military effort in South Vietnam will collapse within 2 or 3 years. The war will fade away, he predicted, and he did not foresee progress at the Paris talks. It was in this same press conference that he warned that many years will be required to remove all U.S. troops from South Vietnam. Is President Thieu dictating our withdrawal timetable?

Is it this attitude, Mr. President, which accounts for the forays of South Vietnamese battalions into Cambodia in recent days as reported in the press? Does the administration condone such actions by our allies? If not, what is it doing to prevent the further spread of the conflict by these means?

Mr. President, I will continue to ask these questions until some meaningful answers are given, and our Government again makes a genuine and reasonable effort to obtain a negotiated settlement of this tragic conflict.

I ask unanimous consent that recent articles which have appeared in the press relating to the military request for delay in further U.S. troop withdrawals, to the South Vietnamese attacks against Cambodia, and to the Chau case be inserted in the RECORD at this point.

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

EVENTS PROVING OUT THESIS OF A SECOND INDOCHINA WAR

(By Stanley Karnow)

HONG KONG.—The late Bernard Fall, one of the wisest Western observers of Asia, insisted for years that the Vietnam conflict was actually a sequel to the struggle between the Communists and the French for supremacy over the entire Indochina peninsula that raged for a decade after World War II.

Therefore, Fall argued, the United States and its allies were really involved in what logically should have been termed the "Second Indochina War."

If that idea seemed somewhat esoteric before, it is now being proved prescient. For not only is the conflict spreading beyond Vietnam and Laos into Cambodia, but it is currently threatening to extend into Thailand as well.

The obvious danger in this growing turmoil is that President Nixon may feel compelled to escalate the American commitment to the region despite his repeated pledges to reduce the U.S. posture in the area.

Alternatively, however, there is the more hopeful possibility that the major powers may somehow sober up sufficiently to seek a multinational settlement for Southeast Asia in order to prevent an explosion that might ignite a world-wide catastrophe.

Thus the present situation may well be a turning-point that could lead, depending on the options taken, to either a wider war or a chance for peace. In short, it is a time of both hazards and opportunity.

Though climactic moments have a way of flaring into sudden headlines, a crisis is the gradual accumulation of events. So it has been in Indochina.

The conflict in Laos, a sideshow to the Vietnam theater, had long remained a minor affair because the contending forces there tacitly respected the unwritten partition of the country worked out during the 1962 Geneva Conference.

But last summer, when Gen. Vang Pao's Meo guerrillas and their American advisers moved into the Plain of Jars, they violated the understanding that kept the balance in Laos.

The Communists predictably counter-attacked this winter and, in addition to reacting with increased air support for the government, the United States openly strengthened the Thai units that have covertly operated in Laos for years.

The entry of the Thai reinforcements has in turn provided the Chinese, who also have troops inside Laos and thousands more poised on the border, to warn that they "will not sit idly by"—a phrase reminiscent of the days before their "volunteers" poured into Korea.

Hence a spiral of irrational challenges and responses threatens to transform the primitive kingdom of Laos into a battlefield on which no side can possibly attain victory.

Meanwhile, the ouster of Prince Sihanouk has disrupted the fragile equilibrium that served to spare Cambodia from becoming actively engaged in the war.

Hardly was Sihanouk deposed than the South Vietnamese, evidently acting with the approval of the new Phnom Penh regime, hit Communist bases across the Cambodian frontier.

Apparently anticipating a larger American role in Cambodia, the Communists have already started to stir up trouble. They have called on Cambodians to overthrow Sihanouk's successors, and they are virtually certain to direct their own forces in the country against the Phnom Penh regime.

At the same time, from his asylum in Peking, the prince has cloaked the Communists in legitimacy by creating a government-in-exile and a "National Liberation Army" to fight "with other anti-imperialist peoples forces of fraternal countries."

And seizing Sihanouk's appeal, which they probably inspired, the Chinese and North Vietnamese are increasingly referring to the "struggles" in Vietnam, Laos and Cambodia as a single "struggle for Indochina." To a large extent, Communist strategy appears to be designed to create diversions to the Vietnam arena, where Hanoi's dreams of rapid success have been punctured.

Their references to a bigger conflict are also calculated to stimulate anti-war sentiment in the United States and, in the process, raise the pressure on the White House to accept their conditions for peace in the region.

But whatever their motives, the Communists are making it clear that they are prepared to expand the war over the artificial boundaries that separate the Indochinese states, and there is no reason to doubt their intentions.

In another forecast that has become significant, Bernard Fall confided to a friend not long before his tragic death in Vietnam that his knowledge of that country might eventualy seem irrelevant if the conflict continued to escalate.

"I feel," he remarked, "like it is 1913, and I am an expert on Serbia who is about to be *depasser par les evenements*—outstripped by events."

[Fom the New York Times, Mar. 28, 1970]

U.S. IS SAID TO HAVE BLOCKED VISIT BY CHAU, THIEU FOE

(By Tad Szulc)

WASHINGTON.—The United States blocked a visit here by a South Vietnamese Deputy, Tran Ngoc Chau, last summer after the embassy in Saigon had advised that his trip would displease President Nguyen Van Thieu, authoritative quarters said here today.

This decision by the State Department came according to highly placed informants, at the time when President Thieu began the pressure against Mr. Chau that led to his arrest and trial three weeks ago, when he was sentenced to 10 years at hard labor.

The charges against Mr. Chau in a Saigon military court were that he maintained illegal and criminal contacts with his brother, a North Vietnamese intelligence captain, Tran Ngou Hion, despite secret information

conveyed to the Saigon Government by a high-ranking American official in July, 1969, that Mr. Chau had acted with the knowledge and approval of the United States Embassy and the Central Intelligence Agency.

FIRST MOVE LAST SUMMER

As reconstructed from Administration, Congressional and other sources here, the first effort by Mr. Chau's American friends to save him from prosecution by the Thieu regime, which regards him as a political foe, came last summer when it was first recognized that he was in danger of arrest and trial.

John Paul Vann, chief of the Rural Pacification Program in the Mekong Delta, testified at a closed session of the Senate Foreign Relations Committee last month that he had presented "in detail" the background of Mr. Chau's association with the United States Government at a meeting in July, 1969, with Tran Thien Khiem, who was then Deputy Premier and now is Premier.

Mr. Vann testified that he informed Mr. Khiem of Mr. Chau's status with the authorization of his immediate superior, the Deputy Ambassador, William P. Colby.

The United States Government has not, however, publicly conceded that Mr. Chau was acting in concert with American political and intelligence officials.

Mr. Vann's testimony before the senate foreign relations committee was heavily censored by the State Department and was returned to the committee this week pending a decision on its release.

BUNKERS ROLE REPEALED

Mr. Vann's testimony, according to senatorial sources, also touched at length on the alleged delays by Ellsworth Bunker, the United States Ambassador in Saigon, carrying out instructions from the State Department to intervene in favor of Mr. Chau.

At about the time Mr. Vann conferred with the Deputy Premier, a number of Mr. Chau's American friends in South Vietnam arranged for him to visit the United States. But when Mr. Chau applied for a visa, he was refused one. Informants here said this was done on Mr. Bunker's recommendation, based on the belief that President Thieu would resent Mr. Chau's departure.

Mr. Chau's concern was communicated to Senator J. W. Fulbright of Arkansas, Chairman of the Foreign Relations Committee. He is reportedly to have suggested to Under Secretary of State Elliot L. Richardson that the Administration intervene.

Mr. Richardson cabled instructions to Mr. Bunker on Dec. 23—the date was erroneously reported in The Times today as Dec. 22—to raise the Chau case with President Thieu and inform him of the Administration's desire to see the charges dropped.

Officials confirmed yesterday that Mr. Richardson followed up the first cable with a second one on Feb. 7, when it developed that Mr. Bunker had conveyed softened expression of American concern to lower ranking South Vietnamese officials.

As a result, Mr. Bunker met Mr. Thieu on Feb. 10, when he was informed that the case was already in the hands of the military court.

Before his audience with Mr. Thieu, Mr. Bunker was relaying assurances to the State Department that even if tried, Mr. Chau would not be imprisoned.

Meanwhile, the Administration continued to maintain silence on the Chau case.

The State Department's spokesman, Robert J. McCloskey said today that he would not comment on any aspect of the case and did not anticipate that comment would be forthcoming.

In Key Biscayne, Fla., where President Nixon is spending the Easter holiday, the White House press secretary, Ronald O. Ziegler said that there "is no displeasure on the part of the President whatsoever in relation to Ambassador Bunker's handling of his post in Saigon."

BUNKER-STATE DEPARTMENT SPLIT ON CHAU REPORTED BY COLUMNIST

Serious differences existed between Ellsworth Bunker, the United States Ambassador to South Vietnam and the State Department over the handling of the case of Tran Ngoc Chau, the opposition deputy sentenced to 10 years' imprisonment, according to the Newsday columnist Flora Lewis.

In her syndicated column yesterday, Miss Lewis wrote that Ambassador Bunker had proposed making a public statement that no American ambassador had ever been involved in Mr. Chau's eight meetings with his brother Tran Ngoc Hien, a North Vietnamese intelligence officer, although Ambassador Bunker knew this is to be untrue.

But, according to Miss Lewis, the State Department ordered Ambassador Bunker not to make such a statement because it conflicted with secret testimony given by John Vann, chief of United States pacification efforts in the Mekong Delta, at a hearing of the Senate Foreign Relations Committee last month.

"That was a diplomatic way of saying the department knew Bunker's proposed comment was untrue and was aware that Bunker also knew it was untrue," Miss Lewis wrote.

Ambassador Bunker was himself present at a meeting in September, 1967, when Mr. Chau briefed high American officials on his knowledge of enemy plans for the forthcoming Tet offensive. Miss Lewis wrote that Mr. Chau had learned of these plans from the meeting with his brother.

Although Mr. Chau did not have precise information on the timing and place of the impending attacks, Miss Lewis reported, some top American officers believe that his advice was instrumental in preventing Gen. William C. Westmoreland, then United States commander in Vietnam, from transferring more troops to outlying regions and exposing Saigon to disaster. The offensive began at the end of January 1968.

Miss Lewis wrote that Ambassador Bunker, in suggesting that contacts with Mr. Chau be denied, was acting to protect President Nguyen Van Thieu of South Vietnam.

"Bunker, 75, is a traditional type of New England Yankee with a record of high personal integrity," she wrote. "However, it was he who picked Thieu as America's favorite candidate for the presidency and, in effect, created the Thieu government. He is deeply committed to its maintenance in power."

WILL THIEU BE THE NEXT "DOMINO" TO FALL?

Sixteen years ago, the U.S. government set out to "save" Indochina (embracing Laos, Vietnam, and Cambodia) for "democracy." Today, Laos is being overrun by the Communists; Vietnam is under the thumb of militarists; and in Cambodia a right-wing coup has just toppled the neutralist leader, Prince Sihanouk.

So after hundreds of thousands of American casualties, and the expenditure of more than $100 billion, all that the United States has to show for its vast effort in Southeast Asia is the dominance of one form or another of authoritarianism. There is hardly a glimmer of real democracy in the whole area that was Indochina.

With Sihanouk out, and Souvanna Phouma (our man in Laos) hanging by a thread, what will happen to our other man in Saigon, President Nguyen Van Thieu? Will he be the next domino to fall? That possibility is what makes Washington so uneasy, for the whole policy of "Vietnamization" rests on the viability of the fragile Thieu government.

Sihanouk himself has no illusions about his next-door neighbors. He has always said Vietnamization would not work. "The day the Americans left," he says, "the Saigon army would dissolve, because it is composed only of mercenaries—very well equipped, to be sure, but paralyzed by the lack of an ideal."

Moreover, the prince predicts, once the United States leaves, the population of South Vietnam would vote "massively" for the Viet Cong. He says old Saigon friends of his, including "big business men and Catholics," have told him they, too, would vote for the Viet Cong, if there were elections.

Three U.S. presidents, Eisenhower, Kennedy and Johnson, tried in vain to force reforms on the Saigon generals, in the hope of establishing a sound, democratic government capable of sustaining itself politically and militarily.

Nixon has fared no better. Thieu jails his opposition, shuts down the press, ousts a civilian as premier and installs a general in his place, tolerates corruption and arrests peace advocates.

This is the situation that has inspired Senators Alan Cranston, D-Calif., Thomas Eagleton, D-Mo., and Harold Hughes, D-Iowa, to introduce a new sense-of-the-Senate resolution calling for the prompt withdrawal of U.S. troops if the "Saigon generals do not immediately reform their government."

Vietnamization, says Cranston, "as now practiced will not end the war. It will keep the fighting going. More killing, more bloodshed, more sorrow, and for what? For a corrupt government which makes war on its own people." The Cranston-Eagleton-Hughes resolution is picking up support, for doubts about the Thieu government are not confined to the Democrats.

"Vietnamization," say Senator Charles Goodell, R-N.Y., "has been a great public relations success, but it is not a true policy of disengagement. We have not Vietnamized the war. We have cosmetized it."

Senator George McGovern D-S.D., puts it this way: "Vietnamization is an effort to tranquilize the conscience of the American people while our government wages a cruel and needless war by proxy."

Senator Edmund Muskie of Maine, who is emerging as the Democrat's leading contender for the White House, voices a concern that is widely shared in Congress. "Given the prospect of our indefinite stay in Vietnam," he says, "Saigon has no incentive to improve militarily or to bargain away its own power at the peace table."

The sharpest criticism of Thieu has come not from the U.S. Senate but the South Vietnamese one. When Thieu railroaded a legislator, Tran Ngoc Chau, to prison earlier this month, Senator Phan Nam Sach, chairman of the Judiciary Committee, said, "President Thieu has torn up the Constitution."

Thieu however, brushed this aside, as he has the feeble, pro forma protests that the United States makes from time to time to keep up public appearances. Thieu knows that Nixon cannot abandon him without admitting Vietnamization is a failure. The best thing about the Cranston-Eagleton-Hughes resolution is that it offers Nixon a way out of this dilemma.

ARBITRARINESS IN SAIGON

The Saigon Government has taken a tardy first step toward reversing a dangerously arbitrary action with its decision to order a new trial for a neutralist legislator summarily convicted by a military court last week on charges of pro-Communist activity and then roughly seized in his sanctuary in the National Assembly. But it remains highly doubtful whether opposition leader Tran Ngoc Chau should ever have been brought to trial in the first place.

The House petition which the Thieu regime engineered to justify its violation of Mr. Chau's legislative immunity is of questionable legitimacy. Mr. Chau avers that members were bribed and threatened to persuade them to sign the document. Others have held

that the Constitution requires an actual vote in the House to lift the immunity of members from prosecution.

Furthermore, the charges against Mr. Chau are based on contacts with a brother—since convicted as a Communist agent—which were carried out with the knowledge and approval of senior American officials in South Vietnam. John Paul Vann, chief of the United States pacification effort in the Mekong Delta, told the Senate Foreign Relations Committee recently that Mr. Chau had reported to him on these contacts. Mr. Vann also told the committee that Mr. Chau was definitely not a Communist but rather a very dedicated nationalist.

In the light of this testimony it is inconceivable that Mr. Chau could be convicted of subversion because of his relations with his brother. It is disgraceful that senior American officials in Saigon have failed to intervene in the lawmaker's behalf, reportedly on the basis of orders not to do so.

The Chau case is only the latest in a long series of persecutions and harassments directed at South Vietnamese who, like Mr. Chau, have espoused the kind of compromise solution to the war to which the Governments of South Vietnam and the United States ostensibly are committed.

The perpetuation of this repressive policy by Saigon, with the acquiescence of Washington, undermines the credibility of both Governments. It subverts the Nixon Administration's professed objective of achieving peace under a regime that is representative of all of the South Vietnamese people.

In the case against Tran Ngoc Chau it is really Saigon and Washington that are on trial. The charges against Mr. Chau should be dropped forthwith.

[From the Washington Post, Mar. 26, 1970]

U.S. SILENT ON BUNKER'S ROLE IN VIETNAMESE SPY CASE

(By Murrey Marder)

The State Department refused yesterday to discuss reports that Ellsworth Bunker, ambassador to Saigon, frustrated American intercession in South Vietnam's Tran Ngoc Chau case.

Chau, once a favorite of U.S. officials in Vietnam, was sentenced to 10 years in prison earlier this month for pro-Communist activity.

His prosecution is regarded by many U.S. sources as a calculated warning to South Vietnamese against private contacts with Americans, and a warning to those who favor broadening the Saigon government in order to seek a compromise settlement of the war.

What is really at issue, these sources contend, is Saigon's determination to gain veto power over any war settlement.

Apparent support for these suspicions came in another set of spy charges in Saigon last week. South Vietnamese police displayed a photo showing an alleged spy, Bui Van Sac, talking to an American official identified as Harold Colebaugh, former political officer at the U.S. Embassy.

DEFENDANT'S STORY

In the first case, against Chau, the defendant claimed at his military trial that he kept U.S. officials informed of his contacts with his brother, a confessed North Vietnamese secret agent.

Several U.S. sources have confirmed these contacts, including John Paul Vann now a senior pacification official in Vietnam. Vann testified in closed session before the Senate Foreign Relations Committee last month about his association with Chau.

The American Embassy, to the private chagrin of many of Chau's American friends, remained publicly silent about the Chau case, however. Chau bitterly protested that he was being sacrificed by the U.S. government to avoid offending South Vietnamese President Nguyen Van Thieu, who was determined to convict him.

In the subsequent spy case involving Bui Van Sac, however, the U.S. Embassy evidently regarded the implications about American contacts to be so blatant that embassy officials felt compelled to speak out.

In defense of Colebaugh's contacts with Sac, the embassy said last Sunday that Colebaugh and other U.S. officials had met with Sac "in connection with carrying out their official responsibilities."

BUNKER ACCUSED

Ambassador Bunker, in a published report yesterday, was charged with "misinforming" Washington about the Chau case. Flora Lewis, columnist for Newsday, reported that Bunker, one of President Thieu's strongest supporters, had planned to issue a statement intended to disassociate the American Embassy from Chau.

Bunker, Miss Lewis reported, planned to say publicly that "no American ambassador directly or through any intermediary suggested or encouraged Mr. Chau to initiate or continue his contacts with Capt. Hien" (Capt. Tran Ngoc Hien, the Hanoi agent and Chau's brother).

The State Department, Miss Lewis reported, advised Bunker not to issue the statement because it would conflct with testimony given by Vann at the Senate Foreign Relations Committee hearing.

Other sources said yesterday that the Bunker statement was carefully phrased to be technically accurate, but it would have exposed the Nixon administration to questioning of its credibility.

These sources said no one had claimed, as the Bunker statement denied, that an "American ambassador" had "suggested or initiated" Chau's contacts with Hien. Chau instead was said to have kept officials informed of the contacts and was also credited with helping alert U.S. officials to a Communist threat to Saigon, which later turned out to be the Tet offensive of early 1968.

State Department press officer Carl E. Bartch said yesterday, "I will have no comment on that matter," declining to discuss the Chau case, the Lewis report or any other aspect of the affair.

President Nixon was asked about the Chau case on Saturday during his impromptu news conference. He replied that "this was a matter which Ambassador Bunker has discussed with President Thieu" but it "would not be appropriate" to say anything further.

SAIGON'S RANGERS AGAIN ATTACK FOE INSIDE CAMBODIA—TROOPS REPORTED IN ATTEMPT TO TRAP VIETCONG FORCE AT FOREST SANCTUARY—FIGHTING CALLED HEAVY—AMERICAN COPTERS SUPPORT EFFORT ALONG BORDER BUT STAY IN SOUTH VIETNAM

(By Terence Smith)

CHAUDOC, SOUTH VIETNAM.—South Vietnamese Rangers crossed the border into Cambodia for the second consecutive day today in an effort to trap a Vietcong force estimated at two battalions.

Despite official denials by the South Vietnamese in Saigon, reliable sources here, including officers involved in the operation, confirmed that South Vietnamese troops and armored personnel carriers again penetrated Cambodian territory today and engaged enemy soldiers on the edge of the Paknam Forest, a well-known Vietcong sanctuary just across the border.

The sources also said the operation was being conducted with the active cooperation of the Cambodian Army. They said two battalions of Cambodian troops had been deployed as a blocking force to prevent the Vietcong from escaping to the north, but had so far not been involved in the fighting.

HEAVY FIGHTING REPORTED

In today's action, a column of South Vietnamese armored personnel carriers pushed to a point one-and-a-quarter miles north of the border and 2 miles east of the Bassac River before turning south in an attempt to trap the Vietcong. Heavy fighting was reported, but no casualty figures were immediately available.

The operation is scheduled to continue for several more days, although officers involved in the planning said it might be terminated before then if contact with the enemy was lost or if diplomatic complications became too great.

It is apparently fear of embarrassing the new Government in Pnompenh that prompted the official denials in Saigon today.

A South Vietnamese Army spokesman at the regular evening briefing told newsmen that the fighting with the Vietcong had occurred "a few hundred meters" inside South Vietnam. Earlier in the day the spokesman had said that the enemy had been encountered three miles short of the border with Cambodia.

Both statements are technically correct. The operation is being conducted on both sides of the border and contact has been made with enemy units in South Vietnam as well as Cambodia. But the spokesman denied that any action had occurred on the Cambodian side.

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U.S. DECEPTION IN SAIGON

(By Flora Lewis)

(EDITOR.—Flora Lewis reports exclusively that U.S. Ambassador to Saigon Ellsworth Bunker misinformed Washington about developments surrounding the arrest of a South Vietnamese lawmaker. She explains its considerable significance to U.S. relations with the Thieu government.)

NEW YORK.—A recent series of cables between the State Department and U.S. Ambassador Ellsworth Bunker in Saigon indicates that Bunker is, to say the least, misinforming Washington and that Washington knows it.

The situation has come to a head over the case of Tran Ngoc Chau, a Vietnamese assemblyman who was tried and sentenced to 10 years at hard labor on a charge of being in touch with a Hanoi agent. Chau testified at his trial that the contacts were made with the knowledge and backing of the U.S. Embassy. But the U.S. has never commented publicly, one way or the other.

The Chau case is of the greatest importance because its implications are central to U.S. relations to the government of President Thieu, and to the question of whether or not Thieu has the power to veto any efforts to negotiate a Vietnam settlement with Hanoi. It reflects Thieu's efforts to manipulate the U.S. and his own people into a box, without challenge from the U.S. ambassador.

The cables show that Bunker proposed to make a public statement after Chau, whose trial Washington asked him to prevent, had been convicted. Bunker told State that Chau's testimony was "false and misleading" and that he planned to say publicly that "No American Ambassador directly or through any intermediary suggested or encouraged Mr. Chau to initiate or continue his contacts with Capt. Hien." (Capt. Tran Ngoc Hien, the Hanoi agent, is Chau's brother. He was arrested last April and is now jailed in Saigon.)

The Department told Bunker not to say anything of the sort because it was "in conflict" with testimony given to a secret hearing of the Senate Foreign Relations Committee last month by John Vann, top U.S. civilian official in the Mekong Delta region, and thus would provoke awkward questions.

That was a diplomatic way of saying the Department knew Bunker's proposed comment was untrue, and was aware that Bunker also knew it was untrue.

Bunker wanted to include in his statement that Chau "on several occasions in conversations with American officials associated with him in the pacification program made veiled references to an important po-

litical cadre from Hanoi with whom he was in contact."

But Vann testified to the Senate committee that he received detailed descriptions from Chau of his brother and their relationship and how the Americans might contact Capt. Hien directly, if they chose. That was at a meeting in July, 1966.

Vann sought to arrange a meeting between Hien and then U.S. Ambassadors Lodge or Porter. But Lodge finally decided against it and authorized Vann to talk to the agent. That talk never took place because Hien answered Vann's request, sent through Chau, that he would see the men at the top, or no American official at all.

Vann's testimony made clear that Chau acted with the encouragement and backing of the U.S.

The record also shows that Chau played an important role in what became U.S. strategy before the 1968 Tet offensive, which may have prevented the fall of Saigon and a communist victory at that time.

Chau gave a long briefing on his understanding of coming events of Ambassadors Bunker and Samuel Berger, Lt. Gen. Frederick C. Weyand, Vann and others in September, 1967. Bunker does not deny this session.

Chau had learned from his brother that the Vietcong planned big attacks on populated areas, although he did not have precise information about the timing and place of the Tet offensive. Nonetheless, on the basis of his knowledge of the situation, he urged the U.S. to strenghten defenses of those areas instead of shifting most of its forces out to border regions.

Chau's combination of information and reasoning convinced Van and Gen. Weyand, the commander of the III Corps area which includes Saigon. Weyand then urged the strategy on Gen. Westmoreland, then U.S. commander in South Vietnam.

That was in November, 1967. Westmoreland, who in that period announced that the war was nearly won, had issued orders to move the great bulk of U.S. forces in III corps to the border provinces in pursuit of what he believed was a disintegrating enemy. The shift was to take place by January 1, 1968.

Weyand argued intensely against that strategy and finally won from Westmoreland a compromise delaying the movement for 6 months. At that time, the enemy was provoking battles near the border, notably at Dak Tho and Loc Minh, which with hindsight can be seen as an effort to draw U.S. troops away from the capital in preparation for the Tet attacks. The big Tet offensive came at the end of January.

Some top Americans who were in Vietnam at that time are convinced that if Westmoreland's orders had not been challenged, the big airports at Saigon and nearby Bien Hoa could have been overrun, preventing reinforcements and thus possibly leading to the loss of the Vietnamese capital.

President Thieu's government, in the course of the prosecution of Chau, has issued statements that it was unaware of Chau's connection with the Americans. (Vann testified to the contrary.)

Another official statement was made on Feb. 22, the day before attempts began to arrest Chau. It charged that the U.S. was in collusion with the Vietcong at the time of the Tet offensive and deliberately removed the South Vietnamese army's ammunition to weaken its defenses at the time of the attack.

American Vietnam experts interpreted this as a warning from Thieu to the Embassy against supporting Chau, lest it give some credence to this outrageous lie. The statement was made by Thieu's special assistant Nguyen Van Thang, whose position with Thieu is often compared to Henry Kissinger's role in the Nixon administration. The charge was repeated by prosecutor and judge in the public trial.

Bunker asked Thieu about it, reporting to Washington, "I said I was frankly amazed. Everybody knows about Chau's efforts to involve the U.S. in this case. How the court seems to to have fallen in the same trap." He accepted Thieu's bland denial of any involvement.

In the period before Chau's trial, Bunker kept relaying without comment South Vietnamese assurances that Chau would not be prosecuted, although the preparations for his arrest were public knowledge. Bunker repeatedly told Washington, which asked him to head off the trial, that everything was being done according to due process and in strict legality. At the same time, however, his Embassy was reporting that Thieu's agents were bribing many deputies to remove Chau's parliamentary immunity and secretly organizing and paying for demonstrations against Chau.

Bunker, whose cables are read by top officials, took no note of these embassy reports which often contained a contradictory version of the facts to the State Department.

The case has caused immense concern among American officials below the top level in both Saigon and Washington, partly because they know and respect Chau and feel the U.S. has betrayed his trust, partly because they think Thieu's intricate maneuvering in this case has put him in a position to block any real efforts to negotiate a peace.

The U.S. still has issued no formal comment on the case, nor permitted release of Vann's testimony, presumably because it would be too embarrassing to appear to confirm Thieu's back-handed charges that the U.S. had secret dealings with the communists, and that they affected defenses during Tet.

Vann also testified that, despite Thieu's disclaimers, the South Vietnamese government was informed about Chau and the whole affair in July, 1969. Vann himself told South Vietnamese Prime Minister Khiem about it at that time, on the authorization of his superiors in the U.S. establishment in Saigon.

Bunker's cables ignore all this and protest instead at Chau being represented in the U.S. press as a "patriotic nationalist." He told the State Department that Chau had called for a coalition government, which is a crime in South Vietnam although President Nixon has said he would not oppose such a government.

The record shows, however, that Chau has publicly opposed admitting communists in the government, though he favors negotiations, a cease-fire, and the communists' right to participate in elected bodies such as the National Assembly.

Bunker, 75, is a traditional type of New England Yankee with a record of high personal integrity. However, it was he who picked Thieu as America's favorite candidate for presidency and, in effect, created the Thieu government. He is deeply committed to its maintenance in power.

The upshot of all this pettigoggery has been, as one Saigon Embassy cable reported, to "defame the U.S."

It also indicates that Thieu is working to prevent the U.S. as well as any South Vietnamese from being able to negotiate a settlement to the war, which Nixon has said is the first aim of his Vietnam policy. So far, Thieu is getting away with it and Bunker is justifying him to Washington.

SUSPENSION OF FURTHER DEPLOYMENT OF OFFENSIVE AND DEFENSIVE NUCLEAR STRATEGIC WEAPONS SYSTEMS

The PRESIDING OFFICER (Mr. HOLLINGS). The Chair lays before the Senate the unfinished business, which the clerk will state.

The BILL 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.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. FULBRIGHT. Mr. President, I wish to say a few words in a somewhat preliminary nature with regard to Senate Resolution 211. As my colleagues know, the resolution now before us is the outgrowth of a resolution introduced last summer with more than 40 cosponsors. The Committee on Foreign Relations considered it, amended it primarily by an amendment offered by the Senator from Kentucky (Mr. COOPER), who had taken a great interest in this matter last year before the committee, and we have now reported a resolution which I think is of the greatest importance.

Reporting to the Congress and the American people on "U.S. Foreign Policy for the 1970's," President Nixon said:

> Both the Soviet Union and the United States have acquired the ability to inflict unacceptable damage on the other, no matter which strikes first. There can be no gain and certainly no victory for the power that provokes a thermonuclear exchange. Thus, both sides have recognized a vital mutual interest in halting the dangerous momentum of the nuclear arms race.

Senate Resolution 211, which is the pending business before the Senate, is addressed to that "vital mutual interest."

Why is there a nuclear arms race? Why do we and the Soviet Union continue to develop, improve, and deploy weapons of mass destruction which if used would destroy us both? We do so because of the threat that we believe Soviet nuclear weapons represent to us, and they do so because of the threat they perceive from our nuclear arsenal. Thus each new refinement by either of us—in the accuracy or method of delivery or effect of nuclear weapons—requires the other to react. We are both caught in a costly and dangerous competition in which neither of us thinks we can afford to drop behind. The purpose of Senate Resolution 211 is to suggest that we simply freeze this competition where it now stands for an interim period.

The resolution which is now the pending business expresses the sense of the Senate that the President of the United States should propose to the Government of the Soviet Union an immediate suspension by both the United States and the Soviet Union 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. The United

States has never before made such an offer. In 1964, we came close to making such a proposal when we suggested at Geneva that "the United States, the Soviet Union, and their respective allies should agree to explore a verified freeze of the number and characteristics of strategic nuclear offensive and defensive vehicles." But a proposal to "agree to explore" a halt is not a proposal to halt. And when we made that proposal in 1964, we were far ahead of the Soviet Union in strategic nuclear weapons so that the chances for agreement were small.

Today, on the other hand, it is generally agreed, I believe, that there is what I call rough parity between the Soviet Union and the United States as far as strategic nuclear weapons are concerned. Both countries appear to have a sufficiency. Yet both are on the verge of deploying new or additional strategic weapons systems designed to move them ahead in the competition in nuclear arms. Thus, neither will be more secure but, in fact, less secure. For it should be obvious that the existence of more nuclear weapons—designed to provide greater explosive force, to perform more accurately, and to have an improved capability for providing instant retaliation—must logically mean a more and more dangerous world. Yet both the United States and the Soviet Union continue to develop and perfect such weapons, unable, it seems, to reach agreements which would permit this deadly competition to be halted.

The situation today seems to pose some possibility for sanity to prevail over suspicion and for reason to triumph over fear. The rough nuclear parity that exists has made it possible for the two major nuclear powers at least to begin talks which might produce some arms limitation agreements. Neither of us will accept the demands of the other dictated from a position of superiority, or agree to compromise from a position of inferiority; but, finding ourselves on a generally equal basis, it might be possible for us to reach agreements that would maintain the present balance.

It follows that such agreements can be reached only as long as rough parity is maintained. The purpose of Senate Resolution 211 is to freeze the United States and the Soviet Union in a condition of parity for an interim period so that meaningful and lasting arms limitation agreements can be worked out in the talks that are about to begin in Vienna. If the condition of parity is not stabilized long enough for such negotiations, the talks will have to proceed against the background of a continuous shift in the comparative strength of the two negotiating parties. In such a situation, agreement would be all the more difficult if not impossible. The purpose of Senate Resolution 211 is to provide the negotiators in Vienna—both American and Soviet—with a chance to negotiate on firm ground instead of on shifting sand.

I should add that from the point of view of verification an interim and comprehensive agreement covering the further deployment of all strategic nuclear offensive and defensive weapons systems is easier to verify, and more difficult to evade, than a long-term agreement or an agreement limited to a particular weapons system. Multiple warheads pose a special problem. Their tests must be monitored to insure that they are not deployed clandestinely. The Committee on Foreign Relations has this consideration clearly in mind when it included in Senate Resolution 211 a clause calling for verification and inspection as appropriate. The committee report noted that the further deployment of multiple independently targetable reentry vehicles could most effectively be suspended by stopping further flight tests, as these tests are subject to national verification.

But a ban on further deployment of all strategic offensive and defensive nuclear weapons systems would prohibit far more than the deployment of multiple independently targetable reentry vehicles. The freeze on further deployment is not a proposal for a unilateral halt by the United States. It would also freeze the further deployment of Soviet SS–9's and SS–11's and of Soviet ABM systems.

Twenty-five years ago, the United States was not only the most powerful country of the world militarily, but we were also an invulnerable country. We had, after all, a monoply on nuclear weapons. By 1949, the Soviets had broken that monopoly. By 1953, we both had the hydrogen bomb. In the 1950's and 1960's ICBM's, ready for instant firing, were deployed by both countries. Power no longer meant invulnerability and does not today. And we are now about to enter still another round in the arms race which will begin in June with the deployment of independently targetable multiple warheads on intercontinental missiles, a development which will lead inexorably to the further deployment of ABM systems designed to protect deterrent forces against these multiple warheads. Senate Resolution 211 would avoid the beginning of this new round.

Senate Resolution 211 cannot be criticized on the ground that it increases our vulnerability, for it does not provide the Soviet Union with an advantage. It can not be attacked as an idealistic or impractical suggestion, for indeed the President has said that its purpose is consistent with the objectives he seeks. It cannot be dismissed as a gesture of partisan politics, for it has both Republicans and Democrats as sponsors. It cannot be impugned as an attempt by the legislative branch to usurp the functions of the executive branch, for it merely offers the President advice which he is free to accept or reject.

But should the Senate pass this advisory resolution, and should the President accept the advice, the first step might be taken toward an arms limitation agreement which would move the United States and the Soviet Union from an era of confrontation to an era of negotiation.

Mr. President, enough is enough. We and the Russians have between us not only a sufficiency of weapons to defend ourselves, but a sufficiency to destroy each other. In fact, our sufficiency is even greater. It is great enough to destroy most life on this earth.

We or the Russians must come to our senses and stop this mad race toward extinction. I hope that we in America will come to our senses first.

I believe the essence of the resolution before us is that a few Members, led by Senator BROOKE and Senator COOPER, have grasped the idea that we must come to our senses and seize the last clear chance before we are caught up in the next round in the arms race.

I wish again to pay my respects to and to commend the Senators who have taken the initiative in developing this Senate resolution, and I hope that the Senate will give it its approval.

Mr. AIKEN. Mr. President, Senate Resolution 211 has been under consideration in the Committee on Foreign Relations since it was introduced on June 17, 1969. We have given it very thoughtful consideration, and the resolution now pending for action before us represents the final decision of the committee. As I recall, there was no objection within the Foreign Relations Committee to reporting the resolution.

This resolution is not intended to run counter to the efforts of the executive branch of the Government, but to supplement them and back the administration up in the SALT talks, as they are called, which will be renewed on April 16 of this year in Vienna.

The resolution represents an effort to persuade Russia to seriously consider the freezing of warmaking instruments and warmaking systems at the present levels. It does not propose disarmament in any way, as our chairman has just stated. No unilateral disarmament is proposed for either country. And, I reiterate, it does not run counter to the efforts of the executive department.

An arms control freeze may not be effective. In fact, it may be hoping too much to expect that suddenly, Russia and the rest of the world would agree to a freeze on armaments and live in a world at peace. But the resolution does represent assurance that the U.S. Senate favors a strong effort to promote a peaceful world. The effort should be worthwhile, and I am glad to join with the chairman of our committee in supporting this resolution, in the hope that it will contribute something to the desire for peace throughout the world and particularly with the nations of the world which now have the means for nuclear instruments to destroy not only themselves but nearly all the rest of the world as well.

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

Mr. AIKEN. I yield.

Mr. MANSFIELD. Mr. President, I simply wish to aline myself with the remarks made by the distinguished chairman of the committee in his opening speech concerning Senate Resolution 211, and also the remarks made by the distinguished ranking Republican on the committee, the dean of the Senate Republicans, the Senator from Vermont (Mr. AIKEN).

I want to express my approval of the resolution fathered by the distinguished Senator from Massachusetts (Mr. BROOKE), furthered by the distinguished Senator from Kentucky (Mr. COOPER), joined in very capably by the distinguished Senator from New Jersey (Mr. CASE), and all in all having as cosponsors on the order of 43 Members of this body at this time.

This is a simple resolution. It is not one-sided. It will depend upon mutual

assistance, mutual agreement, and mutual complementation.

There are two resolving clauses to Senate Resolution 211, as amended. The first states that it is the sense of the Senate that prompt negotiations be urgently pursued between the Governments of the United States and of the Union of Soviet Socialist Republics to seek agreed limitations of both offensive and defensive strategic weapons. This purpose is consistent with article VI of the Treaty on the Nonproliferation of Nuclear Weapons which binds the United States and Soviet Governments "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date." The second resolving clause expresses the sense of the Senate that the President of the United States should propose to the Soviet Government an immediate suspension by the United States and the Soviet Union of the further deployment of all offensive and defensive nuclear strategic weapons systems, subject to national verification or other measures of observation and inspection as may be appropriate.

A reading of the bill and the report indicates that in the view of the Foreign Relations Committee, the initiative along these lines should be taken and could be taken by the United States.

I would point out that by letter of last June 24, the Department of State, in reply to the committee's request, stated that the executive branch was in accord with the resolution in supporting the desirability of starting talks with the Soviets on the subject of limitations on strategic weapons. The letter went on to note the preparations for such talks that were then underway. That, of course, referred to the meetings in Helsinki and, by inference, to the talks which will be held later this month, as the Senator from Vermont has pointed out, in Vienna.

The State Department's letter also calls attention to President Nixon's statement at his news conference on June 19, at which he said:

> We are considering the possibility of a moratorium on tests as part of any arms control agreement.

Then he goes on to add:

> However, as for any unilateral—

I repeat, unilateral—

> stopping of the tests on our part, I do not think that it would be in our interest.

Neither do I; neither does the Committee on Foreign Relations. This is a matter which would have to be mutually agreeable, mutually acceptable, and mutually enforceable. It would not in any sense of the word mean, so far as this country was concerned, unilateralism in any shape, manner, or form. I think that factor ought to be emphasized time and time again. In short, this resolution says that no stone will be unturned in our efforts to end arms escalation. It is going to be a two-sided affair if entered into, or it will be no affair at all.

I thank the distinguished Senator from Vermont for his statement.

Mr. AIKEN. I thank the majority leader for the remarks he has just made. As usual, he has made a very fine contribution to the discussion.

There may be those who will say that in agreeing to this resolution the Senate is trying to force the hand of the President. Nothing could be further from the truth.

I would like to read two sentences appearing on page 5 of the report:

> The committe recognizes that Senate Resolution 211 is in the nature of advice to the President which he is free to accept or reject. The committee believes, however, that the resolution expresses a growing recognition by the American people that no effort must be spared to bring to an end the escalating cycle of the deployment of nuclear weapons systems—a cycle which threatens all mankind with destruction.

I will say again that this resolution represents, in effect, an offer of the Senate to the executive branch for full cooperation in working out an arms control agreement with Russia.

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

Mr. AIKEN. I yield.

Mr. MANSFIELD. I think it is interesting to note that both the chairman and the ranking minority member of the committee both emphasized that if this resolution is agreed to, it will not force the President's hand in any way, and that he is free to accept or to reject the advice of the Senate. In that way, the Senate, I think, is trying to be constructive and is acting clearly in that manner.

What disturbs so many of us is—if my information is correct—that the Soviet Union and the United States each has enough, many, many times over, to destroy the population of the entire world. This is a factor which I think ought to be taken into consideration; because what good does it do, I ask, if we build up our weapons systems, our nuclear stockpiles, and our nuclear devices, and find in the end that in doing so we have only achieved the means leading to the destruction of all of us and the salvation of none?

Mr. AIKEN. Mr. President, we are all working toward a common purpose, and I hope with all my heart that the Soviet Union will see fit to work with us.

Mr. BROOKE. Mr. President, I ask unanimous consent that the name of the distinguished junior Senator from Kansas (Mr. DOLE) be added as a cosponsor of Senate Resolution 211.

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

Mr. BROOKE. Mr. President, when I first introduced Senate Resolution 211, it was restricted to a moratorium on operational testing of MIRV—multiple independent targetable reentry vehicles—a very devastating technology. Later that resolution was amended to include deployment of MIRV as well. It was my hope in introducing the resolution that the Senate would go on record as asking the President of the United States to propose to the Soviet Union a moratorium on flight testing and deployment of MIRV technology.

I now want to express my deep appreciation and commendation to the distinguished chairman of the Foreign Relations Committee, the Senator from Arkansas (Mr. FULBRIGHT); to the Senator from Tennessee (Mr. GORE); to the Senator from Kentucky (Mr. COOPER), and to the Senator from New Jersey (Mr. CASE), who have been so helpful in broadening the resolution to include a freeze on all offensive and defensive weapons systems.

I think the committee has done a commendable job. I am more than pleased that the committee saw fit to report this resolution unanimously to the floor of the Senate, where I hope we will get prompt and favorable action prior to the talks in Vienna which are to begin on April 16.

I think such action is important, because it would enable the President of the United States—through the delegation which represents our Nation—to go to these talks with the support of the Senate for a freeze of offensive and defensive weapons.

Mr. President, there is no more vital business before mankind than the strategic arms limitation talks between the Soviet Union and the United States of America. SALT comes at a unique juncture in the strategic arms race. Unless we can exploit political interests and strategic balance, the technological operation of the arms race may well continue to feed on itself for many years to come.

I am here today together with my colleagues, and particularly the distinguished members of the Committee on Foreign Relations, to urge the Senate's leadership in the search for nuclear arms control.

Twice in the past decade the Senate has paved the way for Soviet-American agreement by resolution, endorsing efforts to devise a nuclear test ban treaty and a nonproliferation treaty. We know that the Senate must ultimately face the question of consenting to any treaty which may emerge from SALT. I believe it is even more important that the Senate tender its advice on the type of agreement which the United States should seek in these negotiations.

Senate Resolution 211 is an essential vehicle for this purpose.

Senate Resolution 211 is cosponsored by 44 Senators, and represents, I am confident, the majority opinion of the Senate.

As President Nixon has so forthrightly said, the security of the United States and the Soviet Union rests today on mutual deterrence. Neither side could rationally attack the other because neither side has the capacity to prevent devastating retaliation by the victim. This capacity to retaliate, to visit assured destruction on any nation which might launch a nuclear war, is the foundation of credible deterrence.

Today, as has been stated by the distinguished chairman of the Committee on Foreign Relations and the distinguished majority leader, both sides possess a credible deterrent. Both sides will do what is necessary to maintain such a deterrent. Developments which seem to jeopardize either side's deterrents erode strategic stability and induce changes in the forced posture of both sides.

The Senate, Mr. President, has a weighty responsibility and a rare opportunity to catalyze an initiative in this important area.

Each of us respects the fact that the President is our country's principal agent

in international affairs. Our respect for the diplomatic prerogatives of the Presidency is great, indeed. Yet the President needs not only the Senate's respect. He also needs its counsel.

Senate Resolution 211 is a crucial means of conveying that counsel by stressing that any moratorium must be mutual. We leave the President wide latitude to determine what kinds of verifications are appropriate.

The resolution imposes no burdens upon the President. Indeed, by sharing the political burdens and risks of choosing a course for the arms control effort, the Senate can relieve the President of certain damaging inhibitions.

This resolution, Mr. President, can create wider rather than narrower vistas for energetic negotiation and, thus, through the device of this resolution, we can effectively couple congressional and executive efforts in the search for a fair and durable peace.

Mr. President, I certainly will have more to say on this resolution as the discussion and perhaps the debate continues, but I do want to say at this moment that time certainly is of the essence.

All of us are hopeful, if not optimistic, about the outcome of SALT. We were somewhat encouraged by what happened in Helsinki, and we are hopeful that the Senate can give its counsel and its advice to the President in advance of the reopening of these important SALT talks.

Whereas I have tried to point out that this is our responsibility, there have been times in the past when the Senate has regretted it was only giving its advice after the fact.

This time, we want to give it before the fact.

We want the President and the delegates in Vienna to know at least how the Senate of the United States—the body which ultimately will have to ratify any agreement—feels on this subject before we go to the talks. I feel that it can be very helpful in the deliberations at Vienna and can also be helpful with the Soviet Union, since they obviously will see where the Senate of the United States stands.

Thus, again, I offer my respect and my gratitude to the Foreign Relations Committee and its chairman for their work on this resolution. I particularly want to pay tribute to the distinguished Senator from Kentucky (Mr. COOPER). His contribution to broadening the resolution is a most helpful one.

Although I have strongly opposed testing and deployment of MIRV, I have always believed, as does the Senator from Kentucky, that in the broader picture we are concerned with the deployment of all offensive and defensive weapons systems.

How long must the arms race go on? Where will it stop? How many more billions of dollars must be spent, not only by the United States but the Soviet Union as well? When are we ever going to bring an end to the arms race so that we can transfer funds back into the serious problems we face at home and around the world?

If this resolution passes, and if the President's negotiations take the sense of the Senate with them to Vienna and, hopefully, if an agreement can be reached at SALT then I think we will have made the most significant and perhaps the most important contribution for the good of all people that has ever been known.

Again I applaud the rich contribution which has been made by the Senator from Kentucky, and express generally my appreciation to the chairman and the members of the Foreign Relations Committee.

Mr. FULBRIGHT. Mr. President, again I want to commend the Senator from Massachusetts (Mr. BROOKE) for having initiated this resolution.

I want only to emphasize its significance. We often forget, in the turmoil of our time, and the various difficulties we face, how dangerous the arms race has become.

An editorial was published in one of the leading newspapers—I think yesterday—pointing out that since 1964, in only 6 years, the world has spent over one trillion dollars—that is one thousand billion dollars—on armaments.

It is difficult to think of that sum of money. It is such an impersonal figure to contemplate. It is hard to translate into things that are useful to humanity.

But, actually, this vast expenditure is one of the crucial factors in the troubles that certainly afflict this country, and, I believe, other countries as well. Certainly, all countries are, directly or indirectly, afflicted by this terrific waste of money and resources, the diverting of our brainpower, we might say, in addition to our natural resources, into the arms race.

It is difficult for us to relate these huge expenditures to the welfare of our people. I think these expenditures have a relationship to the kind of internal turmoil represented by postal strikes, threatened rail strikes, and by riots. I believe that the people sense in a way, even though they may not translate it exactly in these terms, that something has gone awry with human relations and with governments.

This is at the crux of what I think the Senator has put his finger on; namely, that if we are unable to bring this arms race to a stop, this insane expenditure of time, money, and resources, then there is really no hope of dealing with the more pedestrian problems such as food, shelter, transportation, the pollution of our atmosphere, and so forth, from which we are suffering so much today.

I do not think that many countries are conscious of just how great has been the worldwide diversion of our resources to military purposes during the past several years. I said one thousand billion dollars for all countries was the amount of money spent on the arms race, but in this country alone, on military affairs since World War II, we have spent over one thousand billion dollars.

That is an outrageous performance by what are supposed to be rational human beings.

I only wish to emphasize the importance of this move. I think the Senator is exactly correct. In order for us to have a reasonable prospect of fruitful negotiations in the SALT talks, this kind of a standstill arrangement is essential. Otherwise, we are threatened with a shifting basis that neither side can well judge.

It has already been announced that if we do not have this freeze, we are going to deploy some of these very dangerous weapons in June. I would hate to see us do that. I think we would have a great responsibility if that does take place.

I think the Senator has made a very significant suggestion here. I certainly applaud him for it. I hope that this resolution can be agreed to unanimously by the Senate.

(At this point Mr. CRANSTON assumed the chair.)

Mr. BROOKE. Mr. President, again I thank the distinguished chairman of the Foreign Relations Committee. He certainly raises a very important point in this discussion.

I frankly do not feel that the American people, and certainly the people of the world, are cognizant of the devastation which either side can rain upon the world with present day capabilities.

We are talking about the killing of millions of people. And it is by no means necessary that we fire off all of our weapons systems or that the other side fire off all of theirs. We could, even with a limited attack, kill millions of people, to say nothing of the millions of the people who would be harmed by fallout and disease and all that would follow in the wake of such an occurrence.

So, when we are talking about stopping this nuclear arms race which has been going on for so long a period of time, we are literally talking about the salvation of mankind on earth.

I do not think this point has really gotten home to the American people. Perhaps, they are somewhat confused as they read about MRV's, multiple reentry vehicles, and MIRV's, independently targetable reentry vehicles, and some of the other terminology of this technology. We have to bring it down to simple words so that all people can understand exactly what we are talking about and what is at stake.

Sometimes I think people are perplexed when we talk about billions of dollars and thousands of billions of dollars, as the distinguished chairman has mentioned. That gets far out of the realm of the cognizance of most of us.

Unfortunately, too many people do not realize that what is happening is that one side is saying, "Well, we need to add more to our arsenal because the other side has this weapons system." So, they begin to add to their arsenal by the expenditure of billions of dollars. Of course, the Soviets are spending billions of dollars, as we are.

After that is done, the other side says, "They have spent billions of dollars, and they are further ahead. We have to catch up." So, they spend billions of dollars and move further ahead. It is a vicious cycle, always spiraling upward. The question is: When do we bring an end to it?

That is the purpose of the resolution and it is the purpose of the SALT talks.

At this time we have what has been referred to as mutual deterrence. We are careful and we expect that neither side in its sane moments would use the weapons for what is known as a first strike.

We know that this is a gamble. We do not know when, by inadvertence or by design, someone might push that button and send some missiles at the United States. We would retaliate, of course. And we could destroy the nations of the earth.

Man, since the invention of gunpowder, has had the means of self-destruction within his reach. We have successfully gone on for this long without invoking self-destruction on the world.

Let us hope that we will continue to do so. But we have to have some reasonable control of nuclear weapons.

I pray with the Senator from Arkansas that we will do all we can to bring an end to this ridiculous and meaningless arms race which is taking place in the world today, primarily between the Soviet Union and the United States. But others are beginning to get into it as well. As the distinguished chairman of the Foreign Relations Committee knows, the Red Chinese have nuclear capability. And there are other countries that are not too far behind and could have a nuclear capacity.

Thank God that we did pass a nuclear test ban treaty and that that treaty is beginning to have an effect. But if we did not do these things, who knows where we would have been at this moment.

Again, I thank the chairman for his great interest and his understanding in conducting the hearings and giving us an opportunity to present our case and, as I said before, for reporting this resolution favorably to the floor.

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

Mr. BROOKE. I yield.

Mr. CASE. Mr. President, I associate myself completely with everything that has been said before on this resolution. It has been a great satisfaction to have had a part in this whole exercise.

As the Senator from Massachusetts knows, both he and I were very much interested in the possibility of a halt to MIRV testing, realizing, as we were advised by all the good scientific expertise in this country, that once MIRV had been tested to the point where it was deployable, it would be most difficult, if not impossible, to put a limitation on this proliferation of strategic weapons, because it would be very difficult to tell whether in a particular nuclear weapon there was one, two, three, four, five, or 10 warheads merely by the process of examination or inspection from the outside.

We all realize the difficulty, if not the impossibility, of any on-the-ground inspection insofar as the Soviet Union is concerned, and perhaps even as far as we are concerned.

So, we both attempted to get an expression of the opinion of the Senate on the importance of suspension. And the Senator from Massachusetts did this in a way which indicates not only his great dedication to the cause of peace, but also his political sagacity. He put it in the form of his resolution.

My own suggestion was a slightly different one, calling for an immediate stoppage on our part and the keeping up of the suspension on testing so long as the Russians did the same.

The Senator from Massachusetts realized that my approach, regardless of the merits relative to his, was perhaps more susceptible to the charge—although, I think equally unfounded—of unilateral disarmament. And realizing how important it is to people in the political world—and we are all in the political world—to avoid that, he was able to get almost a majority of the Members of the Senate, including, of course, the Senator from New Jersey, to support his resolution.

So, we came to hearings before the Foreign Relations Committee under the guidance of our chairman and with the full cooperation of Members of the Senate on both sides of the aisle. We had hearings on this resolution, considered it carefully, and, as the Senator knows, on the motion of the Senator from Kentucky broadened it to include a moratorium on the deployment of all strategic weapons, both offensive and defensive, pending the conclusion of the SALT talks.

I was glad to support this change. And I know that the Senator from Massachusetts was also, especially since our action in no way—as our committee report shows—intended to diminish or downgrade the importance of a cessation of the testing of MIRVs, because it still seems possible that we can ask for such a suspension safely and that its significance is still as great as when we first proposed it. This is very much a part of the sense of the Committee on Foreign Relations and all of us on the floor that supported it. I want to emphasize again that the Committee on Foreign Relations acted unanimously in this matter.

Mr. BROOKE. If I may interrupt the distinguished Senator from New Jersey at that point, let me say first that I believe that the distinguished senior Senator from New Jersey was the first, or certainly among the first, to join as a cosponsor of this resolution in its original form. As he has well pointed out, at that time he also had proposed a similar resolution which called for unilateral suspension. I want the Senator to know how great a contribution he made in the early stages of this effort and also when this resolution was before the Committee on Foreign Relations.

The Senator has referred to part of the report language which indicates that the Committee on Foreign Relations wants to include and intends to include a moratorium on operational flight testing of MIRV. This is of great significance because even though it has been announced that MIRV's could be deployed as early as June of 1970, which is a few months from now, it is obvious that it will be necessary to continue flight testing of this technology in order that we might perfect it and in order that we might have more reliability and greater accuracy. Of course, if this flight testing continued this would only mean that the Soviet Union would then want to continue flight testing of its MIRV, if it is flight testing MIRV's. If they continue and perfect their MIRV's, added to their MIRV's, or SS–9's, with their superior megatonnage, it would be a serious threat to the security of the United States and then would cause us to add to our arsenal again, which would add more fuel to the nuclear race.

So I think it is very important and I am very pleased that the Committee on Foreign Relations has contained in its report language which clearly indicates its intent, and the intent of the resolution, that we ask for a moratorium on further flight testing of MIRV, as well as on deployment of this devastating nuclear device.

Mr. CASE. I appreciate this. Will the Senator yield further?

Mr. BROOKE. I yield.

Mr. CASE. I want to again emphasize that our committee action—and I know the Senator from Kentucky when he enters into this discussion will make the point himself—in no way indicated we intended to diminish the resolution of the Senator from Massachusetts, but rather completely to broaden it.

That brings me to the last point I would like to emphasize at this time, and, if it is appropriate, next week I shall again engage in the discussion of this matter on the floor of the Senate since it will not be acted on finally today.

I want to make this point and I cannot emphasize this too much. We are proposing this at the beginning of the SALT talks. We are proposing that this action be taken by the President, and we are strongly urging it at the beginning of the SALT talks to provide a moratorium during those talks, so that the status quo may be maintained until they are completed; and that the situation, which does now seem favorable to an agreement limiting arms, will not be disturbed during the long process—and it will be a long way before an agreement can possibly be made in this difficult and complicated matter. It is not irrelevant, or redundant, or whatever the word was intended to be that this should be done and that we are urging should be done.

We are not asking an agreement now except in the broadest sense—and it need not be a written action; it can be a mutual action which is an expression in the most general terms. We are not trying to have an agreement signed in the beginning of the negotiations. We are not asking that every "i" be dotted and every "t" be crossed. The reverse is true. We are saying, Let us propose to this other greatest power in the world, along with ourselves, a mutual suspension of all further deployment of strategic weapons while we see if we cannot get the kind of agreement to hold this in perpetuity, or for so long as we can look ahead, because this most precious time of rough parity between our two countries could slip away when we are talking about details that may take years to settle. We cannot let these years go by in a period of feverish activity in which each country tries to outdo the other in the deployment of strategic weapons, which neither of us need for our own safety or for the maintenance of peace.

So this moratorium that we urge is intended to strengthen the President's hand and to strengthen our negotiators. It is intended to give an assurance, so

far as assurance is possible, that this moment, so fortunate because of our mutual ability to protect ourselves by retaliation and, therefore, the existence of the deterrent, does not pass without effective action, and is not allowed to be destroyed by activity during our discussions looking toward the making of the final definitive agreement.

I thank my colleague for permitting me to intervene at this point. It seemed to me terribly important that this matter be emphasized and that it be emphasized that we understand that you cannot have a definitive agreement before you start negotiations; but that you can maintain the status quo which would make it possible for the negotiations to be successful.

Mr. BROOKE. Mr. President, I thank the distinguished Senator for intervening, as he characterized it. I think he has been most helpful in bringing out several points that have not been discussed so far in this debate. I think the Senator would certainly agree that by this resolution we are not proposing that the United States do anything that we are not asking the Soviet Union to do—I want to make that very clear. I think, as the Senator points out, that we are calling for mutual cessation and freeze and we are not asking the United States to give up anything that we are not asking the Soviet Union to give up.

We are not saying the United States should stop testing its MIRV, or should stop deploying any of its weapons systems, if the Soviet Union does not at the same time stop testing whatever it is testing or stop deploying any of its weapons systems. It seems like a very reasonable proposal.

In addition, as the Senator has well pointed out—and the Senator certainly knows better than I, because he has been here far longer and has served a long time on the Foreign Relations Committee—we all know how long these talks take. There are many complex systems to be discussed and negotiated at the SALT talks. We have no reason to believe that the SALT talks will not take months, and conceivably years, before they are ultimately concluded. The distinguished chairman will correct me if I am wrong. That estimate certainly is not a high estimate.

If that is true, and at the same time we are continuing with our testing and the Soviets are continuing with their testing, who knows what weapons systems the United States or the Soviet Union may have before the agreement can be concluded? History has proved, unfortunately, that once we get the technology, the deployment is right behind it. So it is important that, immediately, this overture, this gesture, this request on the part of the President of the United States be made in order that, during the progress of the talks, we might have a moratorium.

I can think of another important benefit the proposal would have both to our President and to our Nation. If the President of the United States is the one to come out and make such a proposal—not Mr. Kosygin or someone in the Soviet Union, but to have it known around the world that the United States is offering an agreement to have a freeze on offensive and defensive nuclear weapons—to me this would be of great help and of great value to the free world and, in fact, to the whole world.

So I am hopeful that the President, if the resolution is favorably acted upon, will heed our advice and that he will make such a request of the Soviet Union. I go further and call upon the Soviet Union, if I may, to listen to this proposal very seriously, consider it very seriously, in terms of what it means for the peace of the world. If they can join in, and will join in, a freeze on offensive and defensive weapons, then we can get on with the details, the dotting of the i's and the crossing of the t's, as the distinguished Senator from New Jersey has stated.

We recognize that in this very complex field of diplomacy it will take time. There are serious questions of verification which must be resolved. Let us hope that while these questions are being resolved, there will be no further stepup, no further acceleration, of the nuclear arms race.

So again I thank the distinguished Senator from New Jersey for the very, very rich contributions he has made and is continuing to make as far as this resolution is concerned.

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

Mr. BROOKE. I yield.

Mr. GURNEY. I am sure the Senator from Massachusetts would agree with me that everyone in the Senate—all 100 Senators—would like to see negotiations of this sort begin and be successful. Some of us however, have reservations as to whether the opposition, the enemy, the Russians, want in good faith to have negotiations of this sort.

My question to the Senator would be, if we passed this resolution, Would it be any more than a meaningless gesture? What evidence is there that the Soviet Union would engage in talks such as we would ask for in the resolution, or that they would stop further deployment of weapons systems?

Mr. BROOKE. Let me answer the very valid question of the Senator from Florida in this way: No. 1, What do we have to lose by making the proposal, and how will we know whether the Soviet Union would be receptive to this proposal unless we make it?

Mr. GURNEY. Let me——

Mr. BROOKE. If I may, No. 2: I think the U.S. delegation to the talks in Helsinki came out of those talks encouraged by what may be regarded as the highest quality of presentation, to their knowledge, that had even been made by the Soviet Union. I think they came back with some degree of optimism, even though the Helsinki talks, of course, were more along procedural lines than they were along substantive lines.

In the interim period, statements have been reported in the press both at home and in the Soviet Union which would indicate that the Soviet Union would be willing to discuss a freeze on offensive and defensive weapons. I think that one witness who was qualified as a principal authority on Soviet matters testified before our distinguished Foreign Relations Committee that, in his opinion, the Soviets would be receptive, or could be receptive, to a moratorium on MIRV and on flight testing of MIRV, and possibly on ABM, which, of course, is a defensive weapons system. So there is some flickering of hope that the Soviets would be receptive.

But I must confess to the distinguished Senator from Florida that I do not, of my personal knowledge, know that the Soviets would be receptive. I am only hopeful that they would be, and I do not think that we would lose anything by making the proposal in the first instance.

Mr. GURNEY. Well, if I may reply to the distinguished Senator from Massachusetts, let us take up the first question. We might paraphrase my question to the distinguished Senator as: "What good would it do?" In a fine, lawyer-like, attorney-general fashion—and the Senator was a very brilliant attorney general of Massachusetts—he has asked me, What harm would it do? That opens up a good colloquy.

One of the reasons why I entered into the discussion here was a very provocative article which I read this morning in this week's Newsweek on this very subject. If the Senator will indulge, I would like to read a little from it, and perhaps we could discuss it further, because it troubles me. This is the weekly column by Kenneth Crawford, who, I think, is a very responsible writer in the field of foreign policy, which he touches on a good deal. It is entitled "Dealing With Russia."

I shall not read it all, but only certain parts of it. It starts out by saying:

> Nixon foreign policy, plausible as it is in theory, is proving difficult in practice.

Then he goes on to say that one of the reasons why is because President Nixon truly wants to negotiate, and this is the general course and foundation of his foreign policy, to attempt to negotiate with the Russians.

Then he goes on to say:

> The difficulty is that it takes two to negotiate and that, in almost all situations, the negotiators must be the United States and the Soviet Union.

Then he discusses the fact that the objectives of the two nations are completely different. He says:

> They are predisposed to disagree because their objectives are wholly different. The U.S. is a trading nation and trade thrives in an orderly world. The Soviet Union is a xenophobic, opportunistic nation and opportunism needs a world in disorderly flux.

He goes on to quote Prof. Richard Pipes, who is the director of the Harvard Russian Research Center—and I think this is most interesting, what Professor Pipes has to say about the Soviet Union. Crawford quotes him as saying:

> "The Soviet elite," Pipes said, "tends to think in terms of perpetual conflict pitting right against wrong, from which only one side can emerge victorious . . . Russian ideology with its stress on class warfare culminating in a vast revolutionary cataclysm neatly reinforces this . . . Soviet behavior is motivated by fear . . . only the fear is not of other peoples but of its own and for that reason it is incapable of being allayed by concessions. Fear breeds insecurity which in turn expresses itself . . . in aggressive behavior . . . By and large, Russian expansion tends to focus on targets of opportunity."

He points out that President Nixon, of course, has sought to negotiate with the Russians as far as the Southeast Asian affair is concerned, and recently as to Laos, which has been the subject of debate here in the Senate a good deal in recent days, and that the Russians have turned a deaf ear and slammed the door to our President as far as Laos is concerned.

He also points out, of course, that more recently we have tried to negotiate with them on the Middle East, and again the door has been slammed in our face, and we have received no encouragement.

Then he closes with this paragraph:

Diplomatic experience, as well as the Pipes analysis, suggests that it is self-defeating to be too ready with concessions when dealing with the Soviet Union. Strength and resolution count for more than amiability, as the Cuban missile crisis and its outcome demonstrated. But Mr. Nixon is committed to initiate negotiations. And he is constantly under pressure from Senate critics to concede more in Paris, to get out of Laos, to quit developing ABM's and MIRV's, even to pull troops out of Europe. So he must negotiate from a pre-weakened position.

I am not saying that the last bit I read is what is proposed in this resolution. But I am saying—and I am going back now to the original question, and perhaps giving an answer to the question posed by the Senator from Massachusetts as to what harm a resolution like this would do—that my feeling, and it is my genuine and very deep feeling, I am inquiring if what Mr. Crawford says is right, that the only thing the Russians really understand is strength, and that if the other side has it, that is probably the best bargaining and negotiating position to be in. After constantly seeking to negotiate with them, when they constantly slam the door in your face again and again, as we have had it slammed recently in Southeast Asia and the Middle East, that indicates that further asking them for concessions in negotiations perhaps indicates a too great willingness on our part, or perhaps a weakness on our part. That is really why I pose the question. I feel very keenly about disarmament, as I think the Senator from Massachusetts does. The question is, how best can we achieve it?

Mr. CASE. Mr. President, will the Senator from Massachusetts permit me to respond?

Mr. BROOKE. I yield to the Senator from New Jersey.

Mr. CASE. I am grateful, as I am sure the Senator from Massachusetts and all of us are, to the Senator from Florida for raising this point. It has not been expressly stated, at least not publicly stated, by people in the administration—and I am not now talking about the President—but this same point has been urged as a reason for many things, including the Safeguard anti-ballistic-missile system—that we must negotiate from strength.

I simply want to make this point: There is no chance, to my mind, of making a horse trade with the Russians. Not one bit. And that is not what we are after. We are not going to them and saying, "If you will do this, we will do that," in any sense of a trade.

We will achieve an agreement with the Russians on limitation of armaments if, and only if, both sides agree that it is in their best interests, in the best interests of both. I am really most grateful to the Senator from Florida for making it possible for us to emphasize this point.

Mr. BROOKE. I thank the Senator.

Mr. CASE. The only chance we have in the SALT talks is to define something that we both accept as in our interest, as was the case in the Nonproliferation Treaty, for example. Neither side gave up anything then; we just recognized that it was in the interests of both sides that this arrangement should be made and recognized, and that is what we are seeking here—the maintenance of a situation.

Of course, our present resolution deals only with the discussion period, and is not in any way an attempt to lay out the definitive agreement, though I would assume that it will very much follow this pattern, if it is to be successful.

But we will achieve success here only if the Russians agree and understand that it is in their interest to do what we are proposing. Otherwise no promise, no concession, or anything else on our part will have one bit of effect upon the Russians, nor, indeed, will any concession that they might make induce us to give up anything we think is essential for our interest.

I have great respect for Kenneth Crawford. He is a great personal friend, and he provides, I think, an astringent antidote to many of the fuzzy and soft-headed discussions and proposals that are from time to time advanced. Here I think that I must disagree with him, if he is thinking about this resolution—and I do not know that he is.

Mr. GURNEY. Well, I do not know that he is, either.

Mr. CASE. We cannot say so. But to regard the SALT talks as a place where you go in and try to make a deal, making it a place for bargaining, this is not that. This is a place for the soberest discussion in the most open and plain way of what the mutual interests of our two great countries, and the interests of humanity, require.

Mr. BROOKE. Mr. President, may I say to the Senator from Florida that I certainly intend no disrespect of Mr. Crawford, but I have heard these arguments time and time again.

These are the arguments that were raised prior to the partial Nuclear Test Ban Treaty. These are the same arguments that were raised prior to the Nonproliferation Treaty.

You know, Xenophobia is not an inherited characteristic at all; and in what better way could we alleviate the fears of the Soviets than by making a serious effort to negotiate?

As to the point the Senator is making, that we should negotiate from strength—of course, we are not contending we should negotiate from weakness. We believe we have that strength. And I think that the facts would bear that out.

But if the Senator's argument is to be believed, then there is no hope left in the world at all. What he is saying, if we were to follow through on his argument, is that we cannot trust the Soviets, we have not been able to trust them, we never will be able to trust them; therefore, what is the result?

I will tell you what the result is. The result is that we will continue to build more and more nuclear weapon systems, even more devastating than the MIRV which we have coming out now, in June, at a cost of billions and billions of dollars. The Soviet Union will respond by building more SS–9's, or maybe by building something else more devastating than any missile that they have today. We will begin to build a much larger ABM than phase I, II, III, IV, or maybe XIII by then, I just do not know. And the Soviet Union will take their Galosh system and build upon that, both of us spending untold billions of dollars, because we think that we cannot trust them, and they think that they cannot trust us.

Who is going to stop it? Where is it going to end? All I am saying is that by passing this resolution at least we are taking a stand and we are making a proposal. We are not asking the United States to give up anything at all.

We are not saying we should be weak and we should go to the table weak. We are not saying that the Soviets are strong, and that, therefore, we will not be able to come to any sort of agreement that will be beneficial to the United States. We are asking them to join with us in mutual cessation of operational testing of these weapons systems and in the mutual freeze on offensive and defensive system. That is all we are asking in this resolution.

With all due respect to Mr. Crawford, I, for one, do not want to live in a world of fear and suspicion the rest of my days. I do not want this legacy for my grandchildren and my great-grandchildren, or for any other people I represent. I do want it for this country, and I do not want it for the world.

It only means that I am going to take some risk of my pride by making a proposal such as this—and I think it would be heralded by the world, frankly, if the President would do it. I think all the nations of the world, developed and undeveloped nations alike, would be pleased to see the greatest nation in the world take the leadership toward peace by asking for a freeze on offensive and defensive weapons systems. And that is all, with all due respect to Mr. Crawford.

I want to make it clear that many members of the Committee on Foreign Relations discussed the matter at great length. We are not suggesting that we are not strong or should not be strong as we go to the negotiating table. But we think that the risks of the alternatives are just too great; that something must be done; and this is our proposal under these awesome circumstances.

Mr. GURNEY. Let me pose one further question. May I say that I certainly have no thought, in raising this question, that any sponsor of this resolution—certainly, not the author of it, the distinguished Senator from Massachusetts—is in any way disposed to "horse trade" with the Russians, to give up more than they would give up. I am well aware that every Senator would have the common goal of not doing that.

My point in raising this point is that

we have been engaged in strategic arms limitations talks. We are doing that right now. I raise this point: What impetus is the expression of the Senate going to give to that?

I also raise the other point that, perhaps, if we are too eager to indicate that we want something to happen right now out of these talks, we are then horse trading, if I may use the words of the Senator from New Jersey, in a weakened position. If we are too eager to sell this horse, perhaps the Russians will not want to buy it. This is the reason I am raising the question.

Mr. BROOKE. I think the distinguished Senator from Florida has raised an important question. I do not want him to feel for a moment that I do not think so. I think he has made a contribution to this debate merely by raising that question and in the manner in which he raised it. I am very grateful that he did. I think it ought to be discussed. This is one of the most important points to be discussed.

I think the American people should be very knowledgeable about this resolution. They should know what it is, and that the members of the Foreign Relations Committee and the Senate ultimately, if it agrees to this resolution, have no intention of giving away the security of the United States of America. Our negotiators and the members of the Senate Foreign Relations Committee are very knowledgeable men. They have been at this business a long time. They have dealt with the Soviet Union. They know the past successes and they know the past failures of the Soviet Union. They are not being hoodwinked at all.

We are not trying by this resolution to give up anything that would put us in a position of weakness, and we are not trying to show too much eagerness, as the Senator has pointed out, which might indicate to the Soviet Union that we are overly anxious and thereby trying to conceal some weakness on our part.

I do not think for a moment that the Soviet Union is unaware of the nuclear capability of the United States of America. They may not know everything, to be sure, but they have a pretty general idea as to what our capability is, just as we have a pretty general idea of their capability. They know that we have *x* number of ICBM's. They know about our submarine fleet. They know about our B–52 bomber force. And they know about the weapons in Europe and things of that nature, which are pretty generally known. They have their satellite observation, as we do, and we cannot underestimate them in this respect.

If this moratorium, this freeze, is to be successful at all, I agree with the distinguished Senator from Florida that it will be due to a large degree to our strength and the Soviet Union's strength as well. We know that. But I just cannot believe that the Soviet Union has inexhaustible funds. I just cannot believe that the Russian people are bent on destruction of themselves. Certainly we are not bent on the destruction of the United States and other people of the world.

I believe that perhaps the time may be right for an arms limitation agreement. Irrespective of all the failures in the past, this time may be right. If this is the right time, the right time in history, all I am saying is, let us take advantage of it; let us move now, while we can; let us not lose a day in moving in order to tie it down and to enter into an agreement which can be verified, and which I am hopeful will be successful.

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

Mr. BROOKE. I yield.

Mr. GOLDWATER. I want to join the Senator from Florida in the questions he has posed. But I want to preface that by saying that I am always in favor of negotiations, and I hope that the Senator's suggestion will be agreed to.

I do not think there can be any doubt that the Soviets know what we are doing. I think the Soviets know the attitude of the Americans probably better than we do. I think back over the number of years we have been in this argument and that they have this knowledge of the attitude of the American people, the attitude of the American Congress.

The questions raised by the Senator from Florida become very pertinent, not to the point that they might prevent the adoption of the resolution, but pertinent to the expectations which might be raised in the hearts of American citizens and people around the free world.

I think, for example, of the fact that this year we are spending a smaller part of our gross national product on arms than we have ever spent; that we are buying fewer airplanes in this budget than we bought in 1935. I think of the fact that we are withdrawing troops from South Vietnam; that we are willing and we have been sitting for over a year at a peace table in Paris. We have made no progress. I think of the Test Ban Treaty which we entered into. I think of the arms limitation talks that we have had, and the fact that the Senate approved the ABM by one vote.

These things to me, if I lived in the Soviet Union, would indicate that the United States certainly has indicated her willingness to talk about disarmament, her willingness to enter into any kind of talks to which the Russians will agree. With all these manifestations at hand, there is a grave question in my mind as to whether or not the Soviets will agree. I hope they will agree to sit down and talk with us. But they are now ahead of us in several areas of the military. Since the SALT talks started, they have fired either 16 or 18 of their MIRV's on an actual flight test, and we have not tested one. This has seemed to be the history.

Mr. BROOKE. The Senator means MRV, not MIRV.

Mr. GOLDWATER. I beg the Senator's pardon. Yes. But the tests necessary before they fire the equivalent to our MIRV—and we have yet to do that—I would hate to see any time where that would prevent our at least testing, but, if we could get them to the stop, we would still be behind them. This is the same as applied to another request, where we sought a test ban treaty after they had developed very high yield warheads, and we had not been able to test, although I have no doubt that we can do the same.

These things bother me, but not to the point of destroying the resolution or not seeing it passed. I think we should do these things with our minds and our hearts open, and with the ability to let the American people know that the chances are rather slim. It is sort of like playing poker. I think the Soviets right now have the strongest hand. I do not think they will stand for any bluffing, even if the bluffing comes in the form of this resolution—which I do not oppose at all.

I just wanted to associate myself with the questions raised by the junior Senator from Florida, which I think are very pertinent.

Mr. BROOKE. I thank the distinguished Senator from Arizona. His words on this important subject, of course, are of great value because of his long experience in this particular field. He is also a distinguished member of the Armed Services Committee and has made an independent study of this matter. I am very much pleased to know that he is not opposed to the resolution in spirit and I am hoping that he will vote for the resolution. I certainly think he has made a contribution in noting that the American people should not have such high expectations that if this does not succeed, it will be more disastrous than before the resolution was even considered. I think his contribution has been very useful.

I want to point this out to the Senator, however, that to the best of my knowledge the Soviet Union has not tested MIRV as yet. I think, as the Senator well knows, that we are close to the deployment of our MIRV, so I do not think in this poker game—as the Senator has characterized it—we are in as poor a position as the Senator may have indicated. I believe that we go to the poker table with as good a hand as the Soviet Union, if not better.

Mr. GOLDWATER. I cannot say we go with as good a hand if we take the overall capabilities of our military posture, even if we exclude the ground forces, which we should never take into consideration—and I say that with all due respect to our own ground forces; but they have done much more testing on their vehicles, and on the theory, than we have. We will deploy, I believe, in June, where we have been prohibited, actually, from the type of testing we would like to do by the Test Ban Treaty. I find no big argument on this, because I think we can do what we want the vehicles to do, but I do not think we have as good a hand as they have. I would hate to depend on our thinking that we did, to bring this resolution to the point that it would have some force with the Soviet Union.

Again, I am not finding fault with the resolution. In all probability, I will vote for it. I think the adoption of the Cooper amendment is most necessary. I think that much reiteration on the part of the Foreign Relations Committee is needed as to whether this will wind up in a unilateral type of disarmament, in which case I could not, although I think the language of the report and the language of the resolution makes that abundantly clear. But I hope it is not the forerunner, this resolution, of calling for unilateral disarmament.

Mr. BROOKE. I assure the distinguished Senator from Arizona that that

is not the intent of the original resolution and it is not the intent of the resolution as voted by the Foreign Relations Committee. I think that the language of the report is clear on that point. I would agree with the Senator that we would not want a unilateral cessation. I do not see that it will be the result of such a resolution, certainly not this resolution. I believe that this resolution would be most helpful, and hope that the distinguished Senator from Arizona will see fit to lending his very prestigious name to the support of it.

I thank the Senator from Arizona once again.

Mr. GOLDWATER. Mr. President, will the Senator from Massachusetts allow me to make a unanimous-consent request?

Mr. BROOKE. Yes; I am happy to yield for that purpose.

Mr. GOLDWATER. Mr. President, for 2 days now, I find myself unable to get the floor to make remarks I have prepared. Inasmuch as I have to be in Oklahoma City this evening on Air Force business——

Mr. MANSFIELD. Mr. President, I must object because the rule of germaneness has been observed consistently this year so far, and unless it is something connected with the pending business, I would reluctantly have to object.

Mr. GOLDWATER. I do not know how I could connect this with the pending business. I could not even try. It has to do with air traffic controllers.

Mr. MILLER. Mr. President, will the Senator from Massachusetts yield for one or two questions?

Mr. BROOKE. I am happy to yield.

Mr. MILLER. First of all, I note that the resolving clause in the pending resolution provides for the immediate suspension of further deployment of all offensive and defensive nuclear strategic weapons systems. That relates only to deployment. As I read it, it does not say anything about the suspension of flight tests.

Mr. BROOKE. It is included in the language of the report. It is intended to include flight testing as well as deployment.

Mr. MILLER. If I may make a suggestion, if that is what——

Mr. BROOKE. It is implicit in the language. I think it is spelled out very clearly in the language of the report. That is my answer.

Mr. MILLER. I would suggest, though, that it might be helpful to add language in the resolving clause which will make it crystal clear that that is what is intended.

Mr. BROOKE. It is in the whereas clause, which the Senator has seen.

Mr. MILLER. Yes; I have seen it. That is the reason why I raise the question. We have it in the whereas clause but it is not in the resolving clause. The second question I have, I note in the resolving clause it says, "subject to national verification." That is, as between the Soviet Union and the United States. What do we mean by "national verification"?

Mr. BROOKE. National verification is, as I understand it, those usual means which a nation has of verification, such as satellites, seismographic equipment, reconnaissance vehicles, and the like.

Mr. CASE. Anything we do that is done normally, that would be permitted by the other side.

Mr. BROOKE. Yes; it would not be onsite inspection, but general means of verification such as are used by nations in keeping track of verifying what another nation is doing.

Mr. MILLER. What the Senator is saying with respect to verification of United States ceasing further deployment, is that the Soviet Union would be expected to use such methods as it is now using with respect to verification by the United States as the Soviet Union's cessation of further deployment. It would be expected that this would be handled by methods available, such as satellites.

Mr. BROOKE. Yes.

Mr. MILLER. This troubles me. While I understand we are getting some good information through the satellites, I have no doubt that the Soviet Union is getting pretty good information out of us because we are an open society. I am wondering whether the verification is adequate. I am concerned, for example, as to whether flight testing or further deployment of airplanes or ICBM's on the part of the Soviet Union are picked up adequately by our present methods. They are the best we have. But I frankly do not know that we are satisfied today that we are getting all the information we need to verify it.

Mr. BROOKE. Mr. President, as the able Senator has pointed out, these means are the best we have. Satellites are practically the only thing we have in addition to, as I have already stated, the other scientific and technological devices that are used for verification purposes. But bear in mind that this is a resolution which calls for a moratorium during which time negotiations will be taking place on the subject of verification.

If we get to the point of verifying whether one side is deploying MRV's, MIRV's, that is going to call for nothing short of onsite inspection or onsite verification. The Soviet Union would perhaps have teams come to the United States and perhaps dismantle a missile and look into it to see how many missiles are inside the missile, whether it is actually an MRV or an MIRV missile. The United States would do the same thing with the Soviet Union. But this has been very difficult to achieve in the past.

Mr. MILLER. Mr. President, the Senator is correct. He states the problem I am getting at. We call, by this resolution, for an immediate suspension to be proposed by the President of the United States—immediate suspension not just by the United States, but by the Soviet Union and the United States, subject to verification.

The idea behind it is that this will encourage negotiations. But the understanding of the Senator from Iowa is that these negotiations at best will go on for a long time. And what causes me concern is that if, indeed, there is an announcement by the Soviet Union saying, "We are going to suspend," the United States, therefore, suspends and the negotiations go on and on and on while we do not have the kind of verification which the Senator has just referred to. Then it seems to me that we may be letting ourselves in for a very rude awakening to a loss of the security of our country.

Mr. BROOKE. Mr. President, the Senator raises a very valid and certainly a very important point. What the Senator is concerned about is the possibility of cheating under such an agreement. If we enter into an agreement for a moratorium on flight testing and deployment of the complex weapons systems, the Soviet Union might go ahead and continue this flight testing and even go ahead with further deployment of one of these weapons systems. How would we know if this is occurring?

I assume the Senator is concerned because national detection is inadequate to give us the confidence and assurance we ought to have for national security. And it is a very real and a very valid concern.

All I can say to the Senator is that with the technology and scientific devices we have today, with the national verification techniques we have today, and from the information I have been able to obtain from high sources both in our Defense Department and in the scientific community, we can, for example, tell by way of a satellite whether an actual missile is in a silo in the Soviet Union. And, of course, they can tell how many missiles we have in silos in the United States.

Flight testing of MRV's and MIRV's can be verified according to our best information. There is, however—and I want to make it very clear—some difference of opinion in the scientific community as to whether we can actually by the use of satellite observation photographs tell whether an MRV is actually being tested as distinguished from a MIRV. Some say yes, and some say no.

I have proposed in this resolution that we might even suggest that certain ranges be specified or that certain times be set aside for such testing in the future. Things of this nature would be a subject for negotiation, to be sure. But, of course, the Soviet Union has the same problem the United States has in this regard. They will not know whether we are cheating, because they do not have any better techniques for verification than we do.

I disagree with the distinguished Senator from Arizona on this point, as I said, but frankly I do not think we are in a worse position than the Soviet Union. I think their risk is probably as great or greater, in my opinion, than ours insofar as national verification is concerned.

If the Soviet Union is to join in this agreement, I know that we do not want to base it on hope and just leave it to trust when national security is concerned. We want to do all we can to be sure that the agreement is being lived up to and that there is no problem at all about improving or increasing our verification methods.

There is nothing in the moratorium that in any way limits the methods of verification that we can use or that we can ultimately achieve.

And that is the only satisfaction that I can give to the distinguished Senator from Iowa who, I know, asks this question in all earnestness and seriousness.

Mr. MILLER. Mr. President, I appreciate that the Senator from Massachusetts is trying to the best of his ability to be responsive to my question.

Mr. BROOKE. Some of this information cannot be divulged publicly. Some of the information is of a highly confidential nature.

I would be very pleased to discuss this matter further with the Senator from Iowa. I am sure that he might find answers to his questions by talks with high-ranking members of the Defense Department who could give him more intricate and scientific knowledge on the question of verification than can I.

Mr. MILLER. Mr. President, the Senator from Iowa has done that. And on that point, may I ask the Senator what the views of the Defense Department are on this resolution?

Mr. BROOKE. I frankly do not know the answer to the Senator's question. The Defense Department was opposed to the original resolution calling for a moratorium on the operational testing and deployment of MIRV's.

The resolution has been broadened to include a freeze on offensive and defensive weapons systems.

I frankly do not know whether the Foreign Relations Committee has a report from the Defense Department as to what its position is on this resolution as amended.

Mr. MILLER. Mr. President, I thank the Senator. When the Senator's resolution calls on the President to propose an immediate suspension, does the Senator have any time frame in mind as to how long we should wait before we have an inspection agreement with the Soviet Union and whether, until such inspection is made, we should go forward with our present deployment and testing? For example, suppose the Soviet Union wants to mull this over for 6 months or for a year, are we supposed to suspend in the meantime, or are we suggesting, "Let us get busy on this now, and we will be happy to suspend the thing for a few days, but you have been reading about what has been going on here, you know what the question is. Give us a yes-or-no answer. We will go ahead with the SALT talks, but you have to agree. We want to know about it and fast. We are not going to hold up our programs waiting and waiting on you."

What is the view of the Senator from Massachusetts on that point?

Mr. BROOKE. Again I thank the Senator for that question. Let me answer him that it is my intent, as the proponent of this resolution, that we make the proposal, or that the President make the proposal, and that we stop nothing. We will continue our flight testing, and if our program calls for deployment in June and there is no response from the Soviet Union by June, we will go ahead with deployment. The Soviet Union knows we are about to deploy MIRV in June. If there is any other testing of weapons systems intended by the United States, we would by no means restrain them, restrict them, or limit them unilaterally. In other words, we would continue business as usual until and if the Soviet Union responds affirmatively and they themselves stop—not just respond—but stop with us.

I do not propose that we stop for a day anything we are presently doing until they agree to stop also. We should agree on a time and say at 12 o'clock noon, on April 16, both sides would stop deployment and stop operational testing. But if we make the proposal and they do not stop, or if they say, as the Senator has suggested, "Let us mull this over and we will get back to you"—which I agree has been their fashion historically—in the meantime things would still go on and we can only presume things will be going on as usual in the Soviet Union during that period as well.

Mr. MILLER. I appreciate that response from my colleague. I think it is a sensible response. I think it will allay concern a good many people have over the possibility that we might have in mind playing the waiting game to our disadvantage.

The final question, or perhaps it should be an observation that I have is as follows: I understand the title of the resolution is to be amended to read: "Resolution expressing the sense of the Senate on suspension of further deployment of offensive and defensive nuclear strategic weapons."

I am wondering, since this is a resolution expressing the sense of the Senate on suspension by both the United States and the Soviet Union, if that should not be made a clear in the title. I know that is what the Senator intends and it is what the colloquy has been about. Why not state in the title that this is the suspension by the United States and the Soviet Union? Let us make no bones about it.

Mr. BROOKE. That would be very helpful to the measure. I see no objection to it. I will discuss it with the Committee on Foreign Relations. It is certainly intended to apply to both the Soviet Union and the United States. If the Senator feels it should be included in the title of the resolution I would have no objection, and I will urge that the Committee on Foreign Relations adopt this suggestion.

Mr. MILLER. I appreciate the Senator suggesting he will urge it on the Committee on Foreign Relations, but after all, it is the Senator's resolution.

Mr. BROOKE. Yes.

Mr. MILLER. And it is supported, of course, by a number of the Senator's colleagues. I have the feeling that most of us in the Senate are in agreement on what we are trying to do. I am not ready at this time to say how I am going to vote on it, but I must say the legislative history being made here is most helpful and all I have attempted to do in the one or two suggestions I have made has been to point up further what I am sure the intention of the author of the resolution is, an intention which I think is very praiseworthy and which, if reflected in the precise language of the measure, will add more weight to it.

I thank my colleague for his fine responses.

Mr. BROOKE. Mr. President, I reiterate that I am grateful to the Senator from Iowa for his help in connection with making this legislative history. Again, I certainly hope that the Senator from Iowa will find it possible to support the measure and vote favorably upon it. But whether he does or does not, I wish to assure the Senator that, as he said, the legislative history to date has been very helpful and this in no small measure is due to the questions he has asked on the floor of the Senate this afternoon.

Mr. MILLER. Mr. President, if the Senator will yield I wish to add this footnote.

Mr. BROOKE. I yield.

Mr. MILLER. It seems to me we should try to secure the view of the Department of Defense on this measure. I would guess that the colloquy that has gone on here today in setting forth the legislative intent behind this measure would be particularly helpful to the Department in its analysis and in giving its views of the resolution.

Mr. BROOKE. I thank the Senator.

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

Mr. BROOKE. I yield.

Mr. COOPER. Mr. President, we have had a good discussion of the resolution before us. There have been good informative statements made by the chairman of the Committee on Foreign Relations, the ranking Republican member of the Committee on Foreign Relations, the majority leader, the Senator from New Jersey and, finally, of course, the Senator from Massachusetts (Mr. BROOKE).

I agree with the Senator from Iowa that providing legislative background on the resolution and immediately after its introduction has been helpful. There has been a lengthy and informative discussion and I would postpone my statement until next week, but for the fact that I am the author of the operating section of the resolution. My amendment expands the original Brooke resolution to include a mutual freeze of all offensive and defensive nuclear weapons of the Soviet Union and the United States. In its interpretation, I hope to be able to present views concerning its meaning and objectives.

First, I want to pay my respect and tribute to the distinguished Senator from Massachusetts (Mr. BROOKE) who, months ago, provided a major purpose and objective of this resolution. He introduced Senate Resolution 211 and brought before the Congress and the country the reality that if testing of MIRV should continue, with certain response from the Soviet Union, we would reach the point where verification would be difficult, if not impossible, where the deterrent possesed by both the Soviet Union and the United States would be destablized, the danger of a first strike increased, and the danger of a nuclear war and holocaust would be more likely. The Senator from Masaschusetts deserves the thanks and admiration of the Senate and the country.

I would say also that the Senator from New Jersey deserves admiration and respect for his initiative. As I recall, he introduced the first resolution dealing with the problems raised by further testing of MIRV. Foresight and vision was demonstrated by both the Senator from New Jersey (Mr. CASE) and the Senator from Massachusetts (Mr. BROOKE) on the problems which we are now beginning to deal with in the Senate today. The res-

olution before us grew from their initiative.

Since the Senator from Massachusetts introduced his resolution, actions and reactions concerning nuclear systems have occurred in the United States and the Soviet Union with respect to the testing, and deployment of new nuclear weapons systems.

The United States has announced that MIRV will be deployed. By its vote last year, the Congress approved the commencement of the deployment of the Safeguard ABM system. The U.S.S.R. has continued with the deployment of its ABM system at Moscow, and the deployment of the SS–9 at a rather rapid rate, which is a matter of concern to all of us.

I think we can assume that the deployment by the United States of additonal weapons systems will continue unless it is halted by the Congress. We can assume that the Soviet Union will continue the deployment of the SS–9, and perhaps expand its Moscow ABM system and build other systems. The United States has no means of halting Soviet action unless we can reach agreement in the SALT talks.

The President has said that the objective that this resolution seeks to achieve and the objective which the administration seeks to achieve through talks at Vienna are substantially the same. I think that is a correct statement, but there is an important distinction in the proposal we are making and the present position of the administration, it seems to me. The Senator from New Jersey (Mr. CASE) made this distinction clear in his statement on the floor during this debate. The distinction is this: The pending resolution asks the President of the United States to propose now, or at the outset of talks, a mutual suspension of the deployment of all defensive and offensive nuclear strategic systems. I repeat, the point is, in this sense of the Senate resolution that the President make this proposal at the outset of the talks.

We do not know what the response of the Soviet Union will be, but the proposal could test the viewpoint and purpose of the Soviet Union at an early date in the talks; and if the proposal were agreed to, it would make the talks very much easier.

Some have said that carrying out the proposal would be complex, and that it might take months to work out with the Soviet Union procedures for putting into effect a mutual freeze of nuclear strategic weapons systems of both countries. But we have been told by eminent scientific authorities in this country that the elements of a freeze are, in fact, simple and straightforward and not as complex as some suggest.

There are many ways that those charged with the negotiations could employ but, as a first step, the President could propose that the United States and the U.S.S.R. would halt at the outset of talks the deployment and further testing of all multiple warheads, both MRV and MIRV, the installation of multiple warhead systems, on Minuteman III and the Poseidon, and postpone deployment of the ABM system.

The quid pro quo required of the Soviet Union would be a halt of further deployment of its ABM system, further deployment of the SS–9 and SS–11, and suspension of multiple warhead testing, and deployment of multiple warheads.

Such a freeze, if proposed and accepted at the outset of the talks, would enable the negotiators to work out with care the very difficult and complex settlements on the many other and various asymmetrical nuclear weapons systems possessed by the United States and the Soviet Union.

Senate Resolution 211 provides advice of the Senate to the President that the United States take this crucial first step to find if it is possible to reach agreement at a time when our respective systems are in rough balance, when our systems are readily verifiable, and when any significant increase or modification of the systems would be readily monitored. That is the crucial point of the resolution—that the effort to secure a mutual freeze be made at the outset of the talks. Before the above factors, inducive to negotiation, have been radically altered.

I shall not today describe in detail the nuclear armaments of the United States and the U.S.S.R. They are in the remarks which I have prepared, and I will place the information in the RECORD when we resume the debate next week. We know that each possesses the capability of destroying the other and tens of million of human beings, even after having been subjected to a first strike.

We are now in the fourth stage of the nuclear arms race; from bombers, to land-based missiles, to submarines armed with nuclear missiles, and now the ABM and MIRV; and a number of other systems are hovering on the horizon.

At each stage in the development of these systems, the destructive power of both the United States and the Soviet Union has increased many times, and as the destructive power of such country has grown, so has the danger of nuclear annihilation.

The security of neither country has been increased or improved; it has been diminished. It is at this time of bleak prospect that the Soviet Union and the United States have the opportunity to halt the nuclear arms race.

There is hope for the present because both countries must acknowledge that it is not necessary to add to their existing power to improve their capability to destroy each other completely. That capability already exists many times over.

I would make a further point. The SALT talks are possible, I believe, because after 25 years of action and reaction, the amassing of vast stocks of nuclear weapons, the United States and the Soviet Union must have agreed, at least implicitly, that the continuing deployment of offensive and defensive nuclear weapons will not add to the security of either nation but will, in fact, only decrease that security.

The impending deployment of multiple warhead delivery systems and ABM systems by the United States and the continuing deployment of the SS–9 by the Soviet Union will create a sense of greater fear of each other, of doubt of the intentions of each other, and could destroy the mutual interest that we must believe have helped bring about the SALT talks.

The SALT talks, which will open on April 16, are certainly the most important we have entered into since the end of World War II. In my view, they can be the most important talks in which the United States has participated in its history. They can be the most important talks for the security of our country and for the security of the world that we have ever entered into, or will ever have a chance to enter into, unless these talks succeed. They may hold the issue of survival for most of the human race, and for civilization as we have known it.

A proposal by the President at the outset of talks to the Soviet Union for mutual suspension of all nuclear strategic systems, whether offensive or defensive, could be agreed to. I believe that if the President will so propose, he will find that he has the support of the overwhelming majority of the Congress, of the people of our country, and of the people of the world.

I hope very much that this resolution will be thoroughly debated, and that it will be adopted by the Senate of the United States and by the Congress—I will not say it is the last effort, but it affords a great opportunity—to halt the arms race, to achieve larger security for our people and the people of the world, and perhaps survival.

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

Mr. COOPER. I yield.

Mr. CASE. I want to thank the Senator for his contribution today and during the committee's discussion of this resolution by his proposal of the amendment—which the committee adopted unanimously—broadening the scope of the original resolution to include all strategic nuclear weapons, both offensive and defensive. He has very clearly summarized the objective which we seek by this resolution, and he has, with customary generosity, given credit to everyone else.

As a matter of fact, there is plenty of credit to go around, if this thing works. None of us is really seeking credit; we are simply seeking survival for ourselves, for our country, and for our progeny, as far as that goes.

The Senator is quite correct in emphasizing the importance of these negotiations. There is nothing more important going on in the world than the discussions about the limitation, and all of us hope eventually the reduction, of strategic nuclear weapons. This is in the spirit of the Nonproliferation Treaty, which was a specific agreement on the part of the Soviets and ourselves, and in which all parties, of course, concurred, that we would seek these limitations.

What we are really saying is, will the President please not just talk about a reduction, but reduce the number of strategic weapons, and halt further deployment at the point, at which we have now arrived, of rough parity. This is the point, of course, which makes possible an agreement between the Russians and ourselves. And it is undoubtedly the recognition that this point has been reached that is the reason why both countries

are willing to sit down and discuss the limitation treaty.

What we urge is that this halt be continued during the discussions, and not lost in the inevitable delays, which may well be unavoidable.

I look forward to further discussion of this matter with the Senator from Kentucky next week, and with anyone else who will join; and it is my hope, and I think now we see some prospect, that there will be unanimous action by this body on the resolution. If that is so, the share of the Senator from Kentucky will have been of enormous importance.

Mr. JAVITS. Mr. President, I would like to join with the Senator from New Jersey in stating my personal knowledge of the new direction which this resolution took upon the very gifted intervention of Senator COOPER in the Committee on Foreign Relations. The report of the committee by the chairman (Mr. FULBRIGHT) gives full credit for that to Senator COOPER, so that history may read and record that indeed it was his initiative which turned us to a grander design even than the fine start made in the idea which the Senator from Massachusetts (Mr. BROOKE)—in which so many of us joined, including the Senator from Kentucky, the Senator from New Jersey, and myself—had laid before the committee.

This leads me, Mr. President, to a very important aspect of this matter.

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

Mr. JAVITS. I yield.

Mr. COOPER. Since the Senator has made that statement, I should like to respond quickly.

First, the Committee on Foreign Relations has been considering this resolution since last year. Members of the committee have expressed their various views, and have expressed views, at times, of expanding it; and even in the meeting we had before this amendment was agreed to, we discussed ways in which the amendment could be strengthened or modified. I remember very well that the Senator from New York proposed language which furnished the seed of the language I offered. The Senator can remember that, when he proposed something like a moratorium. It all entered into this amendment. We have been working at it for 6 or 7 months.

I simply wanted to make that clear; I do not want to claim any exclusive credit.

Mr. JAVITS. We are giving it to the Senator. It is true that there were other inputs, but certainly the committee report, I think, is quite accurate in describing the Senator from Kentucky as the author of the fundamental thrust which this matter has now taken.

When we debated the ABM, our concern was that we were throwing another multibillion chip on the table in a two-man poker game, with the Soviet Union and ourselves as the only participants, and that therefore, if we could agree to stay our hands, it would save incalculable resources for both countries.

The answer given to us was that the Soviet Union does not care about ABM, that it has not put any block in the way of the SALT talks.

Of course, our response to that, Mr. President, was that the reason they do not care is because they are of exactly the same mind as some in the United States; because we cannot trust the other side, we must constantly seek to achieve, or maintain, military superiority.

All of this thinking is reduced to the most mundane popular level, to wit: "Let's get together and try to work out something out in the way of limitation, but until, when, as, and if we do, we are each going to go ahead and do everything we can to gain the advantage over the other fellow."

That is putting it bluntly and crudely, but that was essentially the situation.

So some new element had to be introduced. We were not just interested in the fact that this resolution be unanimous. Maybe it would be a good thing if it were not unanimous, because we want it to be meaningful. We want it to count, to have a punch and an impact.

Unfortunately, as the Administration has designed these SALT talks, this is the only way in which we can have an impact on them—by the Senate declaring itself in a statement of policy such as this.

Personally, I think the administration would have been very well advised—and it certainly was urged upon it—to have, as has happened on previous occasions in great international affairs, conferences, and agreements, Senate observers, at least, perhaps even Senate delegates. There is no reason why even the House of Representatives should not have been included in some form.

But the administration, in my judgment unwisely, did not choose to pick up that idea. So we have only this way, if we do have an idea, and a basic and important one, to express ourselves.

It is not too late, incidentally, for the administration to seek some reasonable congressional representation.

The old idea that everything that you tell Members of Congress somehow finds its way into the press has always seemed unjustified to me. We ran the Manhattan project with the full knowledge of Members of the Senate and the House during the war. We have secret things going on in a number of committees—Appropriations, Foreign Relations, Foreign Affairs in the other body, Atomic Energy, the Armed Services Committees of the respective Houses, and probably many others. In addition, it has always seemed to me to be a rather bad argument, because whom do we vest our confidence in abroad but parliamentarians? Indeed, in the parliamentary forms of government, every prime minister and every defense minister is a parliamentarian. Does this make them "security risks"? I hope very much that the administration may, even at this late date, reconsider its position.

But even the presence of observers or delegates of that character would not be as forceful as an expression of the Senate, the whole Senate, and that is the opportunity presented to the Senate in this resolution.

This resolution is important for another reason. It represents an acceptance by the Senate of the rough parity concept. I think it is critically important that we declare essentially what the President has declared, that we are no longer in a leap-frogging game with the major atomic competitor—to wit, the Soviet Union—and that we are ready to accept what is called rough parity in this committee report. The President has used the more ambiguous term of "sufficiency." I think the Senate's acceptance of the parity concept is a very consequential aspect of the adoption of this resolution. It would represent, in my judgment, a very significant contribution and could be of enormous help to the President in achieving the desired ultimate result—an effective limit to the strategic arms race.

This resolution is critically important because it raises our sights with respect to the SALT negotiation. Obviously, the objective is to arrive at a moratorium on the deployment of all these weapons—and I emphasize that word "deployment" because it is far more inclusive than the concept incorporated in the original Brooke resolution, which dealt with MIRV flight tests alone. This deals with deployment. It is the end point that counts. If you are going to agree in advance to a moratorium on deployment, then obviously the end result by which the world will judge the SALT talks can hardly be less. So the standard immediately set by the Senate, if it adopts this resolution would be an elevated one rather than a very limited one. We get away from the grocery counter in terms of bargaining over these atomic weapons. We do not want a haggling session of attempted piecemeal trade-offs. Such a concept of negotiation is certain to bring out the worst on both sides, to maximize distrust and deception, and to jeopardize the chances of significant results.

Even if we should succeed in freezing the arms race where it is, this is not by any means the end of the road. We still can destroy each other with what we have—even if we do not deploy anything further in the way of MIRV's or ABM's or MRV's or whatever new exotic hardware of destruction either side may develop. We have yet to arrive, by strengthening the United Nations or in some other way, at a far more rational operation of the world according to the rule of law rather than the rule of force. None of us should kid ourselves that we are doing anything but attempting to "cap the volcano." It is still there and can still blow us all up, even if we effectuate the very result which the Senate seeks in this resolution. But if you are going to move in another direction, other than the balance of terror, you have to stop somewhere in terms of building up the forces on both sides. For that reason also the resolution is an excellent one, in my judgment.

I repeat, Mr. President, that, in my judgment, a major achievement of the resolution so far as the policy of our country is concerned will be in having the Senate accept the concept of rough parity in strategic nuclear weapons with the Soviet Union. That is what this represents. That is the situation, in fact, that we have both lived with for some

years. The Russians accept it; we accept it. To me that represents a very great milestone in terms of the reduction of the mortal danger which faces all mankind in the specter of thermonuclear war.

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

Mr. JAVITS. I yield.

Mr. CASE. I want to thank the Senator from New York for underlining and underscoring the most important point which he has just repeated. He is absolutely right.

Of course, put another way, this rough parity, a condition of approximate equivalence so far as strategic weapons goes, as between the Soviet Union and the United States, is the only basis for any kind of agreement at all, as, I am sure, the Senator would agree.

Mr. JAVITS. Of course.

Mr. CASE. It emphasizes and underscores what I attempted earlier to point out—that we are not going into this in any way as a bargaining session or as a horse-trading operation, in which each side will try to outwit the other, or a session in which each side will confront the other and attempt to scare it into an agreement. We are going into it for the purpose of refining and defining our mutual understanding that both sides have an equal interest in maintaining this rough parity, which is the only basis for peace on earth.

Mr. JAVITS. The Senator puts one other point in my mind, which I would like to mention in this regard. It has been mentioned by Senator GURNEY—and it is quite an understandable concept—that the Russians do not understand anything but strength. If you do not negotiate out of strength, if you do not show strength, then they do not believe you, and they are not going to do anything.

But I think it is also important that we understand that when we have the strength, when it has been achieved, when we stand strong, then what do we do? Just get stronger? Or do we try to be a "closer," as we used to say in the business world. I know many people who are brilliant but they are highly unsuccessful businessmen because they never know when to "close." I think it is a very human and a very colloquial concept, but a very true one.

We must negotiate from strength; there is no question about that. We have strength. The Russians have strength. This is the time when the concept of rough parity should induce us both to "close." We are big enough and strong enough and confident enough so that we can make the offer. I do not think we need to stand on protocol or ceremony with respect to that. We are both strong enough so that we are talking from strength, and that is the time to close the deal.

Mr. CASE. My only comment would be that it is not only businessmen who sometimes do not know when to close. Lawyers have the same difficulty, too. I am not referring to the Senator from New York.

Mr. JAVITS. And diplomats and presidents.

Mr. CASE. That is right.

Mr. JAVITS. We also have to think about the degree to which these new weapons on our side and on their side is likely to trap us into an escalation of the atomic arms race. ABM and MIRV are the next generation of weapons systems that SALT is seeking to contain; they are, in effect, what SALT is all about, if it is to be significant and effective.

I believe that this resolution reflects the feeling that they have not given sufficient importance to the time lag in coming to an agreement on the SALT talks as compared with the, perhaps, irrevocable posture with regard to the next generation of strategic nuclear weapons if we both go ahead with ABM and MIRV. In the Test Ban Treaty and the Nonproliferation Treaty, we have already both accepted fair equality in terms of detection. No one has challenged that during the years the Test Ban Treaty has been in effect.

I think that is extremely important because of the tremendous expense of billions of dollars and the deprivation it would mean to both peoples if the deployment of the new generation weapons is not stopped. The sheer fact is that they may back us off the edge of the precipice so that we cannot, any longer, come to an agreement because it will go out of our hands. This makes this resolution and the idea which it proposes critically important.

Finally, I think again it should be emphasized that the idea of unilateral disarmament, the idea that we will be the "patsies" and come forward with a fine and beneficent proposal which is going to disadvantage us, is strictly exorcised by this resolution. It has been developed completely now by the Senator from New Jersey (Mr. CASE), the Senator from Iowa (Mr. MILLER), the Senator from Massachusetts (Mr. BROOKE), the Senator from Kentucky (Mr. COOPER), the Senator from Florida (Mr. GURNEY); but it needs to be emphasized.

No one is talking about unilateral disarmament. No one is talking about anything but a mutual freeze. So that any discussion about the fact that it may cause us to relax our guard, that the next step will be that someone will suggest, "Do it yourself and they will follow," and all that, we exclude that expressly and we say so in so many words. We will make the proposal, if this resolution passes, if the President adopts what we urge in this resolution as the judgment of the Senate. But we will not stop our national security efforts, our vigilance and preparation. We will not delay. We will not be mawkish about it. We will propose it and push it. It must be mutual, not just out of courtesy, or in thought, but in fact.

We are not in any way proposing opening up the United States to be disadvantaged in this deadly competition.

For all these reasons, Mr. President, I believe that the committee, of which I have the honor to be a member, has brought in a highly important and highly constructive resolution, and I hope very much that the Senate will overwhelmingly approve it.

Mr. President. I yield the floor.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the pending business be temporarily laid aside.

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

Mr. MANSFIELD. Mr. President, that complies with the rule of germaneness. What is the next order of business? Is it business in connection with certain Senators? Who is the first Senator to be recognized?

The PRESIDING OFFICER. Yes. The Senator from Florida (Mr. GURNEY) is scheduled to speak next for not to exceed 30 minutes.

Mr. MANSFIELD. Mr. President, with confirmation of the Senator from Wyoming (Mr. HANSEN), while we are waiting for the Senator from Florida (Mr. GURNEY), who is next to be recognized, I should like to be allowed to proceed for 6 or 7 minutes, and ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

U.S. FORCE LEVELS IN GERMANY

Mr. MANSFIELD. Mr. President, a statement by the Defense Minister of the Federal Republic of Germany, Helmut Schmidt, was published in the April 2 issue of the Washington Post. Entitled "Bonn and the U.S. Presence," the statement sets forth most articulately the German Defense Minister's views on U.S. force levels in Germany. Like his predecessors, Mr. Schmidt is apparently opposed to any reduction in the level of our forces in Germany unless certain conditions, including some reduction of Soviet forces in Eastern Europe, are met. I ask unanimous consent that the full text of Mr. Schmidt's statement be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MANSFIELD. Mr. President, I have spoken on the subject of our forces in Europe many times on the floor of the Senate in connection with resolutions I have proposed calling for a substantial reduction of those forces. I will not impose on the time of my colleagues to recapitulate today the remarks I have made previously. I would like, however, to make a few brief comments on Mr. Schmidt's statement, principally to set the record straight on this matter that is of such importance to the United States.

I would refer, first of all, to Mr. Schmidt's observation that there seems to be a great debate regarding the relationship between Europe and the United States every 10 years and that another great debate is in the offing which will "revolve around the questions of America's future political position in Europe and of the number of American troops that would have to be kept in Europe to maintain the credibility of the American commitment to the defense of the Old World." I most respectfully beg to differ with the implication that the number of American troops that should be kept in Europe is a new subject of discussion in this country. On the contrary, the question has been debated for many years. It was more than 3 years ago that I first introduced a resolution, Senate

Resolution 49, calling for a substantial reduction of U.S. forces permanently stationed in Europe. And the debate had begun far earlier than that. In an interview published in the Saturday Evening Post of October 26, 1963, President Eisenhower stated:

Though for eight years in the White House I believed and announced to my associates that a reduction of American strength in Europe should be initiated as soon as European economies were restored, the matter was then considered too delicate a political question to raise. I believe the time has now come when we should start withdrawing some of those troops . . . One American division in Europe can 'show the flag' as definitely as can several.

I ask unanimous consent that the full text of the interview with President Eisenhower also be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. MANSFIELD. Mr. President, Mr. Schmidt makes a number of factual assertions in his statement, facts that he says speak for themselves, which I think deserve some mention. He states that the 12 West German divisions "are, in fact, 12 divisions." It is my understanding that three of these divisions are short one brigade each and that there are certain other deficiencies in the West German Army that need to be made up, in such areas as reserve training and the supply of noncommissioned officers. I should add that I have full confidence in the West German Government's determination to overcome these deficiencies.

Mr. Schmidt also states that the West German defense budget for 1970 represents an increase of 6.8 percent over the previous year. To set that figure in context, I would like to point to a number of other percentages. According to the latest figures available, 8.7 percent of the men of military age in the United States are in the Armed Forces compared to 4 percent in Germany. In 1968, the last year for which such figures are available, defense expenses per capita totaled $396 in the United States and $87 in West Germany, and I should note that the defense expenditure per capita in Germany was lower than that in Britain or France among the NATO countries. Again taking the figures for 1968, defense expenditures as a percentage of the gross national product were 9.2 percent in the United States compared to 3.9 percent in West Germany, a percentage lower than that of Britain, France, Greece, and Portugal, among the members of NATO. These facts, too, speak for themselves.

Mr. Schmidt concludes his statement with a frank admission that further offset agreements to balance some portion of the foreign exchange costs we incur by maintaining the present level of our forces in Europe are going to be difficult because there is no longer a need to place large arms orders in the United States, and he notes that budgetary contributions would have to come out of the German defense budget and thus apparently are not being contemplated. An editorial in the Washington Post, which also appeared in the April 2 issue, commented on Mr. Schmidt's statement by saying that this part of the Defense Minister's article "ought not to satisfy an American administration already hard pressed by urgent defense and domestic needs." I agree. I ask unanimous consent that the full text of the editorial be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. MANSFIELD. Mr. President, it was not my intention to take the floor of the Senate today. I had intended to remain quiet until after the visit of Chancellor Willy Brandt next week. I felt that it was only the proper thing to do. However, in view of the fact that this statement was made by the Defense Minister of the Republic of West Germany, I felt it only fair that a reply should be made.

EXHIBIT 1

BONN AND THE U.S. PRESENCE

(By Helmut Schmidt)

It seems to be almost a law of postwar history: every 10 years a great debate about the relationship between Europe and the United States is being conducted across the Atlantic.

In the early fifties this transatlantic debate led to the great European divide. In the early sixties the debate—frequently reminiscent of a theological dispute—turned upon, the life-and-death issue of nuclear strategy; nuclear sharing and nuclear co-determination were the catchwords.

Now another great debate between Europe and America is in the offing. Clearly, it is going to revolve around the questions of America's future political position in Europe and of the number of American troops that will have to be kept in Europe to maintain the credibility of the American commitment to the defense of the Old World.

The administration has pledged time and again that the present level of U.S. forces in Europe will be maintained until mid-1971. I have no reason to doubt the validity of this pledge. Yet I also realize that the pressure is building up in various quarters to scale down the American presence in Europe; and I cannot but worry about some aspects of the public discussion getting under way in the United States.

First of all, there is frequently fundamental misunderstanding of what the American commitment is all about. The presence of U.S. troops is a significant contribution to European defense. But it is much more than that; an earnest of the American commitment, and as such the key element of Western deterrence. Basically, it is a contribution to America's own security; the front line of defense against the rival super-power, the fulcrum of the global balance, and the chief stake in the competition between the United States and the Soviet Union.

The second feature of the internal U.S. debate that gives cause for concern is the misrepresentation of several crucial facts by some of the leading protagonists. They conjure up the picture of a Europe sitting idly on its haunches, satisfied to leave its defense to the Americans. This is a false picture.

I hold no brief for my colleagues in Europe, but I can set the record straight with regard to the Federal Republic of Germany. These are the facts:

Contrary to recent allegations, the 12 West German divisions are by no means "only the equivalent of eight or nine divisions." They are, in fact, 12 divisions, and fully meet the requirements of the Atlantic Alliance. We have NATO's word for this.

The defense budget for 1970 shows an increase of 6.8 per cent over the previous year.

Since the invasion of Czechoslovakia we have put an additional 23,000 men into uniform. The total strength of the Bundeswehr now stands at 472,000. And we have taken a number of remedial measures to make up for the reduction of Canadian forces, such as putting an extra armored regiment and a new airborne brigade into service, and facilitating the return to Germany of the British Sixth Brigade.

West Germany's regular armed forces are being restructured to match the concept of flexible response. At the same time, a large-scale effort has been launched to make better use of our reserve potential.

Costly modernization programs have been initiated to increase mobility, firepower and staying power.

These facts, I think, speak for themselves.

The most important feature of the debate is its detrimental impact on East-West relations. Curiously, some of the most vociferous advocates of U.S. withdrawals from Europe happen to be men who simultaneously favor a policy of rapprochement toward the Warsaw Pact countries, as it is at present pursued by the Bonn government. But dismantling the psychological foundations of NATO is certainly a wrong way toward detente. If there is hope at all of lowering the level of confrontation in Europe, it is the hope of reaching an East-West agreement on mutual and balanced force reductions. Unilateral withdrawals, however, will deprive the Soviet Union of their main incentive for mutuality. Some advocates of U.S. troop reductions would sound a lot more consistent and convincing if at the same time they also advocated Soviet withdrawals and, toward that end, pressed for East-West negotiations about mutual and balanced force reductions parallel to SALT.

Finally, I am worried by some of the facile assumptions about feasible alternatives in the event of U.S. troop withdrawals from Europe. Let's take them one by one.

A combined European effort to make up for the disputed drain may be highly desirable but I see little chance for it in the short run. Who would imagine for a moment that any European force could be a substitute for the political weight and the deterrent value of the Seventh Army? And who would seriously argue that a European armada could have the same psychological and political effects as the Sixth Fleet in the Mediterranean?

Nor could the gap be filled by a German national effort. Lack of money, manpower and popular support would preclude such a solution—quite apart from the grave political effects it would have in the East as well as in the West.

By the same token, continued German payments for continued American presence offer no feasible way out. We have reached the end of the buildup phase of our armed forces. There are no longer any large arms orders that we might place in the United States, so further offset agreements are going to be difficult. Budgetary contributions, on the other hand, would have to come out of the German defense budget; we would mend one hole by opening up another. We will take a serious look at this problem later on if it arises, but I doubt strongly that we can come up with any solutions. Likewise one will probably find it very hard to realize multilateral burden-sharing projects.

So what should we be doing? First, I think we should beware of raising our voices in a new transatlantic debate. Second, we should realize that we are faced with the same problems: shortage of funds and men, a host of pressing domestic needs, and skeptical public opinions vis-a-vis the military. Thirdly, we should make a studied and concerted effort to counteract the forces that tend to pull us in different directions at the moment.

American withdrawals from Europe, of course, need not be ruled out forever. And they would not necessarily be damaging to the alliance, provided a number of "ifs" were

observed: if there was a joint concept from which to proceed; if there was a combined effort to remove inconsistencies of our defense policies and to streamline our defense structures; if reduction of troops did not imply reduction of commitment. And if, finally, a successful effort was made to instigate a similar thinning-out operation in Eastern Europe. On any other basis, a U.S. pull-out would be dangerous.

All this amounts to a tall order—and calls for a concerted effort. President Nixon's report on American foreign policy for the seventies constitutes an encouraging first step. We welcome the invitation President Nixon extended to Europe for "a full and candid exchange of views with our allies."

EXHIBIT 2

LET'S BE HONEST WITH OURSELVES

(Eisenhower interview with Saturday Evening Post, Oct. 26, 1963)

Our country's responsibility for helping to maintain world peace, for meeting and turning back the enslaving forces of Communism, for aiding the family of free nations to build for a more secure future—these are not distant and apart from our daily life. Rather they are an extension of it. The character and strength the United States brings to world councils can only reflect the inner courage, strength and wisdom we have developed as a nation. This is national morale, and it is my unshakable conviction that morale, even more than sheer power, is the deciding factor in the fate of a nation. I recall vividly the inspiring example of Great Britain in the early years of World War II, when that nation seemed on the verge of defeat and ruin. Yet despite her bitter losses and reverses, her people had the morale—and little else—to keep on fighting until the tide turned.

This is the kind of morale that inspired Washington at Valley Forge, Lincoln after Chancellorsville, our nation after Pearl Harbor. In peace such inner strength enables us to be purposeful and firm, without being truculent; and if ever again we should have to face the test of war, that kind of morale will be absolutely essential to our survival.

In this nuclear age any prospect of war may seem unthinkable, but *think* about it we must, as long as any threat exists. As a practical matter, I do not believe that war between the United States and Russia is inevitable, as some people insist, because these two nations now have too much knowledge of and respect for the nuclear strength of each other. Each has too much to lose. But if we face the facts of life, we know that the threat itself cannot be wished out of existence as long as the two great powers of the world, motivated by mutually antagonistic philosophies, have vast arsenals of nuclear warheads and the missiles to deliver these weapons to any point of the globe. We cannot abate our efforts to achieve a world of law. Yet until that achievement we must continue to live indefinitely in an uneasy armed truce, constantly alert to see that a potential enemy does not gain any decisive advantage over us.

Frankly, without in the least minimizing the perils of nuclear war, I am more immediately concerned over the schemes of a militant Communism to achieve world domination by other means. These will severely test the *staying power* of self-government—the self-discipline of democratic peoples. We all know, in a general way, of the Communists' plans to communize and dominate the people of the earth by whatever means promise success in a given situation—subversion, infiltration, disruption, terrorism, *coup d'état*. The one thing of which we can be absolutely sure is that the Communists will continue—with a zeal for an unworthy purpose that we can scarcely understand—to probe for weak spots in democracy, seeking to break down cooperation between free nations. They will not hesitate to use military or quasi-military force, as they have in Korea, Cuba, Vietnam and Laos, whenever they see an opportunity to catch us off balance. We must have the will to continue this tedious and costly struggle.

In our dealings with the Communists—and we must deal with them one way or another in this world—I believe we should keep reminding ourselves that *the basic conflict between their system and ours is a moral one*. Our form of government is based on deep-rooted spiritual values which go beyond man himself. These are spelled out in the familiar phrases of the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights. . .." The generating force of our democratic government is a belief in these God-given rights and in man's inner obligation to deal fairly and honestly with his fellows.

The Communists see our moral precepts as a direct threat to their ideology, which starts by denying these priceless principles. They deny that the individual has either a soul or unalienable rights, viewing him as little more than an educated animal, subservient to an all-powerful state. Their atheistic, materialistic doctrine therefore justifies ruthless domination over others, including summary executions of innocent people—practices that to us are morally and legally abominable.

On the evidence it seems clear that the Communist leaders realize that our free system is far more appealing to most human beings than anything they have to offer. If they did not so believe, why do they prevent free elections in their satellite nations? They fear, and rightly so, that Communism never can exist permanently side by side with prosperous, self-governing nations. To save the system to which they are dedicated, they zealously believe they *must* destroy competing forms of government by any means. They are deterred only by risks that appear to them to be unacceptable.

From a practical, day-to-day standpoint, this means that we must judge all negotiations with Communist nations with our eyes wide open to their long-range goals. For example, we dare not interpret the new treaty for suspension of nuclear tests in terms of a "breakthrough" toward peace in the Cold War. We would be abandoning our common sense if we considered it as evidence that the organic nature of Russian Communism had changed. At the same time, we should do everything within reason, and consistent with our own security, to lessen the areas of tension and reduce humanity's nuclear risks.

If the Russians observe the agreement, the world will, of course, gain a greater margin of safety from radioactive fallout. We all could breathe a bit easier, literally and figuratively, but we should know by now that Soviet Russia cares little for the pledged word, or for the opinion of mankind. I remember only too well when, in 1958, I authorized a moratorium on nuclear testing in the atmosphere for a fixed period. The Soviets, far from feeling any obligation to relieve the fears of humanity, rapidly prepared a vast series of explosions which greatly increased the radioactivity in the atmosphere. Although we had then been well ahead of the Russians in nuclear techniques, these tests indicated that in certain sectors the situation may have changed. We know that they have exploded more-powerful nuclear bombs than we then had in our arsenal—one of them being of at least 58-megaton force.

Many of our scientists believe that such massive bombs represent mainly a propaganda gain, a means of spreading fear among unthinking people, and not a military advance. They point out that, first, both sides have more than enough nuclear power to destroy each other and, second, that several well-placed 10-megaton bombs would do more actual damage than one 100-megaton weapon. In any case, our past experience with Soviet Russia clearly demonstrates that we must be on guard against any cheating on the treaty.

Despite these doubts, I expressed my belief that the treaty must be tried. Most nations are desperately anxious to see a halt to radioactive pollution of the air they breathe; and more than 90, I was told, had signed the treaty even before the U.S. Senate had an opportunity to act on it. All these peoples have fervent hopes that this limited agreement may lead to other steps for lessening of tensions—and ultimately to genuine disarmament. We should pray that those hopes are realized in full—but at the same time we cannot afford to let unsubstantiated optimism blind us to the fact that the treaty itself is scarcely more than an experiment.

We should keep in mind, too, that the sudden decision of Soviet Russia to sign this partial test ban did not spring from any newfound spirit of friendship and cooperation. While Russian motives are always hidden, we can speculate that the men in the Kremlin may have wanted to ease tensions and perhaps set the stage for possible aid on Russia's western flank while engaged in an apparently bitter ideological dispute with Red China. We have no way of knowing whether or not this schism between the two Communist powers is genuine or is a massive hoax designed to weaken the unity of the free world. If it is genuine, we may find practicable means of deepening and widening that breach, thus seriously diminishing the total thrust of Communism. But again we must remember that the two Communist powers are not quarreling about their goal of world domination, but merely about the methods by which they seek to achieve it.

In any case, the security of the free nations must depend on their continued close cooperation to meet the challenges of totalitarianism, whatever form these may take. We should put our lesser quarrels into this perspective, work out friendly settlements, and get on with the overriding job of making democracy work. Just as among members of a family, there will always be differences of opinion, but we should be able to thresh these out without breaking up the furniture.

In the newspapers these days I read much about the supposed shortcomings of many of the nations with whom we are associated in mutual-security efforts. It is true that few countries could say in all candor that they are fully meeting all of their own responsibilities. Many obviously are not carrying their fair share of the military and economic load. Others are not facing up to these reforms which are essential to their own sound development. Some are seeking a temporary advantage, at grave risk to their long-range future, by playing both sides against the middle in the Cold War.

However, before pointing fingers in other directions, I strongly feel that the United States must look to certain of its own glaring deficiencies—especially its lack of a sound federal financial policy. Others might place different problems, such as lack of a consistent long-range policy in foreign aid, in higher priority; but I put our fiscal situation as No. 1 because, unless we act on a sound track financially, we may undermine our whole structure.

I have written before in these pages on the dangers of overspending and goverment-inspired inflation, but I want to reemphasize that this is not an isolated domestic problem. It projects an image of weakness, not strength, to the world. It threatens the world's confidence in the integrity of our money. There is much concern because our international-payments deficit now is running at the rate of $5.2 billion a year, and the Administration has proposed various regulations and taxes to discourage the investment of American capital abroad. However, such temporary and restrictive expedients merely deal more with symptoms than with the basic disease itself. We know that the sound, long-range answer is to get our federal

spending under control and work toward balanced budgets and dollars of assured buying power, as well as to minimize unnecessary and undesirable expenditures abroad. This is not an easy solution, but it is the only way to give ourselves and the world solid proof that we have the self-discipline to protect the integrity of our monetary system.

As one part of such a program I believe the United States has the right and the duty of insisting that her NATO partners assume more of the burden of defending Western Europe. When I went back to Europe in 1951 to command the forces of NATO, the United States agreed to supply the equivalent of six infantry divisions which were to be regarded as an emergency reinforcement of Europe while out hard-hit allies were rebuilding their economies and capabilities for supporting defense. Now, 12 years later, those forces, somewhat reinforced are still there.

Though for eight years in the White House I believed and announced to my associates that a reduction of American strength in Europe should be initiated as soon as European economies were restored, the matter was then considered too delicate a political question to raise. I believe the time has now come when we should start withdrawing some of those troops. I know that such a move would have many repercussions.

Although we have invested billions of dollars in air and naval bases and have built up a supply system all over Europe, to say nothing of the billions we have spent in developing the deterrent power for the entire Free World, all this does not seem to have the same effect of "showing the flag" as far as Europeans are concerned, as the presence there of U.S. ground troops. But the fact is that we have carried and would continue to carry out fair share of the NATO responsibility. [One American division in Europe can "show the flag" as definitely as can several.]

It would be helpful, at this time, to put all of our troops abroad on a "hardship basis"—that is, send them on shortened tours of foreign duty and without their families, as we do in Korea. Unless we take definite action, the maintaining of permanent troop establishments abroad will continue to overburden our balance-of-payments problem and, most important, will discourage the development of the necessary military strength Western European countries should provide for themselves.

The time has come, also, when we must take into account the effect of the population explosion on our mutual-assistance system. I don't propose to go into the much discussed causes and effects of this phenomenon; I simply want to stress the responsibility we have for finding some realistic means of containing this human explosion. Unless we do, it may smother the economic progress of many nations which, with our technical and economic assistance, are striving to build a decent standard of living. The world population, now above the three billion mark, will have reached 3.5 billion by 1970 and will have doubled to six billion by the year 2000. A large proportion of this increase is occurring in countries which are having difficulty in feeding and clothing their present populations and desperately need a little elbow room while they improve their resources.

Countries such as these need, more than anything else, some means of holding their population growth in check for some period, say 10 years or more, to provide a building spell during which they could construct sound technical foundations for a steady, balanced progress. Otherwise, I just don't see how we can effectively help them for the long pull. There is no real progress or security to a nation which, with outside help, raises its productive capacity by two percent a year while the population rises three percent.

Population control is a highly sensitive problem, of course. When I was President I opposed the use of federal funds to provide birth-control information to countries we were aiding because I felt this would violate the deepest religious convictions of large groups of taxpayers. As I now look back, it may be that I was carrying that conviction too far. I still believe that as a national policy we should not make birth-control programs a condition to our foreign aid, but we should tell receiving nations how population growth threatens them and what can be done about it. Also, it seems quite possible that scientific research, if mobilized for the purpose, could develop new biological knowledge which would enable nations to hold their human fertility to nonexplosive levels without violating any moral or religious precepts.

Of all the questions which worry the world, the one I wish I could answer positively is, "Can we ever have *real* peace?" The paramount goal of our times should be an era in which peoples and nations, free of the fear of war, could drop the sterile burden of vast armaments and devote their God-given resources and energies to building a better civilization.

Yet we know there is no golden road to peace. Peace is not, for example, a matter of a few world leaders getting together to parcel the nations of the globe into various spheres of power. It is not to be gained by imposing the will of the United States on other nations, any more than we can gain it by appeasing those who would dominate *us*. We want no Pax Romana or a modern substitute therefor.

Peace is a blessing and, like most blessings, it must be earned. As a nation, we can best work toward it by determined effort in advancing and supporting sound cooperation within the family of nations for mutual security and economic progress. We should work toward the liberation of the United Nations from subservience to pressures of arrogant dictators and excessive nationalism. We should assist in building it into a genuinely world-representative organization where nations can and will settle their disputes objectively and without resort to arms.

And above all, I repeat, we must face with honesty the test our democracy continually puts to its citizens: to build within ourselves and our children an abiding sense of those moral principles which must continue to be our inspiration. Only our individual faith in freedom can keep us free.

EXHIBIT 3

THE UNITED STATES AND EUROPE: ANOTHER GREAT DEBATE?

(Washington Post, April 2, 1970)

We are publishing on this page today an article by Mr. Helmut Schmidt, the Defense Minister of West Germany, who is coming to town to talk to our Defense Secretary, Melvin Laird, in preparation for next week's visit to Washington of West German Chancellor Willy Brandt. We print it not because we necessarily agree with it but because we take it to be the opening position of the Federal Republic in what promises to be the joining of a critical issue over our future military role in Europe. Mr. Schmidt predicts "another great debate between Europe and America" and apparently does not relish the idea. "We should beware of raising our voices in a new transatlantic debate," he warns and right there we specifically disagree. A debate of some sort is inevitable and it probably wouldn't hurt if it got a little rowdy because the issue raised by Mr. Schmidt is not one that can easily be brushed aside. What it comes down to is the question of our military presence in Europe in the future—how big a force we will maintain, how much our allies will do on their own behalf, and specifically what the West German contribution will be, for the Germans are clearly the key to Europe's defense.

A good part of what Mr. Schmidt has to say seems inarguable to us. The allies should work this out in concert; a precipitate, unilateral U.S. withdrawal could be calamitous. Any one-sided drawing down of force levels on the Western side might well be mis-read by the Russians; and there is much to be said for his argument that it might also throw away an opportunity to negotiate reciprocal thinning out of troops on both sides of the line as part of a broader European security arrangement.

Thus we would agree with him that nothing abrupt be done by us to upset the status quo. The Nixon administration has wisely agreed to this, at least until the middle of 1971, and General Westmoreland, the Army Chief of Staff reaffirmed this just yesterday in a speech in which he advocated no change in our 310,000-man European force for at least two years.

So far, so good, except that it doesn't end there, if you take seriously, as we do, the sentiment of the Senate, where a majority seems to favor a resolution framed by Senator Mansfield which would in fact call for heavy cuts in our force levels in Europe right away. If some heed is not taken of this sentiment, it will probably harden into a determination, not just to express the sense of the Senate in a resolution, but into something more forceful, such as an amendment to the defense appropriation denying the necessary funds.

Mr. Schmidt offers no realistic way out of this confrontation. The Germans cannot provide more troops, he argues, not only because of domestic political reasons, but because neither their friends nor their enemies want a bigger West German army. But he goes a lot further than that in saying that the West Germans cannot even continue to offset the balance of payments losses we suffer from keeping troops in Europe—let alone ease our burden by paying some share of the budgetary cost of our troop presence. This is not going to be enough for Senator Mansfield and those who have signed onto his resolution. And it ought not to satisfy an American administration already hard pressed by urgent defense and domestic needs. Something will have to give, and it is not too much to say that some evidence of West German give may have to emerge from the Chancellor's talks with President Nixon if the transatlantic debate which Mr. Schmidt fears so much is not to turn into a donnybrook.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous unanimous-consent agreement, the Senator from Florida is recognized.

Mr. McGEE. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. GURNEY. I yield.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

PROPOSED PAY INCREASE FOR POSTAL AND OTHER FEDERAL EMPLOYEES—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate the following message from the President of the United States:

To the Congress of the United States:

Yesterday, the government negotiated a settlement with its postal employees.

This settlement could not properly be made in isolation from the needs of all Federal employees. In dealing with the special needs of the postal workers, the government representatives took into account the context of the Federal government's relations with its entire work force.

It should be noted that this negotiation took place only after the postal work stoppages had ceased.

One who works as a government employee agrees not to strike. But, concomitantly, the government has an obligation to insure each of its employees fair treatment so long as each lives up to his or her obligations.

The government is committed by law to a pay policy of comparability; that is, pay levels should correspond to those in business and industry. The agreed-upon government-wide pay increase complies with this standard.

This Administration is committed to a policy of pay-as-you-go. I believe that we have an obligation to provide revenues to meet the increased expenditures involved in this settlement. This is only good business and it is insurance against inflation.

1. *I propose that the Congress enact a pay increase of 6% for all Federal employees, paid under statutory salary systems, including members of the armed forces, retroactive to the last pay period at the end of calendar 1969.*

2. At the same time, *I urge the Congress to take action to reform the postal service.* Had this action been taken earlier, the postal work stoppage would have been averted.

The Congress must recognize the need to modernize the postal system, to improve working conditions and to give employees and management an effective medium for bargaining.

The proposed postal reform will be worked out in an agreement between the postal unions and Department representatives. The settlement provides that this work will be completed by April 10. I feel confident that a reorganization can be agreed upon which will meet our mutual goals.

3. Immediately upon enactment of postal reform, the process of collective bargaining will begin. In recognition of improvements in postal operations, *the results of such bargaining will include an increase in wages of at least 8%* in addition to the government-wide increase.

4. It has also been agreed in negotiations this week that the inequities created by the need to wait 21 years to move from the entry to the top rate in a job classification should be removed by reducing this to an 8-year period.

Postal revenues: To pay as we go for the postal salary increase and to eliminate the current postal deficit of about $600 million, *I urge that the Congress raise first class postal rates to 10¢ for regular first class mail as soon as possible.* This increase will produce added revenues of approximately $2.3 billion.

We are going to move to bring all rates except those for the blind and non-profit organizations to levels where they will cover at least their demonstrably related costs. As a first step under this policy we are proposing measures which will increase second and third class postal revenues $120 million in FY 71.

An adjustment in the schedule of parcel post rates will also be sought to produce $125 million in revenues. Government mail reimbursements will be increased by $89 million.

In all, I am proposing added postal revenues by Congressional and administrative action of $2.6 billion. These revenues are essential to meet the salary needs of postal workers, to wipe out the postal deficit, and to contribute to the efficiency of the postal system.

General revenues: To pay for the 6% increase to all government workers, which will cost $1.2 billion in fiscal 1970 and 1.3 billion additional over the $1.2 billion already included in the fiscal 1971 budget, *I propose that the Congress consider further actions which will result in some modification of our 1971 budgetary program.* The 1970 additional outlays can be met from budgeted and surplus funds.

At the beginning of my Administration I made the basic decision that the Federal government must start to live within its means. The long inflation that began after 1965 had its roots in a string of unbalanced budgets capped by the $25 billion deficit in FY 1968. To restore order in the economy the Federal government's first responsibility was to restore order in its own finances.

The tax program which I put before the Congress a year ago called for a balanced set of reforms, at the same time making provision for total revenues that would match the prospective outlays.

Prospective revenues for FY 1971 in the tax bill that finally reached my desk last December were more than $3 billion below what my own recommendations a year ago would have provided. I expressed my grave misgivings about that revenue shortfall. I finally decided that, time having run out for the last session of the Congress, there was no alternative but to sign the bill and put before the Congress in my Budget Message a program of expenditures consistent with these reduced revenues.

That was done. It was an austere program. Important programs were sharply curtailed or entirely eliminated. A major omission was the overdue pay increases to Federal workers.

This tax bill has forced on the Federal government a level of wage outlays that is inconsistent with any reasonable estimate of wage level decisions in this session of the Congress.

Yet I cannot and will not participate in an excursion into fiscal irresponsibility. That would re-awaken skepticism about our determination to quell inflation, just when clear evidence of progress is in sight. And savings diverted into financing a deficit mean reduced funds and resources for housing, for State and local government projects, and for the capital formation essential to our ongoing productivity and economic progress.

Therefore, I call upon the Congress and the Nation to face in future years the realities of our Federal budget. We must pay the bills for the wages that we vote. We must pay just wages in government. These involve more outlays than the revenues that last year's tax bill would produce.

I firmly believe that, given the facts, the American people will support the Congressmen with the courage to do what is right.

Putting the public interest first, it is right to build confidence in the integrity of the dollar, which we will do by redeeming our pledge of an anti-inflationary budget.

Putting the public interest first, it is right to insist on a course of economic stability that will lead to price stability, job stability, and a balanced use of our resources.

I propose the following additional revenue which will neither require extending the surtax nor raising income tax rates: The 1971 budget forecasts the collection of $3.6 billion of estate and gift taxes in the coming fiscal year. *I propose to accelerate collection of these taxes, which would add an estimated $1.5 billion in receipts in fiscal 1971.* As a result of the pay increases recommended in this message, I estimate that $180 million per year will return to the government in personal income taxes.

The total of these added revenues to the fiscal 1971 budget would be about $1.7 billion.

It will be recognized that this estate and gift tax acceleration will only provide additional revenue for one year. It will be necessary for the Congress to consider and adopt permanent revenue measures for FY 72 and following years to meet these additional wage outlays.

Within the next 10 days, legislation will be prepared to achieve the recommended wage increases, the reorganization of the Post Office Department, the postal rate changes and the 1971 gift and estate tax revenues measures described.

I cannot stress too strongly my support of early adoption of all of these interdependent and necessary actions. Each will relate to and depend upon the others. I request the Congress to act upon all, at once, to afford deserving employees an equitable pay adjustment, to provide badly needed reorganization to our postal service and to adopt the proposed pay-as-you-go revenue program to support these needed changes.

RICHARD NIXON.

THE WHITE HOUSE, *April 3, 1970.*

PAY INCREASES FOR POSTAL EMPLOYEES AND MEMBERS OF THE ARMED SERVICES

Mr. BYRD of West Virginia subsequently said: Mr. President, I ask unanimous consent that the message from the President of the United States on pay increases for postal employees and all other Federal employees and members of the armed services be referred jointly to the Committee on Post Office and Civil Service and the Committee on Finance.

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

ORDER OF BUSINESS

Mr. BENNETT. Mr. President, will the Senator from Florida yield to the Senator from Rhode Island (Mr. PELL) and

me briefly so that we may conduct a necessary report to the Senate?

Mr. GURNEY. I am glad to yield to the Senator.

STATEMENT OF POSITION OF SENATOR BENNETT AND SENATOR PELL ON NOMINATION OF JUDGE CARSWELL AND EXPLANATION FOR ABSENCE FROM SENATE NEXT WEEK

Mr. BENNETT. Mr. President, the Senator from Rhode Island (Mr. PELL) and I have been selected to represent the Senate as observers at the meeting of the Asian Development Bank to be held next week in Korea. We have both waited until this late date to make sure there would be no hindrance that would prevent either of us from going because we want our absence to have no effect on the voting on any of the Carswell motions.

If I were here next week to vote I would vote against recommital and if given an opportunity I would vote for the confirmation of Judge Carswell.

The Senator from Rhode Island (Mr. PELL) can explain his position but I think we can now go on and fulfill our assignment abroad on the assumption that we have a true dead pair which will not change the result of the vote.

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

Mr. BENNETT. I yield.

Mr. PELL. Mr. President, I rise at this time to state that the senior Senator from Utah (Mr. BENNETT) and I will be accompanying Secretary of Treasury Kennedy to a meeting of the Asian Development Bank in Korea next week.

Since the Senator from Utah is a supporter of President Nixon's nomination of Judge Carswell to fill the current vacancy in the Supreme Court, and I am an opponent of that nomination, we will be paired.

In this regard when it comes to referring the nomination back to the Committee on the Judiciary I would vote to refer back this nomination just as the Senator from Utah would oppose doing so. And, if this motion to report back the nomination is defeated and the Senate is called upon to vote upon Judge Carswell's confirmation, I would vote "no" just as the Senator from Utah would vote "yea."

Finally, if the plans of either of us should change at the last minute so that either of us cannot accompany the Secretary of the Treasury, we have agreed that the other would not go either.

Thus, by agreeing to pair, the actions of the Senator from Utah and I will have no effect whatsoever upon the action of the Senate with regard to Judge Carswell's nomination.

THE NOMINATION OF JUDGE CARSWELL

Mr. GURNEY. Mr. President, one of the main arguments that has been advanced by the opponents of Judge Carswell concerned a statement, which was circulated widely among the Senators and also in certain newspapers, made by lawyers and law professors scattered around the country who oppose Judge Carswell.

I thought it would be well perhaps to spend some time discussing this statement today and analyzing it.

Mr. President, to the accompaniment of a press conference and other fanfare, a petition has been circulated to all Senators by persons describing themselves as "practicing lawyers and members of law school faculties in various parts of the country." The statement opposes confirmation of Judge Carswell.

From reading the press accounts of this petition, before I actually got around to considering the signatures in detail, I got the impression that it was a collection of representative and distinguished practicing lawyers as well as law school faculty members. But a careful study of the signatures has convinced me otherwise. It would be difficult to imagine a more unrepresentative collection of names than that which appears on this petition.

I count a total of 461 names on the copy of the petition which I received. Of these, only 126 are those of practicing lawyers, and the balance are law school professors.

The directory of American law school professors indicates that there are slightly more than 4,000 professors who teach at the 145 law schools approved by the American Bar Association. The American Bar Association estimates that as of last year there were approximately 305,000 lawyers practicing in the United States.

Thus already we see a marked imbalance in the signatures on the petition. Law school professors, who comprise only slightly more than 1 percent of all lawyers in the United States, have furnished more than 75 percent of the signatures to the petition circulated to the Senate. The 334 professors who signed comprise somewhere between 8 and 9 percent of the 4,000 professors who teach at law schools in this country. But the practicing lawyers who signed comprise a fraction of the total lawyers in the country—other than law school professors—which is so small that it is rather difficult to state. It is one twenty-fifth of 1 percent, or 0.04 percent of practicing lawyers other than law professors. Because several signatures on the petition appear to be those of law professors, though they are not indicated to be such on the petition, it is impossible to state with accuracy the precise number of law professors who have signed the petition, in their capacity as professors.

To sum up, it appears this way to me: Out of 304,978 lawyers in America, 461 or two-thirds of 1 percent signed this petition. Out of 4,062 law professors, 334 or 8 percent signed this petition. Out of 300,916 practicing lawyers—the total number less law school professors—126 or one twenty-fifth of 1 percent signed this petition—not a very impressive total any way we look at it.

Now let me turn to this figure on practicing lawyers, and break it down a little more. While there may be some dispute as to how a couple of these signers should be classified, I counted 126 practicing lawyers—that is, lawyers who are not school professors—on the petition which I received. More than half of the States in our Union—31 in number—were not represented by a single signatory in this class of practicing lawyers—specifically Alabama, Alaska, Arkansas, Delaware, Florida, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming had no practicing lawyers signing this anti-Carswell petition. While it may be accurate for these signers to say that they come from various parts of the country—and that is using their words—there is certainly a great big part of the country from which they do not come.

Now, what is the explanation for the entire lack of support for this anti-Carswell petition among practicing lawyers in 31 of our 50 States? Judge Rosenman, whom the New York Times said acted as principal spokesman for the petitioning group, gave this explanation as to why individual practicing lawyers in the South were not solicited:

> Frankly, we didn't want to waste the postage. We thought that many would start with a Southern prejudice. But we will welcome with open arms any who are willing to join us.

So far as I understand it, Judge Rosenman's arms still remain open and empty.

But, Mr. President, you will notice that if you exclude the States of the so-called Old Confederacy—11 in number—there remains 20 States from which not a single practicing lawyer signed the petition against Judge Carswell.

Now I am sure that time was a factor to these people who are trying to line up support against confirmation, and they had to use some selectivity in mailing. I am not sure just how much selectivity they used, since I have had an opportunity to examine one of the form letters that was sent out by the group trying to organize this opposition. The letter begins "Dear Sir," and then apologizes for this "discourteous xerox form of letter." It goes on to say that the enclosed statement "has been circulated to a small list of prominent lawyers in the city of New York and throughout the United States."

A story in the New York Times dated Friday, March 13, states that copies of the statement were circulated to the "major law firms in all cities of more than 100,000 population, excluding New York."

The New York Times story also states that:

> In all, copies of the statement were submitted for signatures to about 300 law firms, 100 law schools, all of the State bar associations and many of the major local ones.

Whichever version of how the statement was circulated is accepted, it is quite obvious that the organizers have had a catastrophic lack of success.

We are told by the sponsors of the petition that it was sent out to "major firms" in cities of 100,000 or more throughout the country. It looks as though it may have been sent to a few other places, too, however.

I think this is important because one of the charges in the petition is lack of credibility on the part of Judge Haynsworth. It seems to me the petitioners show a lack of credibility also.

For example, the town of Wayne, N.J., has a population of just under 30,000. Martindale-Hubbell indicates that the firm of Hoffman and Humphries, located in Wayne, consists of three partners and one associate. Two of these partners—Walter F. Hoffman and Burrell Ives Humphries—have signed the petition. Messrs. Hoffman and Humphries, of course, have a perfect right to express their views on this subject. But their signatures on the petition have raised several questions in my mind.

First, how representative is a petition like this, when 2 percent of the total signatures come from two members of a three-man firm in Wayne, N.J.? It is doubtful whether these two are representative of Wayne or of 300,000-odd other practicing lawyers in the rest of New Jersey and in the other 49 States of this Nation.

The second question that comes to my mind is whether false information was put out at the press conference by the organizers of this opposition group. They obviously did not circulate it just in major firms and just in cities of over 100,000. It looks like they circulated it wherever they thought they could get a couple of signatures. And they still ended up with only 126 practicing lawyers out of the 300,000 in the whole country.

Who is to say that lawyers in small firms, or lawyers in cities of under 100,000 should be excluded from a circulation like this. Indeed there is something very unrepresentative about a program which in its conception speaks of circulating only to lawyers in "major firms" and only in cities of over 100,000 to sign the petition. We can see just how badly the sponsors did in big law firms in big cities—126 practicing lawyers.

They did get another signer from a small town—Mr. George R. Davis of Lowville, N.Y. Lowville is the county seat of Lewis County, N. Y., and has a population of 3,616. They got Mr. Davis to sign this petition, but what we do not know is how many other people in Lowville were asked to sign, and refused?

How many other lawyers in cities under 100,000 in the other 49 States of the Union were asked to sign, and refused?

We know only that Mr. Davis signed.

There is also representation on the petition from a three-man firm in Hackensack, N.J.—Messrs. Shedd, Gladstone, and Kronenberg. Now Hackensack, Martindale tells us, is located in Bergen County, N.J., and has a population of about 30,500.

Now when we see three partners of a three-man firm in Hackensack, N.J., signing a petition which contains a total of 126 names of practicing lawyers throughout the United States, I think we are entitled to ask just how representative these signers are. Are they prominent among the 300,000 lawyers throughout the United States? Are they partners in major firms in cities of over 100,000?

That is what Mr. Rosenman said he was petitioning in his press conference. No, all they represent are three of 300,000 practicing lawyers of various sizes, shapes, and descriptions, who are entitled to have their views considered, but no more and no less than any of the 300,000 practicing lawyers in the United States.

Let us go to the State of Ohio, one of the biggest States in the Union, which produced the signatures of two practicing lawyers out of an estimated total number of lawyers in the State of 14,368. One of these signers was a partner in a law firm in Columbus, Ohio, and another is a partner in a law firm in Cleveland, Ohio. The Cleveland firm in which Mr. Freedheim is a partner consists of 14 members—the other 13 did not sign. The Columbus firm of which Mr. George is a partner consists of 13 members—the other 12 did not sign.

And look at the rest of Ohio. By the sponsor's own account the petition was circulated to major law firms in all cities. Now this would include, besides Columbus and Cleveland, where the opponents obtained one signature each, Akron, Cincinnati, Dayton, Canton, Toledo, and Youngstown—where they obtained not one single signature.

So here is the State of Ohio—with about 14,000 practicing lawyers and about 6,000 members of the American Bar Association, and eight cities with a population of more than 100,000. And the opponents of confirmation come up with a grand total of two signatures from Ohio. That is how representative this petition is of Ohio.

It is worth noting that if the opponents had done what they said they did—circulated only to cities over 100,000—not only would all smaller cities be summarily excluded, but entire States would be excluded. Alaska, Idaho, Maine, Montana, Nevada, New Hampshire, North Dakota, South Dakota, Vermont, West Virginia, and Wyoming are automatically disregarded under the plan set up by the sponsors of this petition.

That is hardly representative of the feeling of members of the American bar about Judge Carswell. However, as I have noted, apparently getting desperate for signatures, the sponsors departed from their plan and reached out for signatures wherever they might be found. The results, throughout the length and breadth of this Nation, with its more than 300,000 practicing lawyers, turns out to be a total of 126 practicing lawyers.

Some of these practicing lawyers have signed themselves as past presidents or past chairmen of various associations and committees. This apparently done in an effort to show that they indeed are a "small group of prominent lawyers." But I think we all know that in State and local bar associations, even as in other kinds of business associations, offices turn over on the average of once a year, and there are anywhere between 10 and 30 living ex-presidents of almost any local bar association. So bear in mind, when John Doe signs a petition like this as a past president of the county X bar association, that there are somewhere between 10 and 30 equally prominent past presidents of that association who did not sign this petition.

Now I do not suggest that people who did not sign this petition are all urging that Judge Carswell be confirmed. I suspect that a lot of lawyers who received the petition, and refused to sign it, did so because they were unwilling to accept on faith the five pages preceding the signature line which are devoted to characterizing Judge Carswell's testimony before the committee—characterizing it, I might say, in an extraordinarily one-sided and unfair manner. Lawyers are by tradition skeptical, and able lawyers like to hear both sides of a case. That would be good enough reason for rejecting a petition such as this.

The signatures of practicing lawyers on this petition show the healthy skepticism with which the American bar regards high pressure lobbying tactics such as those engaged in by the organized opposition to Judge Carswell.

There is another fact about this petition that is interesting and is worth exploring. This has to do with hypocrites and hypocrisy.

A main thesis of the petition deals with Judge Carswell's connection with an allegedly segregated golf course in Tallahassee. The petitioners point the long, accusing finger at Judge Carswell, charging that he helped organize this club for the purpose of avoiding court-ordered desegregation of public facilities. Of course, these petitioners conveniently omit some facts: that Carswell signed a charter of an original group that never functioned; that he attended no meetings of any kind; that in fact the initial corporation never got off the ground; that an entirely new and different corporation was organized which carried out the functions and purposes of the golf club.

Judge Carswell was not a member of the second group—he had no connection with it; he had absolutely nothing to do with it. Many years later, after it was established, he joined it for a brief period so that his children could play golf. When they went off to school, he resigned.

None of this true story is recited in the petition. What sort of lawyers and law professors lend their names and signatures to this kind of deliberately distorted presentation?

We might take a look at a few of the "distinguished lawyers" who signed such a petition. Two of them are Bernard Webster and Francis T. P. Plimpton.

I did a little checking in Who's Who to see what clubs these gentlemen belong to.

Here is a list:

Mr. Plimpton belongs to the following clubs: Union, Century, Brook, Downtown Association, Coffee House, Economic—New York City; Piping Rock, Cold Spring Harbor Beach, Metropolitan—Washington; Ausable Chasm—Adirondacks; Mill Rey—Antigua.

Mr. Webster belongs to: Century, Downtown, Coffee House, and Metropolitan—Washington.

These are among the most exclusive clubs in the world. Now, I do not know whether they have segregation clauses in their charters. Probably not—self-interest would make sure that there were no such specific clauses.

But believe me, you will not see many black faces among the members, either.

Only in recent years, after a big flap, did the Metropolitan Club of Washington let in a token few black members.

I have tried to find out if black members belong to the other clubs, but have met with a very polite but decided veil of secrecy.

I have called upon these clubs today by telegram yesterday to state here, publicly in the U.S. Senate, and to advise us how many black members they have—for that matter, how many Jews, how many Catholics, and how many members of other minority groups.

This point of the club association of these organizers is very important because it goes right to the heart of their argument. They base their argument against Judge Carswell upon a segregated golf club.

I say these petitioners, like one who seeks equity, must come into court with clean hands. Under our Anglo-American system of jurisprudence, no litigant with soiled hands is entitled to be granted equitable relief.

Their own hypocrisy reveals their true motive—which is simply that they do not want to approve a Southern conservative jurist for appointment to the Supreme Court.

As far as I am concerned, they can belong to any club they want to. I have no quarrel with that. But when they come before the U.S. Senate and seek to influence its high constitutional role to advise and consent, let these gentlemen come with clean hands and argue in full view of the public, not behind a hypocritical smoke screen.

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

Mr. GURNEY. Yes, I yield.

Mr. CRANSTON. On the matter of the golf club, since I myself have referred to that incident, I would like to clarify what were my own concerns about Judge Carswell's participation in that event. I think this may well reflect the concern of some of those the Senator is referring to. Part of my concern was certainly the matter of involvement in a club that had rules of segregation. My main concern was that of Judge Carswell's involvement in preparing the bylaws of the incorporation of that club, which was obviously a move designed to get around the law of this land, occurring when he was a U.S. Attorney charged with responsibility for enforcing the law of the land.

Mr. GURNEY. May I interrupt to say there is not a single shred of evidence that Judge Carswell had anything to do with preparation of the bylaws.

Mr. CRANSTON. Let us limit it to the incorporation.

Mr. GURNEY. Or the incorporation papers.

Mr. CRANSTON. The statements in regard to the incorporation of the club are in the record, I believe.

Mr. GURNEY. I understood the Senator's statement to be that he had something to do with the preparation of that. If the Senator can point out in the record where that appears, I would be interested to read it. I read the record of hearings very carefully, and I never saw it.

Mr. CRANSTON. The direct participation was the contribution of $100 by Judge Carswell to the club at a time when he was U.S. attorney. Is that right?

Mr. GURNEY. That is right.

Mr. CRANSTON. And at a time when he was sworn to uphold the law of the land. The club was being established to get around what was the law of the land.

Mr. GRIFFIN. Mr. President, will the Senator from Florida yield to me for the purpose of my directing a question to the Senator from California?

Mr. GURNEY. I am glad to yield.

Mr. GRIFFIN. I wonder if the Senator from California and others who are attributing such motives to Judge Carswell would attribute the same motives and criticisms to the then Governor of the State of Florida, Leroy Collins, who later served with great distinction as an official in enforcing the civil rights laws of this land in the Johnson administration, and who also contributed $100 at approximately the same time to the same club, along with three or four other prominent and distinguished citizens of the city of Tallahassee.

Mr. CRANSTON. Mr. President, if the Senator will allow me, I am limiting my comments to the nomination that is before the U.S. Senate for consideration, the nomination of an Associate Justice of the Supreme Court. The President criticized the Senate as if we were suggesting other nominees for the Supreme Court. We are not. I have resisted the temptation to name other conservative and strict constructionists whom I deemed to be qualified to sit on the Supreme Court. I am not making a judgment of other people. I am restricting my comments to the man who is before us for consideration as a nominee to the Supreme Court.

Mr. GRIFFIN. I am not suggesting that the Senator from California suggests that Mr. Collins should be appointed to the Supreme Court. I am only saying that great attention has been focused on this point. I pointed out to him that another very distinguished member of his party, whom I greatly admire and for whom I have great respect, and who was the top official of the State of Florida, testified before the committee and on the record that he also contributed $100. I assume the Senator would also be critical of anyone else who did the same thing.

Mr. CRANSTON. I am most critical of a man whose sworn duty was to uphold the law of the land but who was involved in a transaction that was designed to circumvent that very law.

Mr. GRIFFIN. Former Governor Leroy Collins testified before the committee that he had no such intentions or motives when he contributed $100 to this club, and I think it altogether possible that that could have been the case with respect to Judge Carswell.

I thank the Senator from Florida for yielding.

Mr. GURNEY. Now, if I might answer the Senator from California—and I know his question was propounded in all earnestness, because this incident has troubled a great many people—I think I have read every bit of testimony in the record surrounding the discussion of this golf club. I have also talked to people outside the record about the facts and circumstances surrounding the golf club; and, as I understand the whole affair, it was thus:

This club was organized in April of 1956. Judge Carswell was approached to see if he wanted to join as a member of the group of people who got it going. He did say he would. He put up $100.

One of the most important facets surrounding this whole transaction is that there were two corporations. There was a first corporation, for profit, the charter of which was filed with the secretary of state, the usual procedure in Florida. That is the one that Judge Carswell signed as an incorporator, and put up $100 for the expenses.

That corporation never functioned. It never got off the ground. The next piece of evidence that happened was that a lease was negotiated by the city of Tallahassee, which owned the golf club, in the fall—I think the month was September—to this first corporation. They had one organization meeting, and then apparently they decided that a corporation for profit was not the way to run the golf club, so they moved in another direction, and organized a corporation not for profit—a charitable corporation, as we call them in Florida. They filed a petition with the circuit court in Leon County, which is the way you organize a charitable corporation. The judge signed an order, and the new corporation was established.

The testimony clearly shows that Judge Carswell never attended a single meeting of any kind of the first corporation. He never had anything to do with it, at all, after the initial contact with one of the organizers, who got $100 from him, and all of the business of the golf club was transacted by the second, charitable corporation.

I think one of the most interesting pieces of evidence regarding this is shown on page 363 of the record, included in the petition of the nonprofit corporation, which contains this information. It says:

> The present officers and directors of Capital City Country Club, Inc.—

That was the first one—

> and the officers and directors of this corporation hereby designated to serve until the first election shall be—

And then it lists the officers and directors of both corporations, and Judge Carswell is not listed thereon, which bears out precisely what he said, that he never had anything to do with the golf club after he put up the $100, and got his $76, I think it was, back from the $100 in February of the next year.

I think his testimony is entirely creditable on the point, and it is ironclad proof of this one basic fact, which is what the argument has been all about, as I understand it, in the debate over Judge Carswell: That Judge Carswell was an active participant in some sort of scheme to operate a private, segregated club. That is what the argument is all about. But the testimony shows that he never had any part in that at all beyond the initial contact and the payment of $100.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GURNEY. I ask unanimous consent that I may proceed for 15 additional minutes.

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

Mr. GURNEY. One further note about the position of the lawyers and the law professors: I was particularly interested by the fact that among the few practicing lawyers who signed this petition were Mr. Ramsey Clark, former Attorney General of the United States, and several others who had been in the Justice Department at the time that he headed it.

I am reminded of a nominating speech for one of the leading presidential contenders many years ago proclaiming that "we love him for the enemies he has made." I think the same might be said about Judge Carswell.

Putting entirely to one side the many affirmative reasons for supporting his confirmation—his long experience as a trial and appellate judge, his activities in judicial administration, and his endorsement by the American Bar Association Committee on Judicial Selection—I believe that an entirely independent reason for voting to confirm Judge Carswell is that Ramsey Clark does not want him confirmed.

This is not the first time, of course, that Ramsey Clark has spoken out in connection with a Supreme Court nomination. He was the leadoff witness, in support of the confirmation of Abe Fortas as Chief Justice. Here are some of the remarks that Ramsey Clark made before the Federal Bar Association in September 1968, while the Fortas confirmation was pending before this body:

> For the 15th time in the history of the republic, the Senate has been asked to advise and consent on the nomination of the chief justice of the United States. It is an awesome responsibility. It is imperative that the Senate perform its duties prescribed by the Constitution . . .
>
> As human beings we are concerned for Abe Fortas, but diamonds don't bruise.

Now there is an interesting allusion. Quite obviously something happened to Abe Fortas, on his way to the Supreme Court, whether it was "bruising" or something else. Now let us go back to the text of his remarks:

> If certain Members of the Senate are as concerned about pornographic material as they appear to be, and should be, they might work on legislation designed to control it: Not attack the Supreme Court of the United States as if it caused lust.

Former Attorney General Clark may be perfectly well satisfied with the decisions of the Warren court in the field of pornography, but I think a lot of us are not. I think a lot of lawyers, a lot of Members of Congress, and a lot of plain, ordinary people throughout the land are not satisfied with the legal protection accorded to the worst forms of pornography today.

There is certainly good reason to believe that Judge Carswell is a strict constructionist—that is, one who is less inclined than the liberal majority of the Warren court to read into the Constitution his own views of public policy. He would undoubtedly give more weight to legislative judgments as to how pornography may best be dealt with, and not turn the first amendment to the U.S. Constitution into a license for commercial smut peddling.

I recall some other equally interesting statements made by Mr. Ramsey Clark when he was attorney general of the United States. Perhaps his most famous statement was that of May 19, 1967, as quoted in the New York Times:

> Attorney General Ramsey Clark said yesterday that he did not believe there was a crime wave in the Nation.
>
> "The level of crime has risen a little bit," Mr. Clark said, "but there is no wave of crime in the country."

I do not know just what kind of intellectual blinders Ramsey Clark had on that date—but they somehow enabled him to ignore and dismiss as unreal the crime problem in the United States, and the plight of the innocent victim of crime. We have heard him talk at length about the rights of the criminal but very little about the rights of the criminal's victim and society's rights.

I think Judge Carswell's views on the enforcement of the criminal law are vastly different from Ramsey Clark's. For example, his vote to have the entire membership of the Court of Appeals for the Fifth Circuit review a three-judge panel's decision to expand the Miranda doctrine as enunciated by the Supreme Court is an indication that in the area of criminal law he is a strict constructionist. Personally, I much prefer the strict constructionist approach to the maudlin sentimentality of former Attorney General Ramsey Clark.

Ramsey Clark's perforation in his September 1968 remarks to the Federal Bar Association concluded with these words:

> The Senate must vote to confirm or reject Justice Abe Fortas on his personal qualifications. Judge him on the merits. He will not be found wanting.

I would say if Ramsey Clark can embrace Abe Fortas—who fell so far short of Supreme Court standards—I am willing to believe the very best about anyone whom he opposes.

I think Ramsey Clark's opposition is just one more good reason why Judge Carswell should be confirmed as an Associate Justice of the Supreme Court of the United States.

I dwelt at some length on the opposition of Ramsey Clark to Judge Carswell—and for a very good reason. I think men should be judged by the company they keep. I suspect that Mr. Clark is typical of the vast majority of the one twenty-fifth of 1 percent of practicing lawyers who signed the petition against Judge Carswell. They are "representative" only of a small minority of the extremely liberal wing of the American bar. They want beyond anything else, and even over the dead professional career and the carcass of Judge Carswell, to perpetuate the activist Warren-type Supreme Court.

Lawyers and judges spend a lifetime weighing evidence, learning to recognize it for what it is worth.

U.S. Senators also acquire a pretty good feel for what axes are being ground and whose oxen are being gored.

I implore the Members of this great body, in its great constitutional duty to advise and consent, to recognize for its true worth the petition against Judge Carswell of the lawyers and law professors. I think they will find that the weighing of this evidence falls far short of any representative cross section of the American bar. They speak for a small, highly vocal, but very liberal faction, no more and no less; and it is indeed not representative of the American bar in general.

Mr. GURNEY. Mr. President, I ask unanimous consent that certain telegrams and letters I have received in support of Judge Carswell be printed at this point in the RECORD. They are a telegram from W. E. Grissett, Jr., president of the Jacksonville Bar Association; the dean of the Mercer Law School; William N. Long, President of the 8th Judicial Circuit Bar Association in Florida; a letter by W. J. Oven, Jr., who was unable to join the 79 members of the Tallahassee bar who sent a telegram to the Senate supporting Judge Carswell; a letter from Thomas C. Dinard, a lawyer in Fort Lauderdale, Fla., who also used to be an assistant U.S. attorney, chief of the civil division for the eastern district of Pennsylvania during the Eisenhower-Nixon administration, recommended by the distinguished majority leader, Senator SCOTT.

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

JACKSONVILLE, FLA.,
April 2, 1970.

HON. EDWARD J. GURNEY,
U.S. Senator,
New Senate Office Building,
Washington, D.C.:

The officers and executive committee of the Jacksonville Bar Association unanimously endorse the nomination of Judge G. Harrold Carswell as a Justice of the United States Supreme Court. Judge Carswell has demonstrated his fine judicial abilities during this years of service on the Federal bench. He will serve with distinction as a member of our highest tribunal. We urge his confirmation by the United States Senate.

W. E. GRISSETT, Jr.,
President.

MACON, GA.,
April 2, 1970.

Senator EDWARD J. GURNEY, Jr.,
Senate Office Building,
Washington, D.C.:

DEAR SENATOR GURNEY: As dean and on behalf of the student body of Mercer University Walter F. George School of Law, I would like to urge the confirmation of Judge G. Harrold Carswell to the seat of the Supreme Court Justice; I had pleasure of teaching Judge Carswell as a student and have been acquainted with Judge Carswell since his law school days and hold him in very high esteem. I believe I can unequivocally state that Judge Carswell is extremely well qualified to fill the position of Justice on the U.S. Supreme Court.

DEAN M. MEADFIELDS,
Mercer Law School.

GAINESVILLE, FLA.
April 3, 1970.

Senator ED GURNEY,
New Senate Office Building,
Washington, D.C.:

Having practiced before Judge Carswell I strongly endorse his appointment to the Supreme Court.

WILLIAM N. LONG,
President, Eighth Judicial Circuit Bar Association.

Tallahassee, Fla., March 30, 1970.

Hon. EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: According to newspaper accounts, a telegram was forwarded Friday to all one hundred Senators, signed by some 79 members of the Tallahassee Bar, announcing their support for Judge Carswell.

I did not have an opportunity to join in this communication, probably because I was out of my office most of last Friday. I would certainly have added my name to this telegram if I had been given the opportunity.

I have practiced before Judge Carswell since his appointment back in 1958, and consider him eminently qualified. I hope your efforts to secure his confirmation will be successful.

Respectfully yours,

W. J. OVEN, Jr.

THOMAS C. DINARD,
Fort Lauderdale, Fla., March 23, 1970.

Senator EDWARD J. GURNEY,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR GURNEY: May I urge the immediate and affirmative vote by the Senate of President Nixon's nomination of Judge G. Harrold Carswell as Associate Justice of the Supreme Court.

The long and unwarranted delay by the Senate in ratifying the President's appointment will cause irreparable damage to the judicial process and to law enforcement upon which the future progress of our country depends.

With best wishes.

Sincerely yours,

THOMAS C. DINARD.

Mr. GURNEY. I yield the floor.

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

Mr. GURNEY. I yield.

The PRESIDING OFFICER. The Chair suggests that the floor has been yielded, and the present schedule is for the Senator from Wyoming to have the floor for a period of time not to exceed 1 hour. The Chair would suggest that if it is desired that any more time be taken up on the subject, the Senator from California would have to seek the permission of the Senator from Wyoming.

Mr. CRANSTON. I ask unanimous consent that I may have about 2 minutes to ask one question of the Senator from Florida relating to matters we discussed.

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

Mr. CRANSTON. On the matter of the incorporation of the golf club, perhaps there was a difference over technical language. But I should like to ask the Senator to comment on the fact that page 32 of the hearings indicates that Senator KENNEDY said to Judge Carswell, "Did you in fact sign the letter of incorporation?"

Judge Carswell said, "Yes, sir. I recall that."

The certificate of incorporation appears on page 348, and on page 353 Harrold Carswell's signature appears on that document. That would seem to me evidence that he was an incorporator of that golf club, by his own testimony to the committee.

Mr. GURNEY. If the Senator from California will yield, at no time did I contend that Judge Carswell was not an incorporator of this corporation. In fact, I think I stated that he was.

Mr. CRANSTON. I must have misunderstood the Senator, then. I thought the Senator questioned my statement that he was.

Mr. GURNEY. No. I said there were two corporations, and he had no part in the second corporation, which was the one that carried on the business of the golf club. There was a change a few months after the formation of this corporation. This corporation never did any business, and the judge never participated in any meetings of any sort. As a matter of fact, I am not even sure—and the testimony really does not go to that evidence—that the first corporation really got itself into business under Florida law, corporation law, besides filing the charter of the corporation. They do have to have an organizational meeting, a meeting of directors and officers, and approve initial steps—the issuing of stock.

For example, the testimony, as I read it over all, was that Judge Carswell never received any stock at all. He put up a hundred dollars and got $76 back. The whole evidence, when viewed in full perspective, indicates that, even though Judge Carswell technically was an incorporator of the first corporation because he signed the corporation papers, but that he never was an active member of any organization that ran a private segregated club that was organized for that purpose, he was not a part of that at all, and this is what he was testifying to before the committee.

Mr. CRANSTON. The allegation did not go to that point. It went to the point that he incorporated, and we agree that he did.

CALIFORNIANS KILLED IN ACTION IN VIETNAM

Mr. CRANSTON. Mr. President, on September 19, I first read into the CONGRESSIONAL RECORD the names of California men killed in action in Vietnam. Almost weekly since then, I have risen on the floor of the Senate to continue this tribute to the memory of our fallen men.

Last Friday—Good Friday—two California families, one in San Diego and the other 95 miles away, in Fullerton—received their notifications of tragedy from the Defense Department.

These two latest casualties brought to 4,000 the number of Californians who have lost their lives in the jungles and swamps of Southeast Asia since the first Californian fell in Vietnam on April 20, 1961, nearly 9 long years ago.

And the war goes on.

The following men have been reported as casualties between Monday, March 9 and Friday, March 27:

Pfc. Daniel Aguilera, son of Mrs. Elixa E. Aguilera, of Cutler.

Pfc. James D. Anella, husband of Mrs. Nedra M. Anella, of Spring Valley.

Radarman Charles E. Brooks, husband of Mrs. Jeanne B. Brooks, of San Diego.

Cpl. Thomas C. Chaney, son of Mrs. Lydia S. Chaney, of Greenfield.

Pfc. Robert W. Culver, husband of Mrs. Glenna F. Culver, of Eureka.

Lt. Joseph W. Devlin, husband of Mrs. Norma Devlin, of Orange.

Lt. Vincent E. Duffy, Jr., son of Mr. and Mrs. Vincent E. Duffy, of Arcadia.

Pfc. Jesse C. Frey, husband of Mrs. Adell C. Frey, of Bell Flower.

Capt. James M. Gribbin, son of Mrs. Molly Ondrasek, of Novato.

Sp4c. Garlin J. Hendreson, Jr., son of Mrs. Millie M. Henderson, of Bloomington.

Capt. Ronald Hurt, husband of Mrs. Olga Hurt, of San Diego.

Pfc. Michael C. Jackson, husband of Mrs. Peggy J. Jackson, of Simi.

Pfc. John E. Lockhorst, Jr., son of Mrs. Ruth E. Oswald, of Ontario.

Pfc. John S. Rick, son of Mr. and Mrs. Don L. Rick, of Fullerton.

Sgt. Paul W. Rose, son of Mr. and Mrs. Guy W. Rose, of La Mesa.

Capt. Richard J. Sexton II, husband of Mrs. Marcia S. Sexton, of Pacific Grove.

Sgt. Atilano U. Tovar, husband of Mrs. Patricia T. Tovar, of Van Nuys.

Sp4c. Charles A. Van Horn, son of Mrs. Evelyn A. Conjuriski, of Rialto.

Pfc. Kenneth E. Wedlow, son of Mr. and Mrs. Theodore Wedlow, of Compton.

Pfc. Thomas J. Whitlow, Jr., son of Mr. and Mrs. Thomas J. Whitlow Sr., of Palos Verdes Peninsula.

THE NOMINATION OF JUDGE CARSWELL

Mr. CRANSTON. Mr. President, I will vote to recommit Judge Carswell's nomination to the Judiciary Committee. Some Senators said that they feel a vote to recommit is simply ducking the real issue. I do not agree. I believe that during the Senate debate of Judge Carswell's nomination, many persuasive reasons have been brought forth which justify recommittal.

I believe that Judge Carswell should explain under oath to the Judiciary Committee and to the Senate and above all to the American people new facts which have been revealed which bear directly on his fitness to sit on our Nation's highest court.

A careful reading of the hearings and the many reports concerning Judge Carswell leads inevitably to a list of unanswered questions which have arisen. The Senate cannot vote with full knowledge until these questions have been asked, and properly answered.

These questions go to the very charges which President Nixon labeled as specious—charges of "lack of candor" and "racism." I do not believe that these charges are specious. I do believe, however, that Judge Carswell should be given a full and fair opportunity to refute these charges.

Judge Carswell attempted to answer some of these charges in a letter to the Judiciary Committee after the completion of the hearings. Personally, I find totally unsatisfactory his general and sometimes evasive denials in this unsworn letter.

I believe the following questions among others, should be put to Judge Carswell.

They illustrate both the need for further answers from Judge Carswell, and the wholly inadequate and confused state of the present record concerning both his qualifications and his candor:

1. Is it true that on the evening of January 26, 1969, two representatives of the American Bar Association visited you in your hotel room and showed you the documents relating to your participation in the 1956 Tallahassee Golf Course incident. Did you examine the documents at that time or later and did you discuss this matter with others that evening after the ABA representatives departed or the next morning before testifying?

2. In view of the fact that the ABA representatives discussed the golf course incident with you the previous evening, how do you explain your answer at the Committee hearing the next morning, when Senator Hruska asked you to "tell us just what the facts are", that "I read the story very hurriedly this morning . . ."?

3. In view of the fact that the incorporation papers containing your signature were shown you the night before, how do you explain your testimony the next morning as follows:

"Senator HRUSKA. Were you an incorporator of that club as was alleged in one of the of the accounts I read?"

"Judge CARSWELL. No sir."

4. In view of the fact that one or more of the papers shown you the night before demonstrated your position as director of the golf club, how do you explain your testimony at the hearing the next morning that "I was never an officer or director of any country club anywhere"?

5. With the same background, how do you explain this testimony at the hearing:

"Senator HRUSKA. Are you or were you at the time, familiar with the bylaws or the articles of incorporation?

"Judge CARSWELL. No, sir."

6. With the same background, how do you explain your testimony two days after the discussion in your hotel room, "Senator, I have not looked at the documents"?

7. In this same testimony you stated that the golf club corporation "was a defuct outfit that went out of business." Isn't it a fact, however, that it did *not* go out of business but continued as a non-profit rather than a profit corporation?

8. Toward the end of your testimony on the golf course incident, this colloquy appears:

"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."

Would you elaborate on this answer in view of the affidavits to the contrary appearing in the record of the hearings and the statement of your supporter, James J. Kilpatrick, that "if Carswell didn't know the racial purpose of this legal legerdemain he was the only one in Northern Florida who didn't understand."

9. Please explain the circumstances under which you chartered a whites-only booster club for Florida State University in 1953?

10. Have you considered then or since whether your activities in chartering the all-white booster club and with respect to the golf course conflicted with the position of United States Attorney which you held during both incidents?

11. Please explain the circumstances under which you participated in the sale of property containing a racial covenant in 1966.

12. On the morning of January 28, 1970, Judge Elbert W. Tuttle telephoned you to say that he could not testify in support of your nomination. Since this repudiated his earlier letter which you knew was in the record, did you not feel an obligation to report this new information to the Committee when you testified a few hours later or when you wrote the Committee a letter purporting to clarify the record of February 5?

13. Since you testified at the Committee hearings, eight civil rights attorneys who had practiced in your Court—in addition to the two who testified at the hearings—have testified in detail to your extreme hostility to them and their cause. Additional lawyers have made similar statements. Your only answer to date is contained in your letter of February 5th to the Committee which includes the statements that "I do not remember specific colloquies with counsel," but "I emphatically deny such episodes . . .". Would you kindly explain the apparent inconsistency in your letter and, to the best of your recollection, answer the specific charges of these attorneys.

14. In particular, Leroy D. Clark, Professor of Law at New York University Law School testified that Judge Carswell "turned his chair away from me when I was arguing." Are you not able to recall such an incident?

15. Likewise Theodore Bowers, an attorney of Panama City, Florida, informed me that "Judge Carswell turned away from him, looking off to the side, turning his body to the side, when he was presenting an argument. He stated that Judge Carswell stayed turned aside throughout half of his total argument. He argued for 10 minutes, and for 5 of those minutes Judge Carswell was looking away, had turned bodily away, seemed to be totally ignoring the case that he was seeking to make." Is it your practice to turn away from lawyers who argue before you or was this limited to civil rights lawyers?

16. Mr. Ernest H. Rosenberger, one of the civil rights attorneys who testified, stated that you suggested to the Tallahassee city attorney that the sentences of 9 clergymen be reduced to the time already served in an effort to deprive them of their standing to continue their habeas corpus proceeding before you and thus clear their records. Did you in fact do this and, if so, do you consider it proper judicial conduct?

17. Sheila Rush Jones, an attorney, has informed me "That in January of 1967 I was employed as a staff attorney for the NAACP Legal Defense Fund, 10 Columbus Circle, New York, New York;

"That as part of my duties as a staff attorney, I represented Negro persons in Florida who sought to desegregate local public school systems. On or about January, 1967, I represented a group of Negro plaintiffs in a school desegregation case at a hearing on a Motion for Further Relief in Tallahassee before Judge G. Harrold Carswell.

"That at this time, Judge Carswell was very discourteous to me, interrupting me with frivolous comments as I attempted to argue the motion. In general he treated me in a mocking, ridiculing way. Only after I began prefacing my remarks with such statements as 'Let the record reflect I am attempting to say etc.' did he cease to interrupt and allow me to complete my argument. I have never before or since received such disrespectful treatment from a federal judge."

Do you recall this incident? If so, can you explain it?

18. At any time prior to your nomination for the Supreme Court did you repudiate directly or indirectly, publicly or privately, your white supremacy statement of 1948 and, in the alternative, can you point to a single writing, public or private, evidencing compassion toward Negroes?

EDITORIALS IN OPPOSITION TO THE NOMINATION OF JUDGE CARSWELL

Mr. President, the distinguished Senator from Florida (Mr. GURNEY) gave a quite long analysis earlier this afternoon of attorneys from various States who have been recorded as opposed to the nomination of Judge Carswell. To complete the record, I ask unanimous consent to insert in the RECORD at this time editorials from around the country on this same matter. Let me add that these are representative of the view of the free press of this country, a press that remains free and that expresses opinions of great moment to us in the fashion that is reported in these editorials.

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

[From the Philadelphia (Pa.) Inquirer, Mar. 12, 1970]

HE FLUNKED THE TEST

When President Nixon nominated Judge G. Harrold Carswell to the U.S. Supreme Court, it was assumed that a thorough search had been made into Carswell's record by the President and the Department of Justice, and that they were completely satisfied with the judge's qualifications.

The harsh experience of the Haynsworth case, if nothing else, should have been enough to justify extreme caution in filling the vacancy on the high court.

It was agreed that the President had the right, if he wanted to exercise it, to name a Southerner, a conservative and someone who could be labeled a "strict constructionist."

Even when it was disclosed that Carswell, in a political speech in 1948, had said that he would yield to one one in his "belief in the principles of white supremacy," his repudiation of a statement made 22 years ago as "obnoxious" to him today, was generally accepted.

The fact that the administration searchers into Carswell's record had not uncovered this revealing bit of information about him, however, impelled others to look more closely into the qualifications of the judge from Tallahassee.

What they found has cast a dismal cloud upon Mr. Nixon's appointee. Carswell's insensitivity on the racial question alone is plain to see. There are 15 cases, when he was a district judge, in which his opinions upholding racial segregation were overruled by higher courts.

In 1953, he drafted a charter for a boosters club at Florida State University which opened membership to "any white person interested in its purposes."

In 1956, he participated in an organization which turned Tallahassee's municipal golf club into a private segregated club.

In 1966, he sold a piece of land with a covenant attached restricting ownerships and occupancy to "members of the Caucasian race."

It is particularly discomforting to know that when a Supreme Court Justice is named, we may be stuck with him for a long time.

Being stuck with a justice who has displayed no visible breadth of wisdom or compassion is a depressing thought.

Since Mr. Nixon announced the nomination—on what misplaced judgment we do not know—Judge Carswell has sunk lower and lower in public esteem as a candidate for a Court where we expect a degree of greatness in its members.

He has not made the grade. The Supreme Court cannot be better for his presence on it.

[From the Montgomery (Ala.) Advertiser, Mar. 27, 1970]

WHY NOT JUDGE JOHNSON?

They said it couldn't be done, but it now appears possible that Judge G. Harrold Carswell may not be the next member of the U.S. Supreme Court.

A move is on to avoid the ritualistic slaughter decreed for Judge Clement F. Haynsworth, a far superior judge in every respect. Instead, opponents of Carswell have opted for what is decribed as a decent private burial, if they can get enough votes to

recommit the nomination to the Judiciary Committee.

The vote on that is to come April 6, and opponents claim they already have enough support to send the nomination back to committee to die. Senate Republican leaders dispute this, but it would be the humane solution.

Although much of the criticism of Carswell has been for the wrong reasons, what changed an expected shoo-in to a cliff-hanger was the undistinguished character of the man. Even southern Senators seem to be feigning their enthusiasm now, and with reason: should Carswell be confirmed after the threshing he's taken, his lack of strong personal conviction and fortitude would likely make him a follower of the liberal members of the court as he attempted to cleanse his name of all the nasty things said about him.

The irony of it all is that if Carswell had been offered first, Haynsworth, who looks infinitely better by comparison, would not have experienced much difficulty in confirmation.

Nixon, busily covering his tracks in every region, probably couldn't sell it to the South (or wouldn't try), but his best choice—and this may shock a lot of Alabamians—would be Judge Frank M. Johnson, in our judgment.

Now, hold on before you blow your top. Give us a chance to explain why we believe this. First of all, Judge Johnson is an excellent trial judge, as few lawyers will dispute, even those who think he's the devil incarnate. He runs a taut ship, but that's the way a court must be run. He is thoroughly grounded in trial procedure, having heard more controversial cases than any judge in the South and been blasted from all sides, including this newspaper from time to time.

But he's tough. He understands the realities of the southern problem and has, time and again, skillfully blunted the thrust of reckless and ridiculous Fifth Circuit rulings, as in the Montgomery school case.

He has walked the narrow ledge between school chaos on one side and open defiance of the Fifth Circuit on the other. He knows what will work and what will not, a knowledge that would be extremely useful in the hermetically sealed atmosphere of the U.S. Supreme Court. Although Johnson projects an obsidian hardness, this obscures the fact that, within the limits imposed on him from the appellate court, he has been as compassionate as the law allows in dispensing desegregation orders, Nixon's overriding domestic concern.

His long record of denunciations of those, white or black, left or right, who riot and take the law in their own hands is better reading than most of Spiro Agnew's statements on the same subject. And he stated years before Agnew was a household word even in Maryland. He was a law & order man before President Nixon.

Outside the South, he is regarded as a civil rights hero, not alone because he has done his duty as he saw it under the law but because of his abuse by George Wallace and the legal confrontations with Wallace as governor and, before that, circuit judge.

Those who are by now apoplectic over the very idea that a newspaper published in the Cradle of the Confederacy, one which has been Johnson's severest critic on occasion, would suggest that this integrating, carpetbagging, scalawagging, et cetera is fit for the Supreme Court should count to 500 and reflect:

There are three federal districts in Alabama—Northern (Birmingham), Middle (Montgomery), and Southern (Mobile). Taking the school issue alone, which of these districts have been hit by the toughest orders from the Court of Appeals? The Birming area and Mobile, right?

Why? Because the judges in those courts attempted to skirt the law of the circuit, and deliberately defied it in some cases.

The inevitable result was appellate overkill, as in the Jefferson decision of Dec. 29, 1966, taking virtually all authority away from district judges, who knew the problem best. Montgomery, by comparison, is not a disaster area because Johnson demanded and got steady, slow evolution rather than sudden revolution.

The appellate court has let him alone, in the main, while rocketing missiles at the other districts. Result: these areas are worse off by far than we are.

Of course, nobody knows how a lower court judge would perform on the Supreme Court. At best, it's a guess based on the probability theory of jurisprudence. But it is our belief that a Justice Johnson could bring some sanity to the high court by virtue of his regional experience and expertise here in the eye of the hurricane.

Strom Thurmond would throw a fit, joined perhaps by both Alabama senators and all congressmen. As we said, it would be hard to sell. Even so, intellectual honesty compels finally saying in print what we have been saying in private since the timely exit of Abe Fortas.

Johnson is a realist. His attitudes and philosophy have been forged in the crucible of real events, real people, real passions and real problems—not in the pale glow of lawyers' briefs which the Supreme Court sees. In most instances, he has taken an uncharted middle course and endured the fury from all sides. It has been a thankless job, subjecting him to vilification by many whites and some blacks, to say nothing of actual threats.

If Judge Johnson really wants the job, he probably won't appreciate this. That's his problem. At the same time, we know Wallace will use this to stuff us under that silly bed sheet again. That's his problem. It happens to be an honest belief arrived at over many months. Surprisingly, many to whom we have broached this argument in conversation were first aghast and then grudgingly agreed there might be something to it. Of course, some merely rejoiced at the thought of "getting him out of Montgomery and Alabama."

Johnson is not likely to get the nod. Nixon would not like the job of trying to persuade the South that Johnson had followed the law and, in many cases, tempered and altered it. But he has. Prior to the Montgomery school decision, we confidentaly expected a disastrous order and wrote many thousands of words about the intolerable Fifth Circuit mandate.

Johnson made it tolerable—not to everyone, but to the city as a whole. Although many will never accept it, even they know that Johnson could have made it far worse. The general reaction was one of relief, as in previous years when the Fifth Circuit was issuing direct orders to courts which attempted massive resistance and brought massive defeat.

We doubt that Johnson is a serious prospect for the Fortas seat if Carswell is quietly put to rest. More's the pity: being invulnerable to charges of "racist" and "southern reactionary," he might shake the court to its senses and, in the process, test his steel on the North. Of one thing we are certain: he could not be bullied. Not by other Justices, civil rights firebrands, by the Eastern establishment or public opinion. We would expect that he would perform on the Supreme Court as he has on the Montgomery district court, heedless of pressure and popular outcry.

We are not saying he would be a fine Confederate on the high court. He would be useless to the South if he were. What we are saying is that he knows the situation, would be free to go his own way (as Carswell would not) and might exert some influence on a court that could benefit by the experience of a scarred veteran of the southern campaign.

If Carswell does expire, Nixon's only alternative may be to look outside the South for a judge who knows nothing and cares less of southern problems.

[From the St. Petersburg (Fla.) Times, Mar. 27, 1970]

THE NOVEL OATH: "CARSWELL QUICKLY AGREED"

In weighing the Supreme Court nomination of Judge G. Harrold Carswell, the U.S. Senate has failed so far to consider one of the most significant incidents in his career.

Before the vote comes up at 1 p.m. April 6 on the growing sentiment to recommit the nomination to the Judiciary Committee, conscientious senators ought to ponder Carswell's willingness to take a strange oath back in 1958.

The incident took place at a sparsely attended committee hearing on March 26, 1958. An Associated Press news report appeared in The Times the following day, and is reproduced in the adjoining column. We noticed the clipping when researching our first editorial on the Carswell appointment, and described it on Jan. 20, 1970.

Now, Sen. Joseph D. Tydings, D-Md., and Sen. William Proxmire, D-Wis., have shown an interest in the incident.

It is easy to understand why Sen. James Eastland, the Mississippi segregationist who was the only senator present at the 1958 hearing, would demand this strange oath. The South, especially Mississippi, still was defiant in its resistance to integration. Clearly Eastland hoped to paralyze the federal judiciary by demanding that every new judge renounce in advance the legal power to pass on the constitutionality of congressional acts. Eastland's purpose, we said in 1958, was "to secure a promise, possibly morally if not legally binding, upon federal judges not to implement any civil rights matters."

The Associated Press reporter described Carswell's reaction to the oath request in these words:

"George Harrold Carswell quickly agreed and took the oath as proposed to him by Senator Eastland . . ."

How could any trained attorney, much less a nominee for a federal judgeship, agree quickly to an unorthodox, illegal oath that would destroy the constitutional separation of powers?

The only answer we have is that the hurried oath-taking fits into the opportunistic pattern of the several changes in Judge Carswell's convictions. Running for the Georgia Legislature in 1948 and chartering a white-only Tallahassee club in 1956, he is a racist. Testifying before the Senate on his high court nomination, he is a civil libertarian. Taking the Eastland oath, he agrees to be a eunuch judge. Before the same committee this year, Carswell quotes the late Justice Benjamin Cardozo that "There is an inescapable grain of lawmaking power within the judge."

In 1958, we called the incident of the novel oath a "threat to the integrity of the courts."

It is still that, and even more.

It is a reason for senators who place principle above either opportunism or party to vote the Carswell nomination back to the committee that failed to investigate the events of March 26, 1958.

[From the St. Petersburg (Fla.) Times, Jan. 26, 1970]

COURTING THE SOUTH WITH JUDGE CARSWELL

President Nixon's nomination of Judge G. Harrold Carswell of Tallahassee to the U.S. Supreme Court was more confirmation of his Southern political strategy.

The President is using his Supreme Court appointments against the political threat of George Wallace.

That may be clever politics, but it is a poor way to select lifetime appointees to the nation's highest court.

Most Floridians would like to give their unreserved endorsement to Judge Carswell. For many, it will be impossible, for three reasons:

He is not widely known outside Tallahassee. Aside from being a Southerner, his qualifications for the highest court are difficult to ascertain.

He does not have a good record on civil rights. One study of his decisions in civil rights cases ranked him 23rd among the 31 judges of the circuit. The National Association for the Advancement of Colored People opposed his recent elevation to the appeals court.

Judge Carswell has not shown the strength and independence needed on the high court to maintain its independence.

In an extraordinary Senate committee meeting in 1958 on Carswell's initial court appointment, Sen. James Eastland, the Mississippi segregationist, demanded that Carswell take a second oath agreeing not to rule unconstitutional any law passed by Congress.

Surprisingly, Judge Carswell did not decline. As the Associated Press reporter described it at the time:

"George Harrold Carswell quickly agreed and took the oath as proposed to him by Senator Eastland."

In 1958, we called this a "threat to the integrity of the courts." It remains that today.

Members of the Senate who believe in the separation of powers under the American political system will need to be convinced that Judge Carswell possesses the strength to defend the independence of the judiciary.

A judge who kneels quickly to Sen. Eastland would seem to be a poor defender of the integrity of the Supreme Court.

[From the Honolulu (Hawaii) Star-Bulletin, Mar. 27, 1970]

STRIKE TWO?

When Clement Haynsworth was rejected for the Supreme Court and President Nixon telegraphed his intention to find another Southerner for the assignment it seemed sure that the No. 2 choice—whomever he might be—would be confirmed.

It seemed sure both because it was believed the President would find a nominee who was impeccable and because the Senate would not want another bruising battle with the President.

Discovery of a 20-year-old segregationist speech created some setback for the subsequent nomination of G. Harrold Carswell but this was old and quickly repudiated by Carswell. No man should be condemned forever for thoughts expressed 20 years earlier, and Carswell still seemed sure of confirmation.

Now doubts about Mr. Carswell's commitment to civil liberties have been joined by a far more pervasive doubt—Judge Carswell is mediocre. Even men who admit mediocrity in themselves see no place for it on the Supreme Court, Sen. Hruska notwithstanding.

The heightened scrutiny of Judge Carswell has done nothing to counter this criticism—rather the reverse. President Nixon now seems in danger of a second rebuff.

A rebuff, in fact, might be better for the court than a narrow confirmation that would leave a sitting justice (and the court) under a cloud.

President Nixon has good reasons well beyond selfish political ones for wanting a respected Southerner on the court. Such a justice—particularly if he were in the majority on crucial civil liberties decisions—could help to weld national unity.

Whether and where Mr. Nixon will find such a justice if Mr. Carswell is rejected is an interesting question. If he is found, the President will certainly want to know from the Justice Department why he wasn't found sooner.

[From the Honolulu (Hawaii) Advertiser, Mar. 26, 1970]

CARSWELL—NO

Winston Churchill once called the U.S. Supreme Court "the most esteemed judicial tribunal in the world." Well it might be.

Certainly, the high court has been an especially critical factor in American life in the last few decades. It should be even more so in the late 1900s as the rate of change in American society increases and with it the need for responsive laws and interpretation of the Constitution.

Government will either change peaceably and intelligently or be destroyed.

In this context, some feel that only the President has a more difficult and responsible position than a justice on the U.S. Supreme Court.

A justice must cast a vote on more than 3,000 cases a year, listen to arguments on 120 cases and write a dozen or more full-dress opinions.

Right now, more than a dozen very important cases have been delayed because the court, with only eight justices sitting, seems to be at a 4 to 4 impasse.

These cases involve a law dealing with anarchy, the death penalty and especially its relation to interracial rape, laws for punishing protesters, the Fifth Amendment provision against self-incrimination, new uses of electronic eavesdropping, obscenity laws, and the legality of search and seizure action in narcotics cases.

The new justice may well cast the deciding vote on these, as well as countless other matters to come before the Supreme Court in the 1970's.

This more than anything, is why there is growing opposition to President Nixon's appointment of G. Harrold Carswell.

For the longer the debate has gone on the weaker his case has become. There has been a growing list of prominent lawyers and law-school professors opposing Senate confirmation.

Cruel as it may be, the judgment is that this is a mediocre man being boosted far above his intellectual level to one of the most important jobs in the nation.

Even his supporters are hard put to defend him, as might be noted from the William Buckley column on the opposite page.

Senator Roman Hruska, one of Carswell's chief backers, himself made the point. "There are a lot of mediocre judges and people and lawyers, and they are entitled to a little representation, aren't they?"

This has given rise to all kinds of jokes about the need for a justice to represent the pot smokers or dropouts or for US. senators elected to represent mediocrity.

But humor fades in the face of duties of a Supreme Court justice.

It's obvious President Nixon wants a Southern conservative Republican. Although many don't agree on such quotas, the President's right to shape the Supreme Court more towards his philosophy is generally conceded.

But, beyond that right, he has a duty to get the best Southern conservative Republican available. There are some top men in this category, including some deans of Southern university law schools. Carswell is far below them—too far.

President Nixon entered office talking of appointing "extremely qualified men" to the court. Yet the best being said about Carswell is that he is qualified to represent mediocrity.

The U.S. Senate should reject this philosophy.

[From the Salt Lake (Utah) Tribune, Feb. 5, 1970]

CARSWELL AND THE COURT

When the Senate refused to confirm Judge Clement F. Haynsworth as a justice of the Supreme Court it was generally conceded that President Nixon's next appointee, whoever he might be, would probably be confirmed with a minimum of fuss.

That seems to be the way it is working out. Judge G. Harrold Carswell's judicial career could hardly be called distinguished. Civil rights groups and individuals have attempted, with some success, to show that the judge still harbors anti-Negro sentiments he has public disavowed. The net effect has been to display the nominee in an unfavorable light but one of insufficient candlepower to illuminate a determined fight to bring about his rejection by the Senate. After the Haynsworth battle nobody seems to have the stomach for another.

So Judge Carswell will probably be confirmed, barring disclosure of some damaging facets of his career that escaped the usual Justice Department check and the intense prying of those who strongly oppose the appointment. What then?

Since the Supreme Court is both the voice and the symbol of the aspirations of the nation, it follows that its membership should be drawn from citizens of the highest ethical and legal attainments. But that has not always been the case as a check of appointments over the years will show.

Appointees who were widely hailed have turned out to be disappointments and some that were accepted without enthusiasm have blossomed into legal giants. Men considered as political and philosophical kinsmen by the presidents who named them have taken their places on the high bench only to undergo 180 degree changes of mind.

On his appointment in 1953, former Chief Justice Earl Warren was regarded as an amiable politican who would exercise judicial authority with extreme caution. Instead Warren emerged as an activist dedicated to the idea that courts must guard individual liberty against the intrusions of government power. When Franklin Roosevelt named Harlan F. Stone as chief justice in 1941 the appointment was almost universally hailed. But Stone proved to be ineffective as chief justice. History supplies other similar stories.

Even if Judge Carswell neither flips nor flops but serves out his lifetime tenure without distinction, the performance will be closer to the norm than apart from it. Though we would greatly prefer that President Nixon had looked harder and set his standards higher, we cannot view Judge Carswell's confirmation as a major tragedy. He isn't the best but he probably isn't the worst either. And there is always the possibility that, like some wines, he will grow better in the barrel.

[From the Lewiston (Idaho) Morning Tribune, Mar. 24, 1970]

G. HARROLD CARSWELL

The erosion of support for G. Harrold Carswell, President Nixon's latest nominee for the Supreme Court, continues, although even the nominee's foes still agree that he is likely to be confirmed.

One of the latest to announce his opposition to confirmation is Idaho Sen. Frank Church, who said yesterday he found the judge "indubitably deficient."

Senator Church seems to have come to his decision primarily on the basis of Judge Carswell's record on the bench and not because he was offended by the judge's evident racism or his lack of candor in appearing before the Senate Judiciary Committee.

As for the Carswell record, Senator Church told the Senate, "One searches in vain for a mark of excellence. We have yet to be shown

a single decision he has handed down that reveals any exceptional qualifications of learning, any flash of brilliance, or any special insight. Taken altogether, Judge Carswell's service has been utterly pedestrian in character."

This is the potent charge against the Carswell nomination: that the nominee may be good enough for the Fifth Circuit Court of Appeals (many lawyers dispute even that) but that he is not good enough for the United States Supreme Court. If one feels this way about him, his allegedly racist turn of mind and his little deception over the Tuttle letter (see adjoining editorial) become relatively insignificant. Much can be forgiven a man of brilliance and sharp of insight, but it is fruitless to justify minor faults of character in a man with only pedestrian abilities—especially if one is considering him for the most honored bench in the world.

[From the Lewiston (Idaho) Morning Tribune, Jan. 24, 1970]

A Man's Right To Change His Mind

Most of us agree that a man has the right to change his mind—even on an issue as basic as racial equality; many Americans have in recent years. But when he is a nominee for the Supreme Court, and must put his past under senatorial scrutiny, he is certain to face difficulty.

This is the situation involving U.S. circuit Judge G. Harrold Carswell of Florida, who has been chosen for the high court vacancy by President Nixon. In 1948 Carswell was running for the Georgia Legislature when he said in a political speech that "segregation of the races is proper and the only practical and correct way of life in our states. I have always so believed and shall always so act."

Today Carswell says he is revolted by his political philosophy of 22 years ago, that it is inconsistent with his record of service in the judiciary and is in direct opposition to his personal views on the races.

But because of what he believed in 1948, Judge Carswell will be subject to criticism in the Senate, which last year rejected Nixon's first choice for the vacant seat. Judge Clement F. Haynsworth of South Carolina.

There is, however, a sharp difference in the two cases. Haynsworth's nomination was turned down because of his financial dealings while sitting on the bench. Carswell, on the other hand, contends he rejected racism before entering public service 17 years ago—a claim he will have to prove before the nomination comes to a vote in the Senate.

If what Carswell says is true, then Nixon can rightly argue on the basis of this southerner's record of public service that the Senate has no substantive grounds to reject his nomination for holding what was the prevalent view on segregation in the south 22 years ago.

In the nominations of both Haynsworth and Carswell, however, two disturbing truths are evidence. First, that the President has an undisclosed commitment to someone (racist Sen. Strom Thurmond is most often mentioned) to seat a conservative from the South on the court; and second, that it is difficult to find a qualified jurist in the South who, at some time in his past, hasn't followed the segregationist line.

[From the Boise (Idaho) Statesman, Mar. 21, 1970]

A Dismal Situation for All Concerned

Sen. Roman Hruska of Nebraska didn't help the cause of Judge Harrold Carswell when he said that a mediocre record should not disqualify him because mediocrity should be represented on the Supreme Court. It is a dismal situation when supporters of the nomination feel compelled to adopt such logic. It is sad for Judge Carswell, for President Nixon, for the Senate and for the country.

Even though many senators are filled with doubts because of the nominee's undistinguished record, he will probably be nominated.

It is difficult to understand why President Nixon, after the rejection of Judge Haynsworth, turned to Judge Carswell. There should be better qualified men in the South.

Some of the senators who voted against Judge Haynsworth will feel they have little choice. It is hard to vote against a President's choice for the court a second time. Yet if they had the choice to make, they would prefer Haynsworth to Carswell.

President Nixon played a bad trick on the Senate after the Haynsworth defeat. Unfortunately, he may also have played a bad trick on the country and himself. The nomination implies a lack of presidential concern for the caliber of the court or the caliber of its decisions.

[From the Omaha (Nebr.) Sun]

He Gave Up His Responsibility

We ran across an editorial excerpt that added a new and damning note to the Carswell matter. The editorial said:

"In an extraordinary Senate committee meeting in 1958 on Carswell's initial court appointment, Sen. James Eastland, the Mississippi segregationist, demanded that Carswell take a second oath agreeing not to rule unconstitutional any law passed by Congress.

"Surprisingly, Judge Carswell did not decline. As the Associated Press reporter described it at the time:

" 'George Harrold Carswell quickly agreed and took the oath as proposed to him by Senator Eastland.'

"In 1958, we called this a 'threat to the integrity of the courts.' It remains that today.

"Members of the Senate who believe in the separation of powers under the American political system will need to be convinced that Judge Carswell possesses the strength to defend the independence of the judiciary.

"A judge who kneels quickly to Sen. Eastland would seem to be a poor defender of the integrity of the Supreme Court."

This excerpt was part of a longer editorial in the St. Petersburg, Fla., Times. Both the quoted editorial and the 1958 editorial were written by a Southerner. Neither editorial has been refuted or denied by Judge Carswell or his supporters.

In its simplest terms, this 1958 incident meant that Carswell willingly abandoned one of the principal responsibilities of his office, which is to rule on the constitutionality of laws passed by Congress.

One might be puzzled as to why opponents of the Carswell nomination have not raised this issue against President Nixon's second choice. The best explanation we have heard is the one advanced by the St. Petersburg editorialist, Robert Pittman: An issue involving the limitation of Senate power is not likely to sway the votes of many Senators.

But to us, the knowledge of Carswell's surrender to Sen. Eastland is a substantial piece of evidence against him. We hope the Senate will reject him, that President Nixon will regard his obligation to the South as discharged, and that he will nominate a superior jurist to the Supreme Court.

[From the Cleveland (Ohio) Plain Dealer, Mar. 18, 1970]

Mediocrity on Supreme Court?

Sen. Roman L. Hruska, R-Neb., defending the nomination of Judge G. Harrold Carswell to the Supreme Court, suggests the Senate ignore those critics who contend Carswell lacks the legal achievement and eminance in law expected of a Supreme Court justice.

"Even if he were mediocre," said Hruska, "there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises and Frankfurters and Cardozos."

Of course, not all justices have the brilliance of the distinguished jurists Hruska mentions. But we do not agree with Hruska's implication that a president, with the advice and consent of the Senate, should set about deliberately to find a mediocre judge to balance a court presumably overburdened with sharp legal minds.

Quite the contrary. We think a president should always strive to nominate a man who has attained some eminence in law, and we think the Senate legitimately should examine the nominee's judicial competency, as well as his ethics.

There is a dispute about Carswell's legal qualifications. A committee of the American Bar Association twice looked at Carswell's record and twice found him qualified.

On the other hand, an ad hoc committee of 300 prominent lawyers and law professors said Carswell lacked legal and mental qualifications. A similar conclusion was reached by the Ripon Society, a liberal Republican group, which examined Carswell's record during 11 years as a U.S. district judge and found that he had functioned "signicantly below the average level of competence" of other U.S. district judges.

Carswell's decisions were reversed twice as often as those in a random sampling of decisions by other federal trial judges, the Ripon Society found. It concluded that Carswell is "seriously deficient in the legal skills necessary to be even a minimally competent justice."

This criticism raises questions about how Carswell might perform as a Supreme Court justice, questions that the Senate has a duty to ponder.

[From the Dayton (Ohio) Daily News, Mar. 10, 1970]

Statistics Show Carswell To Be a Mediocre Judge

The Senate vote on G. Harrold Carswell's nomination to the Supreme court is expected this week or next. It is generally assumed that Judge Carswell will be confirmed. That is a shame.

The man's racism has been documented at points throughout his adult life. It has also been shown that his personal prejudice has slopped over into his professional life as a lawyer and his official performance as a judge.

Suppose, however, that Judge Carswell experienced a sudden and profound change of heart after President Nixon nominated him to the Court. Suppose that he was entirely sincere when he testified that he was no longer a racist. Is he otherwise qualified?

The Ripon society, the liberal Republican organization, says no. A statistical study of Carswell's decisions has convinced the society that his record "was significantly below the level of the average federal district court judge."

During his 11 years as a U.S. District judge in Florida, 84 of Carswell's trial decisions were published in official legal reports. Of these 17, or 11.9 percent, were appealed. Fifty-eight percent of the appealed decisions were reversed.

A random sampling of 400 court decisions in the same 11-year period showed that only 5.3 percent of trial decisions were appealed, and of these, only 20 percent were reversed. Thus, Carswell's record is significantly below average.

The high number of reversals might be excused if some of Carswell's rulings were original interpretations of law—daring attempts at landmark decisions. But if there is any theme central to Carswell's work, it is mediocrity. His colleagues have rarely quoted his decisions in making their own judgments.

Judge Carswell became a U.S. attorney and then a federal judge for largely political reasons. He was a "Democrat for Eisenhower" in one presidential election, and afterwards a faithful Republican. If he becomes a member of the Supreme court, it will also have been for political reasons. By any other

standard—ethical, intellectual, professional—he does not measure up.

[From the Dayton (Ohio) Journal-Herald, Mar. 25, 1970]

DROP CARSWELL NOMINATION—SENATE SHOULD START ANEW ON APPOINTMENT

We have had the hope—shared by many, we believe—that the Carswell nomination would go away. We wish he hadn't been nominated, not so much because he is an outright bad nominee but because he is not an outright good one, and the Supreme Court deserves better.

Our temptation after the Haynsworth debate was to shrug the Carswell nomination off as no more of an outrageous political move than has been traditional with occasional appointments to the court. But as the matter has dragged on, the press of conscience to say what we must has become irresistable.

The nomination of Harrold F. Carswell is a puzzling move on the President's part. Judge Carswell is neither a distinguished jurist, a distinguished politician, a distinguished thinker nor a distinguished lawyer. His principal distinction is as a perfunctory operative whose mind blows with the prevailing wind.

We understand the President's objective of a Southern "strict constructionist" on the high court. We do not ourselves espouse the so-called Southern philosophy on many matters nor would we like to see it dominate the court, but we think it deserves representation on the Supreme Court and that the systematic exclusion of that viewpoint has undermined the court's credibility.

What the President has actually done, however, is to make representation of Southern strict constructionism virtually meaningless by naming a man who has neither the knowledge, the record nor, perhaps, the fortitude to meaningfully represent the considerations his nomination is supposed to reflect.

The whole affair is bad news. The Senate would do well, despite what may be its feeling of guilt over the stridency of the Clement F. Haynsworth controversy, to allow everyone to start by rejecting the nomination of Judge Carswell. And if the President wants what he says he wants—and we think he does—he would do well to pick a man capable of carrying out that function.

[From the University of Cincinnati (Ohio) News, Feb. 27, 1970]

CARSWELL I: JUDGING THE JUDGE

(By Jon Reich)

Nixon's nomination to the Supreme Court of Judge G. Harrold Carswell has been reported out of the Dixiecrat-Republican dominated Senate Judiciary Committee (SJC). Confirmation by the Senate looms around the corner.

It will be a tragedy for the nation. Not merely because the manifestly incompetent and bigoted Carswell is an insult to the Court and country alike, but because of the wider implications. This deserves fuller treatment. First let's examine Carswell's fitness for the Supreme Court bench.

He has violated judicial ethics. This is the bugaboo, you'll remember, that foiled Fortas and hung Haynsworth. At first, however, it appeared that Carswell was free of such taint. But these facts have come to light:

In 1959, and again in 1968, Carswell decided cases in favor of corporations in which large interests were held by Ed Ball, a powerful Florida entrepreneur. Ball has been called "an old family friend" of Carswell's. In 1964 Carswell dismissed a suit against a bank; his father-in-law was then a director of the bank and Carswell had a loan from it.

His judicial conduct has been deplorable. In 1956, while a U.S. Attorney, Carswell helped organize the takeover of a public golf course by a private group. This was shortly after a Supreme Court ruling which would have opened the facility to blacks. The group's—and Carswell's purpose—was to keep the course lily-white.

Carswell lied about this matter when he testified before the SJC.

He has violated federal law while on the federal bench. In two separate instances in 1964, Carswell connived to manipulate legal proceedings in order to harass and imprison civil rights attorneys and voter-registration workers, whom he denounced as "Northerners."

The details are subtle; suffice it to say that Title 18, Sec. 242 of the U.S. Code makes it a criminal offense to deprive a person of his rights "under any color of the law" precisely what Carswell did. But he refused to answer questions about it directed to him by the SJC.

He is a racist. In December he gave a speech to the Georgia Bar Association. Its racist overtones offended several colleagues, as did the shabby joke he told about "a dark-skinned person."

While U.S. district judge, Carswell on July 12, 1966, sold some resort property with a restrictive clause that stipulated occupants had to be whites. (White House Press Sec'y Ron Ziegler defended this by saying: "this particular situation is not isolated at all.")

From 1956 to 1963, Carswell was an officer of the housing corporation for the Florida State chapter of Sigma Nu fraternity. During that time, and in fact until 1968, the chapter had a clause excluding Negroes and Orientals from membership.

In 1948 Carswell publicly stated, "I yield to no man . . . in the firm, vigorous belief in the principles of white supremacy, and I shall always be so governed . . . I believe that segregation of the races is proper, and the only practical and correct way of life in our states. I have always so believed, and I shall always so act."

He is incompetent and unfit for the bench. Carswell's civil rights rulings have been consistently overturned by higher courts. His judicial opinions are described as "pedestrian." Professor Edward Padgett of Poli. Sci. told me that Carswell "is not . . . of the first order of ability. Haynsworth appears to be superior!"

The most telling judgment was perhaps that of highly respected Derek C. Bock, Dean of Harvard Law School, who wrote:

"The public record of Judge Carswell's career and accomplishments clearly does not place him within even an ample list of the nation's more distinguished jurists. The appraisals that I have heard from lawyers who are familiar with Judge Carswell do not contradict the paper record. On the contrary they suggest a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the court."

If there were any lingering doubts as to the sincerity and intentions of the President who declared he would "bring us together," they've been dispelled. Nixon has called into question his own fitness to lead by making an appointment so capricious and ghastly.

The political implications alone are frightening. But the social implications are truly terrible. At a time when the justness and fitness of our whole political system are being called into question, whom does the Carswell appointment reassure? How many dissident blacks, and whites, will thus be persuaded to "have faith in the system"?

There are some large issues here, and I mean to explore them. But time is passing. The list of Senators opposing Carswell is growing, but too slowly. (Our own Sen. Young has declared against.) Virtually all of you reading this will be eligible to vote when Sen. Saxbe comes up for a re-election in 1974. WRITE A LETTER. Or just a postcard—four little words will do: THUMBS DOWN ON CARSWELL. Do it today. Be the first on your block to spend six cents for justice.

[From the Chicago Sun-Times, Mar. 18, 1970]

NO PLACE FOR "C" STUDENTS

Lawyers often employ a strategy in a legal suit called "confession and avoidance." If there is a weakness in a case, the strategy calls for admitting it and then trying to avoid it. In some arguments in and out of court, debaters often try to turn a weakness into an advantage, sometimes producing weird results.

The argument about the nomination of Judge G. Harrold Carswell to the U.S. Supreme Court has taken that turn. His mediocrity is admitted by his supporters. And it is being advanced by some as the very reason he should be put on the highest court in the land. Such arguments defy not only reason but derogate the dignity of the court itself.

In calling upon the Senate to reject the Carswell nomination last Sunday, we said on this page that the high court should not be a training ground for mediocre judges, who by some alchemy, might be transformed into great justices.

On Monday, Sen. Roman L. Hruska (R-Neb.) who is leading the floor fight for Carswell, tried to argue that the Supreme Court needs mediocrity.

Hruska didn't even hold out the hope that Carswell might grow in the office. The ranking GOP member of the judiciary committee said:

"Even if he were mediocre, there are a lot of mediocre judges, people and lawyers. Aren't they entitled to a little representation and a little chance? We can't all have Brandeises, Cardozos and Frankfurters and stuff like that there."

Never mind that President Nixon, in his campaign speeches of 1968, said he wanted to appoint men like Cardozo and Oliver Wendell Holmes. Never mind that Judge Carswell's rate of reversal is three times the national average, which means his legal superiors found his mediocre legal thinking faulty to an excess. In the name of politics and giving Southern conservatives a voice on the high court, Hruska would promote Carswell over his legal superiors.

Sen. Russell B. Long (D-La.), who supports Carswell as a fellow Southerner, argues that too much brilliance on the Supreme Court has been a mistake. He would prefer a C student on the high bench to an A student.

How far politicians will go in their loyalty to party or to regional prejudices!

Small wonder that many in the younger generation reject the standards of their elders. The nine men of the Supreme Court can shape the destiny of the nation and affect the lives of every individual. It demands the best of America's brains, individuals with Solomonesque stature and with great understanding of their nation and all its people.

Mediocre lawyers and C students have a place in the American scheme of things, but not on the Supreme Court.

[From Chicago Today, Mar. 9, 1970]

"NO" ON JUDGE CARSWELL

When President Nixon last January announced he was nominating Judge G. Harrold Carswell of Florida to the United States Supreme Court, we predicted that Carswell would be confirmed. The prediction was based on one fact—that a careful scrutiny had turned up none of the embarrassing financial ties that had led to the rejection of Judge Clement F. Haynsworth—and one assumption that seemed reasonable. This was that Carswell, aside from being a southern Republican, must have had something on the ball personally; some distinguishing quality or ability as a jurist that had caused Mr. Nixon and the justice department to pick him, rather than some other judge.

This assumption appears to be wrong.

Carswell's record as a jurist is unusual in only one way: It would be hard to find another federal judge with such a thoroughly undistinguished career. During his 11 years on the federal bench, Judge Carswell's contribution to legal thinking has been zero. He has written no learned articles, handed down no rulings in any way remarkable for insight or knowledge of law.

According to statistics compiled by the Ripon society, a liberal Republican group, Carswell's record before he became an appellate judge last year is not just mediocre, but strikingly below average.

Of 84 trial-court decisions made by Carswell and printed in official reports, the society found, 17 were appealed and 10 reversed. Thus 11.9 per cent of his printed decisions, and 58.8 percent of those that were appealed, were reversed by a higher court. In a random sampling of 400 district court decisions over the same 11-year period, the comparable figures were 5.3 per cent and 20 per cent. Carswell, in other words, was reversed on appeal nearly 3 times as often as the average.

Carswell's critics have zeroed in on a few actions and speeches of his that can be taken to indicate racial prejudice. He has disclaimed such feelings, however, and we willingly accept his assurance. We are not looking for reasons why he should be rejected as a Supreme Court justice; we have looked earnestly for some reason why he should be confirmed. And we can find none.

There is no point in attacking Judge Carswell, who didn't ask to be nominated. The insistent and alarming question is what kind of standards are guiding this administration in its choices for the Supreme Court. And the short answer is that the standards are just not good enough.

The Senate should serve firm notice on Mr. Nixon and Atty. Gen. John N. Mitchell that they cannot go on picking names out of a hat for Supreme Court—that they will have to take this immense responsibility seriously enough to choose qualified men, and to make sure they're qualified before asking the Senate to confirm them.

Judge Carswell's nomination should be rejected.

[From the Christian Science Monitor, Mar. 26, 1970]

THINKING AGAIN ON JUDGE CARSWELL

President Nixon has a number of strong and logical arguments to support his desire to have a "strict constructionist," a "conservative" and a "Southerner" appointed to the present vacancy on the Supreme Court. He has very few such arguments, however, to support the elevation of Judge G. Harrold Carswell to that high post. We therefore suggest that the President himself reconsider the Carswell nomination, and that the Senate recommit the nomination to its Judiciary Committee for further hearings on Judge Carswell's legal and personal fitness for so exalted an honor.

We agree that there is reason to believe that, in some ways, the present Supreme Court is overbalanced towards liberalism. Although during the past two decades the high court has rendered a number of admirable milestone decisions, nonetheless, there is evidence that court thinking has, at some points, gone too far and eroded national standards, notably in the areas of crime and pornography. A thoughtful conservative could be influential in restoring greater kilter to the balance.

But such a conservative must be in a position to make an insightful and persuasive contribution to the nation's ongoing legal thinking. We see nothing in Judge Carswell's record to lead us to believe that he is this kind of deemer. His judicial record is middling. His racial attitudes, while he has a perfect right to hold them, are not such as to inspire confidence that he will be of much help in extricating America from its deep racial dilemmas.

To this has now come the case of Judge Elbert Tuttle. A onetime chief judge of the Fifth Circuit Court of Appeals, and thus Judge Carswell's immediate superior, Judge Tuttle stated that he would testify on Judge Carswell's behalf. This offer was later withdrawn, but it appears that Judge Carswell did not inform the committee of this fact, leaving the latter to believe that Judge Tuttle's support remained behind him. As one national columnist rightly says, this involves "good faith, perhaps even deliberate deception."

Under such circumstances we do not see how either the President or the Senate can conceivably go ahead with the Carswell nomination. It should be taken out of the full Senate's hands and be put back where it can be studied as thoughtfully as such a major appointment must be.

[From the Boston (Mass.) Globe, Mar. 19, 1970]

WITH FRIENDS LIKE THESE . . .

With supporters like Sens. Russell B. Long (D–La.) and Roman L. Hruska (R–Neb.), solidly in his corner "telling it like it is," the growing opposition to Judge G. Harrold Carswell's confirmation as an associate justice of the Supreme Court should have it made.

No? Well, then, hear their encomiums for a nominee already described by others as the "least qualified in a century," not qualified even for his present seat on a lower court.

Sen. Hruska (pulling out all the stops): "There are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises and Frankfurters and Cardozos."

Sen. Long (going Sen. Hruska one better): "Wouldn't it be better to have a B student or a C student instead of another A student? A judge doesn't have all that brilliance to satisfy this senator."

Add this unstinted praise to senior Federal Judge Elbert P. Tuttle's affirmation that, after studying Judge Carswell's attitude on equal justice," he "could not in good conscience" testify in Judge Carswell's behalf, although he earlier had agreed to do so. And shouldn't this, then, be the final frosting on the Carswell cake? When his friends so frankly boast that Mr. Carswell is mediocre, maybe just a C student, is there anything more that his opposition needs to say?

NEW ENGLAND CAN SAVE THE COURT

With the defection of Sen. George Aiken (R–Vt.), it now appears that the Senate vote to recommit to the Judiciary Committee the nomination of Judge G. Harrold Carswell to the Supreme Court could hinge on the votes of three New England senators—Sens. Winston Prouty (R–Vt.), Margaret Chase Smith (R–Me.), and Thomas J. Dodd (D–Ct.). Seven others including Sens. Edward M. Kennedy, Edward W. Brooke and Thomas McIntyre (D–N.H.) will vote to recommit, as they should. Sen. Norris Cotton (R–N.H.) earlier had committed himself to Judge Carswell.

The vote is scheduled for Monday. And if recommital is voted down, Mrs. Smith and the Messrs. Prouty and Dodd, it is indicated, may be the determining factors in the vote to confirm or reject, a vote scheduled for Wednesday. They can save the day—and the Court.

By voting for recommital, or, this failing, against confirmation, they will be demonstrating their awareness of conclusive evidence that Judge Carswell, as his own Chief Justice in the Fifth Circuit has put it, "just isn't up to the job." By voting to confirm "the least qualified nominee in a century," they would be affrming the most demeaning and irrational assessment yet heard of the highest court's proper place in the American political system. This is the preposterous assessment by Sen. Roman L. Hruska (R–Neb.), a supporter of Judge Carswell, that a nominee's mediocrity should not be held against him and might even be in his favor. This would be an astounding affirmation for them to make, just as it was astounding for Sen. Aiken so to affirm.

Sen. Aiken's stated reason for his surprise support of Judge Carswell is that "President Nixon has a good record, and I will not be a party to embarrassing or downgrading him either at home or abroad." But this reason is as shallow as the reason given by the Senate Republican Leader, Hugh Scott. Mr. Scott will vote for Mr. Carswell "because the President nominated him." But neither Mr. Nixon nor the presidency is the issue. The issue is the downgrading of the Court. No senator owes the President blind allegiance. They do owe allegiance to the Court's integrity. They have sworn, as Sen. Brooke so ably has argued, to exercise their own best judgment under the advice and consent provision of the Constitution. They cannot uphold their oath and at the same time consent to a demeaning of the highest court in the land. At the very least, the Carswell nomination should go back to committee.

This is not only because recommitment is a legitimate and honorable device through which Republican senators can be spared reprisals for voting against the President's wishes, or, perhaps, White House orders. Sen. J. William Fulbright (D-Ariz.), himself a Southerner, has advanced other reasons which govern him and should govern others as well. These are the sundry allegations of racial bias and questions of competency raised since the earlier committee hearings. Sen. Fulbright wants these clarified. Considering their nature, it is a puzzle that Sen. Aiken could not wait for clarification, too. They include not only new evidence of the nominee's racial bias and incompetence, but even more alarming confusion between facts, as others have reported them. and Mr. Carswell's testimony under oath.

Even with important unanswered questions dogging the nomination, some Republican senators hesitate to reject Mr. Nixon's second consecutive nomination. But there are precedents for it. It has happened twice before, and, once, three successive nominations were rejected. The fault now, as in the prior instances, is the President's not the Senate's. There are competent men including Southerners from whom he could choose. Judge Carswell is not one of them. The Senate's duty is to the Court and its survival as a respected branch of government.

New England senators especially should remember that the seat to which Mr. Carswell have been nominated was once graced by one of the area's (and the nation's) most estimable citizens, the legendary Oliver Wendell Holmes. Then they should vote their conscience.

[From the Appleton (Wis.) Post-Crescent, Mar. 24, 1970]

THE EMBARRASSMENT OF CARSWELL

When the United States Senate rejected the appointment of Judge Clement Haynsworth to the Supreme Court, there were elements of both party politics and ideologies involved. Democrats and liberals could be expected to disapprove of a Republican conservative southerner. But the primary reason Judge Haynsworth was not accepted was a matter of ethics involving possible conflicts of interest.

Judge Harrold Carswell has no such handicap. He is not a wealthy man and never owned any stock in any company—in fact he has borrowed heavily to finance his rather elaborate home and standard of living. But upon his appointment, spokesmen for the Nixon Administration said that Judge Cars-

well's career and background had been thoroughly examined, presumably so that information like that which cropped up about Judge Haynsworth would not be dug up by others. We must wonder now exactly what sort of an investigation the Justice Department conducted.

There was first the matter of racial prejudice in a campaign statement Judge Carswell made 20 years ago. Although he has stated that he no longer holds white supremacist views, Sen. Edward Brooke pointed out in a floor speech that he has found nothing to indicate that Judge Carswell repudiates his earlier view, other than his current statement. There are charges that the judge was judicially hard on civil rights claimants and decided against them in 15 cases that later were reversed by higher courts.

A number of leading lawyers have requested the American Bar Association committee consider its approval of the nomination. Several hundred lawyers have signed a statement that Judge Carswell is not qualified even for the position he now holds.

But perhaps Judge Carswell's continued silence over the withdrawal of support by a retired judge of distinction in his own area, and in fact Judge Carswell's failure to point out to the Senate that the support had been withdrawn are even more serious because they indicate, at most, an attempt at deception and, at least, a lack of astuteness. How could Judge Carswell not have realized that probing senators and newsmen inevitably would have found out about Judge Tuttle's change of mind?

The investigative machinery of the Justice Department does not appear to be very thorough.

Many opponents to Judge Carswell's nomination have pointed out that there are many judges of distinction who take a conservative view and are strict constructionists. Whatever the outcome of the status of Judge Carswell, the failure by the Nixon Administration to nominate a man of really high caliber has brought unnecessary humiliation to two men who are not essentially evil.

[From the Milwaukee (Wis.) Journal, Mar. 22, 1970]

SENATE SHOULDN'T CONSENT TO CARSWELL NOMINATION

Some supporters of the nomination of Judge Carswell for the US Supreme Court, finding nothing else to extol in the man, are now driven to extol his mediocrity. Since many Americans are mediocre, as the case is put, they should have one of themselves on the court!

To state the premise is to demolish it. Resort to it depicts the poverty of any argument for Carswell's confirmation, and the desperation of his supporters as they contemplate the tide of conviction spreading across the land (outside the South) that he simply won't do.

Carswell's notorious white supremacy speech of 1948 has turned out to be inexcusable as a mere aberration of youth, conforming to the rules of southern white politics at the time. For he did not repudiate it by word or deed throughout his later career; in fact, he gave it life by many actions right down to the present. He now says himself that it was "a matter of convenience"—which only now has become convenient to repudiate.

Even if racial bias were deemed tolerable in a Supreme Court justice, however, lacking the proefssional competence demanded by the position cannot be. Neither can lack of "sensitivity to injustice"—a lack in Carswell to which many legal scholars have attested after studying his record as a US prosecutor and trial judge.

Law Dean Louis Pollak of Yale has concluded that Carswell's credentials are "more slender than those of any other nominee for the Supreme Court in this century." His "level of competence," says Dean Derek Bok of Harvard, is "well below the high standards that one would presumably consider appropriate and necessary for service in the court."

Prof. Gary Oldfield of Princeton: ". . . an obscure judge who has made no visible contribution to the development of the law. His chief qualification appears to be an abiding unwillingness to protect constitutional rights of black Americans." ". . . A judge who would rather risk bad law and repeated reversals than offend the feelings of local segregationists."

Carswell's record of foot dragging in civil rights includes 15 unanimous reversals by courts of appeal, in which he had persistently gone opposite to the guidance of higher courts in parallel cases. This shows him not to be even a conscientious judicial workman.

Danger that such a man may be confirmed stems from an inclination by most of the Republican senators who had blocked President Nixon in the Haynsworth case to feel that they should let him win this one. That puts political etiquette above the country's need for great jurists on the Supreme Court, which Nixon once acknowledged but now denies in practice.

Making Nixon a winner with Carswell would make the court and the country losers. If the role of the Senate to "advise and consent" means anything, it means that a Senate filling the role will not permit this to happen.

[From the St. Louis Post-Dispatch, Mar. 16–22, 1970]

WRONG FOR THE COURT

One of the opponents of the nomination of Judge G. Harrold Carswell for the Supreme Court has asked how any Senator who voted against Judge Clement Haynsworth for that post could go home and explain why he accepted Judge Carswell.

Explanations should not be easy. No doubt most Senators would rely on the point that they had discovered no potential conflict of interest regarding Judge Carswell, as they did against Judge Haynsworth. Yet this explanation would disregard a number of points in which the latter was the superior candidate for the high court.

There is first of all, Judge Carswell's record of obstructionism against civil rights progress. What was mildly questionable in the Haynsworth case is clear in the Carswell case: this judge consistently found against or attempted to delay desegregation actions. A judge so lacking sympathy with the law of the land and the absolute necessity for racial equality before the law has no place on the Supreme Court.

There is what a group of 400 prominent lawyers termed "a mind impervious to repeated appellate rebuke." The lawyers reviewed 15 cases in which Judge Carswell found against Negro or individual claims of rights; in every case his decision was reversed and reversed *unanimously* by a higher court. Is this the kind of record for a man to take to the highest court of all?

There is an evident lack of candor exceeding Judge Haynsworth's hazy recollections of his business dealings. What Judge Carswell insists he never realized was that the incorporation of a Tallahassee public golf course as a private course was done to further segregation. At the time the Judge helped to incorporate the club he was United States district attorney, and several federal suits were already under way in Florida to integrate other public golf courses. If Judge Carswell did not know what was going on, everyone else in Tallahassee seems to have known.

There is, finally, a record of unrelieved intellectual and judicial mediocrity which many attorneys find especially repugnant in a candidate for the highest court. How, they wonder, can a man who has contributed nothing to the law or to the study of the law take a place on a bench that has seated many of history's greatest judicial minds? How, they ask, can President Nixon so demean the court?

Lacking an answer to such a question, we may only observe that it is totally unnecessary to demean the third branch of government. If Mr. Nixon, fixed in his Southern strategy, wants to use the court to woo the South, he can easily find Southern judges, and conservative judges, who are far more distinguished, have far better judicial records and who have demonstrated far less indifference or hostility to the Constitution.

Simply because the President might have done better instead of worse, it should be difficult indeed for Senators who voted against Haynsworth to explain a vote for Carswell. On that point we would hope that more and more members would join the score or so of Senators now determined to stand against the Carswell appointment.

There is no excuse for complicity by the United States Senate in a wrong against the Supreme Court.

[From the Palo Alto (Calif.) Times, Mar. 18, 1970]

MEDIOCRITY KNOWS NOTHING HIGHER

With champions like those who spoke for him when the Senate began debating his nomination to the Supreme Court, Circuit Judge G. Harrold Carswell need not fear challengers.

"Brilliant . . . upside down thinkers" on the court are destroying the nation, Sen. Russell Long, D-La., said. He recommended a straightforward "B student or C student" like Judge Carswell.

Supporting Long's argument, Sen. Roman Hruska, R-Neb., said:

"Even if he were mediocre, there are a lot of mediocre judges and people and lawyers. Aren't they entitled to a little representation and a little chance? We can't have all Brandeises and Cardozos and Frankfurters."

True enough. Or Warrens or Hugheses or Holmeses or Taneys or Marshalls. But the dearth of such men does not excuse not searching for an outstanding jurist when a vacancy is to be filled.

(Speaking of Holmes, Sir Arthur Conan Doyle, creator of Sherlock Holmes, once wrote: "Mediocrity knows nothing higher than itself, but talent instantly recognizes genius.")

The Supreme Court is not an institution meant to be staffed on a representative basis. Would Senator Hruska like to be tried by a mediocre judge? Would he contend that idiots and morons, of whom there are many, are entitled to a little chance on the court, too? The peril of know-nothingism is growing.

Long's admission that Carswell's record on the bench is ordinary (some reviewers say it's below average), should spur senators with higher standards to look long and carefully. While at it, they might well weigh the prevalent impression that he is still a segregationist at heart.

[From the Red Bank (N.J.) Daily Register, Mar. 18, 1970]

SEN. CASE AND JUDGE CARSWELL

When Republican U.S. Sen. Clifford P. Case joined his colleague from New Jersey, Sen. Harrison A. Williams, Democrat, in announcing opposition to the nomination of Judge G. Harrold Carswell, he characteristically did it after extensive study.

He said he reserved his announcement until last Thursday so that he could go over the record of the Senate hearings and supplementary statements of others both in support and in opposition to Judge Carswell's elevation.

"On all the evidence," Sen. Case said,

"Judge Carswell does not measure up to the standard we have rightly come to expect of members of the Supreme Court. It is a standard exemplified by such men as Oliver Wendell Holmes, Charles Evan Hughes, William Howard Taft, Harlan Fiske Stone, Owen J. Roberts, Benjamin Cardoza, Earl Warren, John Marshall Harlan, William Brennan and Potter Stewart—all of them nominated by Republican Administrations in this century."

Thus, Sen. Case is in the ranks of a growing number of Republicans who seriously question why President Nixon selected a man whose service on the bench has variously been described as "undistinguished," "mediocre," "inadequate," "lacking in intellectual stature."

After the embarrassing experience the President suffered in his failure to obtain confirmation for Clement F. Haynsworth Jr., we had expected that his next choice would get—and deserve—better treatment. The said revelations which led to the resignation of Justice Abe Fortas forces the Senate to closely scrutinize presidential selections for the high court, Democrat or Republican.

The vacancy on the court is causing a backlog at a time when its workload is at its heaviest, and it is unbelievable that Mr. Nixon canot find a replacement for Mr. Fortas who could win quicker support. We must conclude that his political interest in the Deep South overshadows his announced concern for the court's jammed calendar.

Sen. Case also had this to say: "It has been argued that Judge Carswell's pledge of undying adherence to the principle of white supremacy made during a political campaign 22 years ago should not be held against him. But his record on the bench . . . gives no evidence of any change of heart or mind . . .

"On the contrary, witnesses appeared to testify to the extreme and open hostility he has shown to lawyers and defendants in civil rights cases. Specifically, it was stated that in 1964 he expressed strong disapproval of Northern lawyers representing civil rights workers engaged in a voter registration project—persons who, it should be noted, would otherwise have had no counsel."

Sen. Case will vote against Judge Carswell's nomination. His fellow Republicans should follow suit.

[From the Star-Ledger, Mar. 28, 1970]

GRACEFUL RETREAT

The swelling opposition to the controversial nomination of Judge G. Harrold Carswell to the Supreme Court would indicate that President Nixon is faced with another rejection of a nominee to the high court.

Rather than face another legislative confrontation, the Administration could opt for a more graceful way out of the dilemma in which it finds itself. A face-saving parliamentary procedure is available to the President; it could soften the blow of an open rejection by the Senate, which has become a strong possibility in the past week.

There is every indication that the foes of the President's nominee are gathering enough votes to send the nomination back to the Judiciary Committee, which would amount to almost certain burial.

This is how those who are torn between their disapproval of Judge Carswell and their reluctance to go against the President can express their disapproval most gently. The President, already politically bruised by the rejection of his first nominee, U.S. Appeals Court Judge Clement F. Haynesworth Jr., will surely get the message.

Sen. Mark O. Hatfield (R-Oregon), who was almost certain a week ago that he would vote to confirm Judge Carswell, appealed to the President in a telegram to withdraw the nomination to help resolve "the crisis of confidence that confronts our governmental process."

A vote on the motion to recommit the nomination to committee is scheduled for April 6.

The President should be angry, not so much with the opposition, but with those in his own administration who advised him on Carswell. The evidence has demonstrated not only that Judge Carswell has an equivocal—to say the least—record on civil rights, but that he is not the caliber of jurist who should even be considered for the highest court in the land.

Surely the President's advisers should have been able to see this before they certified him to the President. The latest evidence shows that Judge Carswell was less than frank in answering Senate committee questions about his role as an incorporator of a segregated Florida country club, and that he had one of the highest reversal averages in his district.

The nation is rich in judicial talent, from the North and South, the East and West, from the conservative to the liberal. Mr. Nixon should have no trouble finding one who suits his taste in geography and philosophy and who is also worthy of the post.

[From the Elizabeth (N.J.) Daily Journal, Mar. 24, 1970]

THE CARSWELL NOMINATION

President Nixon's nomination of Judge G. Harrold Carswell for the Supreme Court is a mistake that, if carried into confirmation, would invite disrespect for justice in America. As Sen. Birch Bayh, leader of the opposition to Judge Carswell has put it, the appointment of a man of such mediocre legal talent would be a sign of retreat that would encourage revolutionaries in their belief that the American system will not work, and would give comfort to racial segregationists.

The time it has taken the Senate Judiciary Committee to consider the nomination has been well spent. Even Judge Carswell's supporters have run out of sound reasons for his nomination. "Even if he (Judge Carswell) was mediocre," said Sen. Roman Hruska, a chief backer, "there are a lot of mediocre judges and they are entitled to a little representation, aren't they? We can't have all Brandeises, Frankfurters and Cardozos." Of course not, but we should be willing to try, no matter whether a judicial nominee represents liberal, moderate or conservative views.

Judge Carswell's record on the bench has been worse than mediocre. His record shows numerous repudiations of his decisions on appeal as a district court judge. From 1956 to 1969, some 59 per cent of his printed opinions that went to appeal were reversed by higher courts, nearly three times the national average for district judges.

While Judge Carswell may no longer believe in racist statements he made during a political campaign in Georgia 22 years ago, he has since demonstrated open hostility to lawyers and defendants in cases involving so fundamental an issue as voter registration rights granted by Congress. And he has further admitted signing a document as an incorporator for a segregated, municipally owned private golf club, an insensitivity to both the law and to the changing mood of the nation.

President Nixon's search for a conservative voice on the Supreme Court has misled him into equating conservatism with the backlash views of the discredited Dixiecrats. They are about as far apart as such Republican nominations as Justice Oliver Wendell Holmes and G. Harrold Carswell.

[From the New York Times, Mar. 30, 1970]

THE SENATE'S CONSCIENCE

Support for the nomination of Judge G. Harrold Carswell as Associate Justice of the Supreme Court has been slipping away. The opposition is now demonstrably nonpartisan. An increasing number of members of both parties, liberals and conservatives alike, stand ready to heed the appeal by Senator Robert W. Packwood, Republican of Oregon: "The right thing, the courageous thing, for members of the Senate to do is to vote their own conscience."

Not a shred of justification remains for the view that Judge Carswell should be confirmed as a routine courtesy to President Nixon. An affirmative vote now is a vote against conclusive evidence that the nominee fails to meet the standards that the country—and the Senate—must demand of any appointee to the highest Court.

Judge Carswell's lack of sensitivity to the human and constitutional rights of black Americans to full equality, under law and in society, is pervasive in his personal attitudes and throughout his judicial career. His belief in white supremacy, far from being the campaign aberration of an ambitious young politician, seems repeatedly to be reflected in his interpretation of the law.

It clearly motivated his role in the transformation of the Tallahassee golf links into a segregated private club, while he was a United States Attorney sworn to uphold the law he helped to circumvent. His subsequent lack of candor concerning this episode merely confirmed that he understood how wrongly he had acted.

The evidence of the professional record is equally bleak. Judge Carswell has made no contributions to the law, either as a scholar or from the bench. His ratio of reversals by higher courts is unusually high. His predilection against hearing the evidence, particularly in petitions by the poor, raises questions of law as well as of human sympathy.

The most convincing objections to Judge Carswell's appointment have been raised not by politicians but by Judge Carswell's peers. Although his backers in the American Bar Association initially placed great emphasis on the allegedly unanimous support for Judge Carswell by his associates, the Fifth Circuit of the United States Court of Appeals, at least two distinguished judges of that court have since withheld their endorsement.

A committee of eminent lawyers, including the president of the Bar Association of the City of New York, has expressed emphatic opposition to the candidate and received the signatures of hundreds of lawyers and law school deans in support of the demand that the American Bar Association reexamine its highly questionable procedure in declaring Judge Carswell "qualified."

The Bar Associations of Philadelphia and of San Francisco have urged the Senate to withhold confirmation. Law school faculties across the country, including the South, have spoken out against the appointment. The entire law faculty of the University of Iowa wrote to President Nixon that, though it concurred with his desire to appoint a conservative, it was deeply disturbed by the choice of a man of "apparent bias and mediocrity."

Can the Senate, having rejected Judge Haynsworth, endorse Judge Carswell without inviting the conclusion that proven insensitivity toward human and civil rights is less objectionable than a possibly loose interpretation of economic conflicts of interest?

The President is clearly entitled to seek out a conservative and a Southerner for the Supreme Court; but to make that search synonymous with the Carswell nomination is to belittle if not ignore the great reservoir of talented Southern conservatives.

Since Mr. Nixon appears unwilling to accept the unmistakable evidence that he has once again been led into making a wrong and divisive choice, it is the Senate's duty to speak for justice and excellence in the nation's public life. Amidst today's crisis of confidence, the Supreme Court remains a symbol of legitimate authority of American institutions. The symbol must not be tarnished nor the authority undermined. This is why we believe that "voting their own conscience" and acting in accordance with their constitutional obligation, the members of the United States Senate should reject Judge Carswell's nomination.

FROM OBSCURE TO UNKNOWN

In naming Judge G. Harrold Carswell to the Supreme Court, President Nixon has displayed more glaringly than ever a talent for seeking out undistinguished candidates for the high bench.

Clement F. Haynsworth, though Chief Judge of a Circuit Court of Appeals, was far below Supreme Court stature in scholarliness, range of mind and sensitivity to judicial proprieties. The man selected after he failed to win Senate confirmation—Judge Carswell, only seven months on the appellate bench—is so totally lacking in professional distinction, so wholly unknown for cogent opinions or learned writings, that the appointment is a shock. It almost suggests an intention to reduce the significance of the Court by lowering the caliber of its membership.

In his election campaign President Nixon promised to put only "extremely qualified" men on the Supreme Court. But one of the principal qualifications he had in mind was a willingness on the part of nominees to see themselves as "caretakers of the Constitution . . . not super-legislators with a free hand to impose their social and politicial viewpoints upon the American people."

No one who cares about the country wants justices or anyone else to impose their viewpoints as such. But, since unanimity of viewpoint is hard to come by, all government involves a degree of imposition by some one. It is the duty of the three branches to check and balance the process, and of the Judiciary in particular to sustain the spirit of the Constitution and see to it that the rights of those imposed on are protected.

It is no recommendation of the Justice-designate to have Senator Richard B. Russell of Georgia say: "He'll follow precedents. He'll follow the doctrine of *stare decisis* (sticking to past decisions)." The Supreme Court is not a place for men who have built their judicial careers on a static approach to history, as civil rights leaders emphatically agree Judge Carswell has done.

He may in time duplicate the growth in wisdom and in stature that others have experienced in their years on the Court. But it is hardly sound policy to name a man to the Supreme Court on the theory that it may do him a world of good.

[From the Washington Post, Mar. 22, 1970]

JUDGE CARSWELL: THE WRONG SIGNAL—AND CHARLES EVERS: A CASE IN POINT

It is a longish leap from the fun and games at the Gridiron Club last weekend to the Senate debate on Judge Carswell. But bear with us because there is a logical connection here between the appointment of a decidedly second-rate judge to the Supreme Court and the ease with which President Nixon and Vice President Agnew stole the Gridiron show. As you may have read, the two men joined in a piano duet, with the President playing a medley of the favorite tunes of his predecessors and the Vice President interrupting him by playing "Dixie." Doubtless you had to be there to get it into the right context, to hear the rough but good-natured jibes at the Administration on race issues that preceded the surprise finale, and thus to appreciate the joke. Almost everybody agreed it was a *tour de force* gracefully done and quite in keeping with the spirit of an affair at which the tensions and antagonisms of the real world are supposed to be set aside.

So it is with no intent to disparage the performance of the President and the Vice President that we take note of this event. Still, at the risk of sounding stuffy, it strikes us as a small piece of a bad scene, and a significant measure of how great is the power of the Presidency to influence a public attitude. All of a sudden, it is all right to joke about something that responsible people in high office used to handle with care and compassion and deadly seriousness.

In theory, a sense of humor is supposed to be a saving grace. So why not make sport of a Southern Strategy? The answer, of course, is that Southern Strategy is a euphemism for something that isn't funny. On its face it is no more than a cynical political tactic designed to innoculate the South against George Wallace for the sake of winning it for the Republicans, the better to secure a second term for President Nixon in 1972. As a political objective, this is fair enough—some people even see in it an admirable toughmindedness. But there is nothing admirable about the logical consequences of this strategy, for to bring it off it becomes necessary for the Administration to cultivate indifference, not to say hostility, toward the fundamental principle of human rights in general, and the equality of education available to black children in particular. Putting it another way, and bluntly, Southern Strategy means a form of racism, tacit or explicit, by people in high places, because there can be no successful effort to undercut George Wallace in the South that does not play the segregation game.

It is important to be clear in our minds about the issue here. We are well aware that the White House will be publishing next week what has been billed as the most complete, the most comprehensive, the most closely argued legal brief ever composed on school desegregation and it is not our purpose here to judge it in advance. For that is not what this is all about. We are not talking just about schools, or doubts held by responsible people about busing or other methods for dealing with the *de facto* segregation which occurs as a result of natural, geographic imbalances. We are talking about what a President or an Administration can do, or not do, to create an atmosphere that is conducive, not to miracles, but to continuing progress against racial discrimination all along the line. And this, in turn, is what is so troubling about the ease with which we now laugh at jokes about a Southern Strategy. It is what links the hijinks at the Gridiron with the nomination of Judge Carswell and a lot of other things—the abrupt removal of a Leon Panneta from HEW because he tried too hard; the effort to subvert Negro voting rights; the insensitivity, in tone and phrase, to black pride; the country club mentality.

Mr. Harry Dent, a presidential assistant, receives a written offer of campaign funds from a Georgia Republican leader in exchange for the restoration of Federal school aid in a Georgia school district. He casually passes it along to HEW—and nobody seems to mind. The Vice President brushes off the idea of quotas for black students by asking the crude question: "Do you wish to be attended by a physician who entered medical school to fill a quota . . .?" Mr. Jerris Leonard, the Justice Department's civil rights enforcer, thinks it clever, or something, to say that one reason blacks just out of law school are not attracted to Justice Department jobs is that they haven't yet bought their first cashmere topcoat. Confronted with a question about Judge Carswell's involvement with segregated clubs, the President thinks it an adequate defense to say, in effect, that everybody's doing it: ". . . if everybody in government service who has belonged or does belong to restricted golf clubs were to leave the service, this city would have the highest rate of unemployment of any city in the country."

And so it goes, right down to the vote on Judge Carswell, with the Administration's men telling Republicans who opposed Judge Haynsworth—in almost every respect a much superior choice—that they can't rebuff their President twice running. They can, of course, and they should, because this is nothing so narrow as a test of party loyalty. It is a test of policy and principle—a kind of Tonkin Resolution on race, if you accept the theory recently advanced in Life Magazine by Hugh Sidey that the race issue could be for President Nixon the disaster that Vietnam was for President Johnson.

The Tonkin Resolution on Vietnam was a fraud, and while that became clearer later, it might have been clearer at the time if the right questions had been pressed, if Congress had not closed its eyes out of misplaced deference to the President and waved him down a wrong road. Therein lies the analogy. Judge Carswell is a bad choice, and the Senate should reject him out of its obligation to safeguard the paramount interests of our highest court. In the process of refusing his confirmation, the Senate has an opportunity, not just to say *No*, but also to say *Enough*—of insensitivity and indifference, of legislative retrogression and of catering to racist tendencies for political gain, of talking about blacks as if there were no blacks in the room. The Senate, in this fashion, could broadcast from at least one seat of government a signal to all races—a signal which at this stage can no longer be broadcast, in a way that would be believable, by anybody else.

Turning from what is cumulative and comprehensive—and no less real or pernicious for that—let us take up cases. Let us consider for a moment what his countrymen and his government have said to Charles Evers, who is the black mayor of Fayette, Miss. Mayor Evers is of course a lot more than that. He was born 47 years ago and raised poor in Decatur, Miss. He served in World War II as an army volunteer in the Pacific and again, in the Korean war, as a reservist. He took a bachelor of arts degree at Alcorn College, and in 1951, with his brother Medgar, he undertook a membership drive in Mississippi for the NAACP. That was to cost him his livelihood: because of his NAACP connection he was forced out of business in Philadelphia, Miss. It was also to cost his brother his life: Medgar Evers was murdered in Jackson on June 12, 1963, and Charles Evers, then living in Chicago, came home and assumed his dead brother's job as field secretary for the NAACP in Mississippi.

One hears a great deal about blacks who have been provoked and abused into despair, a great deal about black men and black women who have been forced to the conclusion that separatism or violence or both are the only solutions available to them. On the basis of his experience, Charles Evers would seem a likely prospect for this turn of mind. His recollections of family suffering and humiliation at the hands of white neighbors when he was a boy are vivid; his brother and the political leaders he followed—both Kennedys and Martin Luther King—were murdered; his every attempt to obtain for himself and others the simplest, most fundamental forms of equal justice in his state have been systematically and viciously fought by its citizens and its leaders. And yet this is a man who can still say that he "loves" Mississippi and that he "loves" his country and that he is bent on making justice work—within the system, by means of the traditional American political processes.

Charles Evers has had almost as much trouble on this count from those he describes as the "black extremists" as he has had from his white compatriots. But he has rejected the ridicule and pressures of the one and the ominous warnings of the other. His crime (in the eyes of both) has been his single-minded pursuit of political equity and racial understanding through the instruments of government that are theoretically available to all. A patient campaign led to the accreditation of his delegation at the Democratic convention in Chicago, and he was a stalwart among those who insisted that the delegation and the party it represented be black and white—

not just black. His prodigious efforts to take advantage of the Voting Rights Act of 1965 via registration and get-out-the-vote drives and via the fielding of a number of candidates, led to his election as mayor of Fayette last year. None of this was done without risk, but his observations upon election and since have been wholly lacking in any of the vengeance or retaliatory spirit that he might easily have indulged had he wished. On the contrary, Charles Evers declared that his policy for the community he served would be one aimed at economic betterment for all citizens—black and white—and that there would be no racial violence from any quarter tolerated. "We're not going to do to white people what they've done to us," he said. "We're going to have law and order and justice." And again: "We've got to prove to this country we can work together. I know we can."

You would think that the kind of spirit and sense Charles Evers has shown would gain him allies and admirers in high places. But something quite different has occurred. One of the Nixon administration's first acts in the civil rights field was an attempt to eviscerate the Voting Rights Act, the legislation to which Mayor Evers and others could point as evidence that the system might be made to work. Then it pulled out the rug in Mississippi from under those of both races who, like Mayor Evers, had persisted in championing the worth of desegregating state institutions as a means of achieving racial amity and common justice. It sent Vice President Agnew to Jackson to titillate the fancy of his audience ("The point is this—in a man's private life he has the right to make his own friends . . . men like John Stennis and Jim Eastland have fought with great determination in Washington to preserve the strength and stability of this country . . . we believe that civil rights must be balanced by civil responsibilities . . ." and so on). Now we learn that Mayor Evers, with the assistance of HEW staff, not long ago put in for an HEW grant to begin a comprehensive health program for his country—the nation's fourth poorest—and an adjoining county. And we learn too that the state's Republican chairman wrote a letter to Washington opposing it and that the grant has been refused.

What are men like Charles Evers to think of an administration that seems at pains to undercut everything that offers hope of achieving progress through the legitimate means and channels of government? Statements on school desegregation, anxious inquiries of selected visitors as to whether and why the administration has a "racist" image are at this point of secondary importance. If, as we believe, the first order of business for Congress is the rejection of Judge Carswell's appointment, so the first order of business for the White House is to cease undermining the legislative gains of the past and undercutting those men and women who are smart enough and brave enough to use them. The President must make plain that when he and his spokesmen talk so lovingly about the "people of the South" they mean all the people of the South, including such distinguished people as Charles Evers.

[From the Washington Post, Apr. 2, 1970]

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.

[From the Washington Post, Mar. 31, 1970]

JUDGE CARSWELL: KEEPING THE RECORD STRAIGHT

Things are beginning to happen so rapidly in the battle over confirmation of Judge Carswell that it is a little hard to keep them in perspective. The weekend began, for example, with Senator Cooper's announcement of support for the judge, and while we would not wish to pretend to anything but regret about this, the fact is, of course, that his decision was expected and largely discounted in advance, as will be a string of such announcements in the coming days, as both sides play for psychological advantage. Leaving this part of the struggle aside, there were these weekend developments which bear closer examination: 11 judges from the Fifth Circuit Court of Appeals signed a telegram endorsing Judge Carswell; 79 lawyers from Tallahassee, the judge's home, sent a similar endorsement; and Deputy Attorney General Kleindienst unloosed a broadside attack against assorted Carswell critics, expressing the belief that those who oppose him for political reason have run out of "misleading" and "deliberately untruthful" charges against him.

Well, on this last count we would certainly hope so, too. But we would also hope that those who support the judge would be a little more precise in what they say, and a little more to the point, which in the case of the Fifth Circuit judges and the Tallahassee lawyers and some of the complaints of Mr. Kleindienst have to do, at bottom, with what people in the legal profession think of Judge Carswell.

Turning to first things first, Judge Carswell's nomination did get a timely psychological lift from the telegram signed by those 11 judges—which only goes to show what trouble it is in. What would have been the outcry about any preceding nominee if it had become known publicly that any substantial number of his closest colleagues op-

posed confirmation? Remember that if Judge Carswell is not confirmed his colleagues, specifically including those who did not sign the telegram, must continue to sit on the bench with him. And there are four sitting judges as well as three retired judges who did not sign. Interestingly, only three of the eight judges who were active when the court underwent its most serious attacks between 1955 and 1965 are openly supporting this nomination. And none of the court's big four in those days (three of them, incidentally, appointed by President Eisenhower)—Tuttle, Rives, Wisdom and Brown—signed that telegram.

As to other matters, the Ripon Society did not, as Mr. Kleindienst said, first say Judge Carswell was reversed 54 per cent of the time and then on further study change that to 40 per cent. It reported originally that Judge Carswell was reversed in 58.8 per cent of those cases in which appeals were taken from his printed opinions. No one that we know of has challenged that figure. The Ripon Society subsequently examined all the appeals from all Judge Carswell's decisions and reported the reversal rate was 40.2 per cent, noting that the rate got worse the longer he was on the bench—25 per cent for the first quarter of his appeals, 33 per cent for the second, 48 per cent for the third, and 53 per cent for the fourth. Either Mr. Kleindienst misread the Ripon Society's statements or chose to ignore its careful distinction between written opinions (which judges usually file only in major cases) and all decisions.

It is true, as Mr. Kleindienst said, that the official voice of the American Bar Association is for confirmation. But we suspect that columnists Mankiewicz and Braden were more accurate than was Mr. Kleindienst when they suggested that a majority of that Association's members who have an opinion are against confirmation. At least, that's the feeling we get from reading the Congressional Record, which senators love to stuff with communications from home—and from reading our own mail. With less than a dozen exceptions, all the letters we have seen in the Record or received ourselves from lawyers supporting Judge Carswell come from his home state of Florida. As for the list of 79 Tallahassee lawyers, it is useful to note that there are 284 lawyers in that city listed in a national directory.

Certainly one segment of opinion is heavily against Judge Carswell's confirmation; these are the people who teach law. We have collected the following tabulation of the universities which have law schools that have been heard from during this debate:

LAW SCHOOL DEANS

Against Confirmation (22)

Boston College, Catholic, Chicago, Columbia, Connecticut, Georgetown, Harvard, Hofstra, Illinois, Indiana, Iowa, Kansas, New York U., Notre Dame, Pennsylvania, Puerto Rico, Rutgers, Stanford, UCLA, Valparaiso, Western Reserve, Yale.

For Confirmation (2)

Florida, Florida State.

FIVE OR MORE FACULTY MEMBERS

Against Confirmation (31)

Arizona, Boston U., California (Berkeley), Catholic, Chicago, Columbia, Connecticut, Florida State, Georgetown, Harvard, Illinois, Indiana, Iowa, Kansas, Loyola (Los Angeles), Maine, New York U., New York U. (Buffalo), North Carolina, Notre Dame, Ohio State, Pennsylvania, Rutgers, Stanford, Syracuse, Toledo, Valparaiso, Virginia, Washington & Lee, Willamette, Yale.

For Confirmation (0)

None.

It is impossible to dismiss this overwhelming vote of no confidence in Judge Carswell from the legal teaching profession; certainly it reduces to irrelevancies the complaints of Mr. Kleindienst about the calculations of the Ripon Society or the argument over who speaks for the American Bar Association—the members who are plainly split on the matter, or the ABA's 12-man Committee on the Judiciary which rated him "qualified." Still less is it any longer possible to argue from this listing that the opposition to Judge Carswell is narrowly sectional and confined to the northeastern corner of the country, as some of the judge's supporters have argued in the Senate debate. It is in every sense a national list—South as well as North, Midwest and Far West as well as East. And it is a devastating list. For it is made up of men and women who teach lawyers and who therefore care deeply about the quality of the law they must teach.

[From the Washington Post, Mar. 27, 1970]

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 facilites . . .

"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 ac-

count 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 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.

[From the Washington Post, Mar. 24, 1970]

JUDGE CARSWELL: A LOOK AT THE REVERSAL RECORD

There has been a lot of talk in the Senate in recent days about Judge Carswel's 11 years of service as a federal trial judge and how well that fit him or does not fit him for service on the Supreme Court. Those opposed to his confirmation point to the rate at which his decisions have been reversed as a demonstration that he is, at best, a run-of-the-mill judge. Those who support confirmation claim that the reversal rate presents a "distorted and unreal" picture. "Like so many of the charges against him (this one) dissolves when exposed to the light of day," Senator Gurney said the other day, claiming that the judge has been reversed in only 33 out of the more than 2,000 civil cases he has handled and in only eight out of more than 2,500 criminal cases.

These figures are totally irrelevant, not to say blatant distortions.

The numbers of 2,000 and 2,500 represent *all* the cases filed in Judge Carswell's court and only about 15 per cent of these ever went to trial. What matters is what the Court of Appeals thought of the far smaller number of decisions it actually had an opportunity to review. There are fewer than 200 of these, according to the reports of the Fifth Circuit Court of Appeals, but no one has produced a list of all of them. Compiling such a list is difficult since the cases are spread over tens of volumes of law books. But we have looked at all those we could find in the reports of the Fifth Circuit since July 1, 1964 and report the following concerning the record of the last half of his trial judge experience:

In criminal cases, Judge Carswell was upheld in 21 of 25 decisions, an affirmance rate of 84 per cent. All the other judges in his circuit were upheld 81 per cent of the time during the last five fiscal years.

In civil cases, Judge Carswell was upheld in 18 of 53 cases, an affirmance rate of 34 per cent. All the other trial judges in his circuit were upheld 72 percent of the time.

In habeas corpus and similar cases, included in the civil category above because the courts list them that way, Judge Carswell was upheld in 5 out of 15 decisions, an affirmance rate of 33 per cent. All the other judges in Florida were upheld in 67 per cent of these cases during this period.

In the other civil cases—the disputes over contracts, accidents, and so on that are the bread and butter of the federal courts—Judge Carswell was upheld in 13 of 39 cases, a rate of 33 percent. The other judges in the South have a batting average in such cases of about 75 per cent.

The key that may explain this record seems to lie in the reputation Judge Carswell has among some lawyers of not wanting to try cases. Each habeas corpus reversal came because he denied a petition without a hearing. More than half of all the other reversals in civil cases came because he granted pre-trial motions to dismiss, or for summary judgment, in situations which the Court of Appeals said required trials. It seems remarkable, for instance, that he was reversed several times over several years in negligence cases involving such things as auto accidents, a swimming pool accident, and a boat collision. These are cases in which the facts almost always determine the outcome and the law is clear that disputed facts cannot be resolved in summary judgments.

Judge Carswell's inclination to dispose of cases summarily does help clear court dockets when he is right. But it also helps clog them when he is wrong. And it seems that those who believe a jury ought to decide the facts must pay the costs of an appeal to win a reversal and a trial. The desire of a judge to be bold and to dispose of cases without trial might be understandable if he presided over an extremely busy docket. However, the caseload in Judge Carswell's court was regularly below the average per judge in his circuit and after 1962 was the lowest per judge in that circuit.

This record is not what could be called a good one. It is not, we suspect, even mediocre, as Senator Hruska would say. Nor can it be explained away, as some of the judge's supporters would have us believe, by arguments about the cases that were not appealed, about laws or court interpretations that had been changed in midstream, or about partial reversals. Among the 35 reversals in civil cases, three were partial, and no more than half a dozen came because of intervening court decisions and new issues of law. The others were decisions by the Court of Appeals that Judge Carswell was simply wrong—wrong 12 times because he ruled without hearing the facts. What all this means, it seems to us, is that the claim that Judge Carswell has been "an outstanding federal judge," to use Senator Gurney's words, evaporates when it is exposed to careful scrutiny.

[From the Washington Post, Feb. 10, 1970]

THE QUALIFICATIONS OF JUDGE CARSWELL—I

Some troubling questions have arisen during the Senate hearings on the nomination of G. Harrold Carswell to be a Justice of the Supreme Court and, in the light of the close scrutiny given to other recent nominations, these need to be dealt with carefully and fully. The case against Judge Carswell, as put forward by his critics, involves a speech he made in 1948, a golf course in Tallahassee in 1956, the record he has compiled in civil rights and related cases in 12 years on the federal bench, and the general qualifications he holds for a seat on the highest court.

The first two of these are matters of history and need to be evaluated in the context of their times. Judge Carswell himself admits to some amazement now at what he said in that 1948 speech. He should, for his were the words of pure and simple racism. But this was the language of Southern politics at the time and many other public officials would blanch now if they were called to account for what they said then. A man ought to be allowed to live down mistakes of his past, particularly those of his first youthful campaign for public office, and Judge Carswell's white supremacy speech is one of those that can be lived down.

The golf course question, too, must be judged in the context of history but the history, in this instance, is not so helpful to the judge. As far as we now know, the relevant history began in late 1955 when the Supreme Court ruled that public golf courses could not discriminate against Negroes. Just at Christmas that year, the Atlanta city course was opened to Negroes and newspapers carried a picture of three Negroes teeing off. Within a few weeks, there was movement in other cities to desegregate golf courses. A federal court, in January, ordered Nashville to desegregate its links. A half dozen Negroes were convicted of trespassing for playing on a municipally owned but privately operated course in Greensboro. And a law suit was filed in the Federal Court for the Northern District of Florida, where Judge Carswell was United States Attorney, to compel desegregation of the municipal golf course at Pensacola.

In Tallahassee, meanwhile, one county commissioner complained that a proposal to lease the city-owned golf course to the Tallahassee Country Club was racially motivated. In mid-February, however, the City Commission approved the proposal (a 99-year lease at $1 a year) and agreed to make a similar deal with "any responsible person" for a Negro golf course then under construction. Two months later—April 1955—Judge Carswell signed the certificate of incorporation of the Capital City Country Club, Inc., four of whose 21 incorporators were directors of the old Tallahassee Country Club. This new organization promptly took over the lease on the golf course and the city government approved that transfer on May 10. On May 24, the Federal Court ordered desegregation of the publicly owned course at Pensacola.

Of all this, Judge Carswell told the Senate Judiciary Committee the other day, "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." The judge may have been completely candid in his statement. If he was, however, then what was going on in Tallahassee in the spring of 1955? Or, rather, where was he? An affidavit sent to the Senate committee by the wife of a Tallahassee banker says, "We refused the invitation (to join the Capital Country Club) because of the obvious racial subterfuge which was evident to the general public."

The history thus works against Judge Carswell on this question. If he didn't know what was going on in the courts, around the country and in his own community concerning golf courses, what kind of United States Attorney was he? If he did know, what was he doing contributing his name—and, in all fairness, his testimony makes it clear that is about all he contributed—to an attempt to save segregation in golf, which he didn't even play? These are only some of the troubling questions that have arisen over Judge Carswell's nomination. Standing alone, they might be resolved in his favor. Added to others, which we will have more to say about, they raise serious doubts about whether he should be confirmed.

THE QUALIFICATIONS OF JUDGE CARSWELL—II

In a day or so, in the concluding editorial of our series on Judge Carswell, we will have more to say about his record and his qualifications to be a member of the Supreme Court. Meanwhile, we interrupt this program to bring you a message from one of Judge Carswell's sponsors—the legal counsel to the Attorney General.

Mr. Rehnquist claims that The Washington Post was wrong in interpreting the Supreme Court's 1964 Atlanta decision as meaning that grade-a-year plans for desegregation were too slow. We rest our case on the two following interpretations of that decision by the Fifth Circuit Court of Appeals. The Fifth Circuit said, in July, 1964, that in remanding the Atlanta case the Supreme Court intended that it be reconsidered

"in light of the Supreme Court's recent pronouncements indicating that greater speed in implementing the Brown decision is now required." The Fifth Circuit added, "The necessary conclusion to be reached . . . is that for a school system which is beginning its plan of desegregation 10 years after the second Brown decision, more speed and less deliberation is required."

In the Jacksonville case, Mr. Rehnquist properly rebukes us for regarding the Supreme Court's decision not to review as a ruling on the merits of the matter. This error, however, is somewhat irrelevant since Judge Carswell was bound just as fully by decisions of the Fifth Circuit as he was by those of the Supreme Court. In this instance, the Fifth Circuit had been asked to rule that federal courts neither could nor should order desegregation of teachers in school cases. It refused to do so, saying that they could and that they always should consider doing just that. A few months later, nevertheless, Judge Carswell reserved decision on teacher desegregation in Bay County. Whether he was, as we said, "apparently ignoring" the Jacksonville case is a matter of opinion on which we and Mr. Rehnquist apparently disagree. As for the rest of Mr. Rehnquist's critique, it appears to deal largely with our motives, the colors we are flying, as he put it. About all there is to be said about that is that we are not now questioning the administration's *motives* in appointing Judge Carswell and so we see no purpose in answering questions about ours. We might add, in passing, that although we had some reservations in varying degree about the ideological or judicial coloration of both of President Nixon's previous nominees to the Supreme Court, Chief Justice Burger and Judge Haynsworth, this did not lead us to urge the Senate that they not be confirmed.

[From the Baltimore Sun, Mar. 18, 1970]

JUDGE CARSWELL

The most important question before the Senate as it considers President Nixon's nomination of Judge G. Harrold Carswell to the Supreme Court is this: is he well qualified? The answer, in the opinion of this newspaper, is No. The record of the committee hearings shows nothing of private financial dealings of the kind that caused the Senate to reject the nomination of Judge Haynsworth. But there is nothing in the record to support a finding that Judge Carswell is well qualified for this post, or that the Nixon administration made a serious search for a well qualified man. Judge Carswell may meet the minimum standards, but an appointment to the Supreme Court resting on his slender credentials can be taken only as a reflection on President Nixon, Attorney General Mitchell and, ultimately, on the Supreme Court.

Let us underscore the point here that we do not take exception to Mr. Nixon's effort to turn the Supreme Court toward a more conservative "constructionist" course. We do not in any way find fault with the appointment of a conservative Southerner. We object, however, to the appointment of mediocre men to the nation's highest court, and mediocrity is the word that most accurately characterizes Judge Carswell's record.

In the sensitive area of race, which seems likely to be before the Supreme Court for years, Judge Carswell's record shows no more than a typical Southern conformity. In 1948 he made a political speech in which he asserted a "vigorous belief in the principles of white supremacy." He says now that this view is obnoxious to him and that he no longer holds it. In 1953 as an attorney in Tallahassee he drew up a "white only" charter for a college football booster organization and in 1956 he joined a plan to lease the Tallahassee municipal golf course to a private, white club.

This is enough to create a considerable mistrust in this appointment, and to raise a question as to the nature of the Justice Department's research before Judge Carswell was recommended to the White House. Beyond this, moreover, is the fact that in more than a decade on the bench in federal district and appellate courts Judge Carswell made no mark of distinction. His reversal rate as a trial judge was high. He is about as nearly a nonentity as a federal judge can be.

* * * * *

[From the Trenton (N.J.) Sunday Times Advertiser, Mar. 15, 1970]

SENATOR CASE'S EXAMPLE

New Jersey's Clifford P. Case has become the fourth Republican in the U.S. Senate to announce he will vote against confirmation of G. Harrold Carswell for the Supreme Court. His decision is a welcome one.

Senator Case based his decision on Judge Carswell's lack of sympathy for civil rights, as evidenced by both private and courtroom performances, and his utterly undistinguished record as a legal scholar and jurist—including the achievement of having been reversed by higher courts nearly three times as often as the average district judge.

"On all the evidence, Judge Carswell does not measure up to the standard we have rightly come to expect of members of the Supreme Court," Senator Case said.

On the same day, 457 lawyers, law deans and law professors urged the Senate to reopen hearings on the Carswell nomination—but added that on the basis of what is known already, the nomination should be rejected.

Elevation of Judge Carswell to the nation's highest court would have two deplorable effects. It would dilute the quality of a body whose very essence demands men of the highest quality. And it would be a cruel blow to minority-group Americans who are constantly being urged to rely on the workings of the law to obtain justice.

We hope other Republican senators join Clifford Case in placing duty to country over duty to a President of their own political party. This includes Senators Scott and Schweiker of Pennsylvania, who have indicated they favor Judge Carswell's nomination—but who voted against the confirmation of Judge Haynsworth, whose qualifications, modest as they were, were excellent compared to Judge Carswell's.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to executive session.

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

THE PENDING BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending business?

The PRESIDING OFFICER (Mr. COOK). The pending business is the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court.

Mr. BYRD of West Virginia. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is the motion to recommit the nomination.

Mr. GRIFFIN. I would like to inquire, for the information of Members of the Senate, following the vote on the motion to recommit, which is the pending motion, and assuming that the motion to recommit should fail, what then should be the business before the Senate?

Mr. BYRD of West Virginia. Mr. President, the Senate would still be in executive session. The business then before the Senate would be the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court.

Mr. GRIFFIN. I thank the Senator from West Virginia.

The PRESIDING OFFICER. The Chair might state to the Senator from Michigan that, under the order of the Senate, the nomination would be the pending business until such time as it would be set aside, and on that nomination, under the previous order, a vote would take place on Wednesday at 1 o'clock

Mr. GRIFFIN. I thank the Chair.

Mr. BYRD of West Virginia. Mr. President, of course the able majority leader could at any time move to return to legislative session, in which case the resolution (S. Res. 211) would again become the pending business.

Mr. GRIFFIN. He could do that.

Mr. BYRD of West Virginia. Or the majority leader could move, while in executive session, to take up legislative business, as in legislative session.

In specific answer to the Senator's specific question, once the vote on recommittal has been had, and if the motion to recommit is not sustained—or if a motion to table the recommital motion should carry—unless the majority leader moves to go into legislative session or to proceed to something else as in legislative session, the pending business then before the Senate would be the question of confirming or rejecting the nomination of Mr. Carswell.

Mr. GRIFFIN. I thank the distinguished acting majority leader.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the unanimous-consent agreement of March 25, 1970, be printed in the RECORD, so that Senators may be reminded of the order for Monday, April 6, 1970.

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

The unanimous-consent agreement is as follows:

UNANIMOUS-CONSENT AGREEMENT

(In executive session)

Ordered, That, effective on Monday, April 6, 1970 (with the Senate convening in executive session at 10 a.m.), further debate on the nomination of G. Harrold Carswell to be Associate Justice of the United States Supreme Court, with the pending question on the motion of the Senator from Indiana (Mr. Bayh), to recommit the nomination to the Committee on the Judiciary, be limited to 3 hours to be equally divided and controlled by the Senator from Indiana (Mr. Bayh) and the Senator from Nebraska (Mr. Hruska), or whomever they may designate, with the vote coming at 1 o'clock, or following a vote on a motion to table the motion to recommit if such a motion should first be offered. Following the above vote or votes the Senate will proceed to vote on the confirmation of the nomination at 1 o'clock on April 8, 1970, or following the vote on a motion to table the nomination should such motion be made, and if the nomination is still before the Senate. [WEDNESDAY, MARCH 25, 1970.]

RECESS TO 10 A.M. MONDAY, APRIL 6, 1970

Mr. BYRD of West Virginia. Mr. President, if there be no further business to

come before the Senate, I move, in accordance with the order of March 25, that the Senate stand in recess in executive session until 10 o'clock on Monday morning next.

The motion was agreed to; and (at 4 o'clock and 36 minutes p.m.), the Senate, in executive session, recessed until Monday, April 6, 1970, at 10 a.m.

EXTENSIONS OF REMARKS

CATHODE RAY TUBE STUDY

HON. SAMUEL N. FRIEDEL

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, April 2, 1970

Mr. FRIEDEL. Mr. Speaker, I have here an article currently appearing in the March 30 issue of Publisher's Weekly. Brought to my attention by Mr. John F. Haley, staff director of the Joint Committee on Printing, it describes the "first known full-scale study" of the costs of composition created by high-speed computer-driven cathode ray tube systems.

Mr. Haley also serves as Chairman of the Federal Electronics Printing Committee, that being the multi-interagency group which assisted the Joint Committee on Printing to advance its research and development directed program to the ultimately successful establishment of the pioneer cathode ray tube system at the Government Printing Office.

Since then the Electronics Committee has continued to function and Mr. Edwin R. Lannon, a representative on it from the Department of Health, Education, and Welfare, undertook the described study at the request of the Joint Committee on Printing and in conjunction with Her Majesty's Stationery Office of the British Government.

I assess Mr. Lannon's study as a major contribution to the orderly advancement of a technology which holds great promise for an essential part of American industry.

The Publisher's Weekly article follows:

PRELIMINARY REPORT OF CATHODE RAY TUBE COST STUDY

A preliminary report by E. R. Lannon, assistant administrator for administration, Environmental Health Service, U.S. Department of Health, Education and Welfare, on the cost of cathode ray tube composition *versus* conventional methods was the highlight of the fifth annual American University meeting on "New Technology in Printing and Publishing." Mr. Lannon's initial figures indicate that conventional typesetting is still considerably more economical than CRT for most jobs, if composition factors alone are considered.

In addition to Mr. Lannon's address, the meeting included presentations on editing for high-speed composition, optical character recognition, computer-output microfilm, and CRT for small book publishers (*PW*, March 16).

Mr. Lannon's address, however, was highly significant, since he presented figures from the first known full-scale study of CRT composition costs. He outlined the Federal government's interest in and involvement with the development of fast composing devices. The first high-speed computer-driven composer—the Photon 900—was developed specifically for the MEDLARS project of the National Library of Medicine of HEW. He also cited cost/performance data from both HEW and the Government Printing Office, which sponsored the first Linotron 1010. "Having established to our satisfaction that electronic composition is economic for much of the work that was already processed on the computer," Mr. Lannon said, "does it follow that other classes of work are also economically processed on the high speed system?"

Mr. Lannon outlined the joint U.S.-British study of the economics of CRT composition of non-stored material, which he was subsequently selected to head. It involved HEW, the U.S. Federal Electronic Printing Committee, the Bureau of Labor Statistics, the Computer Typesetting Research Project at the University of Newcastle-upon-Tyne, the British Federation of Master Printers, and manufacturers of CRT composition devices. He said that the work suggests "the dimensions of the 'ball park' that a firm must work in if it wishes to be marginally competitive—applying high-speed cathode ray tube composing devices in lieu of conventional composing processes and intermediate speed computer-driven composing processes."

As sample pages, the U.S.-British study used the eight pages used by Jonathan Seybold of Rocappi Inc. in his CRT study for Printing Industries of America, completed in 1969. The Seybold study, however, computed theoretic times.

"Having worked with computers for over ten years, I have learned by the fire of experience that theoretic times and real times are often orders of magnitude apart," Mr. Lannon said. He compiled real times, based on processing of the eight pages by CRT manufacturers, commercial printers, the GPO, and Her Majesty's Stationery Office. The conventional methods used were Linotype, Monotype, Photon 500 series and a computer-driven Photon 713. Wage statistics were supplied by the U.S. Department of Labor and the British Federation of Master Printers. The eight sample pages were of several orders of typographic complexity: a novel, "The Group," three textbooks, a directory of the American Bar, a book catalog index, a merchandise directory and a telephone book page.

COMPUTATIONS BASED ON TWO EQUATIONS

Two equations were drawn, Mr. Lannon explained, for computing the "marginal volume of work necessary to process each month and the number of one-shift keyboards required to feed the system at marginal levels." He said that the first equation was used "when the necessary [computer] time can be purchased as needed from either a commercial service bureau or an in-house computer facility. The second equation pertains when the computer of necessity must be dedicated to the composing process." The equations will be applied for each page on every system, and a mix equation for a given mix of work among the classes of work represented by the samples also is being applied to each of the four conventional systems and the four CRT systems, for both the U.S. and the U.K.

Mr. Lannon stressed the fact that any interpretation of his findings must be weighed against an evaluation of the methodology by which they were found. Break-even points will vary as the cost of labor varies, he said. "In general, when labor costs are high the break-even point will be relatively low," he explained. "When labor costs are low the break-even point will be quite high. Expressed in the way of economists, we are dealing with the marginal productivity of capital *versus* the marginal productivity of labor. Where labor is both productive and relatively inexpensive it is more economic than relatively expensive capital which is only slightly more productive than labor."

He also stressed that his study abstracted the cost of a single page from a totality of costs, and that to that extent the analysis is faulty. It is well known, for example, that set-up time for computer-processing of small jobs is prohibitively expensive unless they can be "ganged" and the same edit and insert routines are used for all. Mr. Lannon said that "a rough calculation on composing materials already on the computer indicated that for jobs less than 19 pages it would be more economic to use line-printer output as manuscript and to re-key by Linotype to get a typographic quality output." Obviously, he said, break-even would be far higher for jobs not already computerized if the same set-up costs could not be applied to more than one job.

Mr. Lannon gave only one example of the application of his break-even analysis, using the RCA Videocomp 830 against three conventional methods. He said that timing data for keyboarding for both methods were live times verified against engineered time standards. The timing data were predominantly British. "American data are, however, quite similar, indicating comparable levels of keyboard productivity in the two countries and explaining perhaps why so much of the type used in the U.S. is set in the United Kingdom," he said. The cost of keyboarding is considerably lower in the U.K.

The first equation, applied to the Videocomp 830 driven by the RCA Spectra 70/35 computer, produced the following results.

Linotype: "The Group," the most straightforward type page among the samples, produced a negative number when Videocomp setting was compared. This means, according to Mr. Lannon, that the break-even point for high-speed composition of this material on this particular device would never be reached. The three textbooks varied, but all were high. "Policy" would require 17,185 pages per month on 22.8 keyboards to reach break-even (all keyboard figures are on the basis of one shift per working day per month); "Prices and the Production Plan," 23,813 pages per month on 36.1 keyboards; and "Pleistocene," 31,829 on 66.3 keyboards. Directory material, not unexpectedly, required less volume to break even against Linotype. The figures were "The American Bar," 9207 pages on 36.6 keyboards; the book catalog index, 7947 pages per month on 67.9 keyboards, the directory page, 3390 pages per month on 17.9 keyboards; and the telephone book page, 1719 pages on 23 keyboards.

FIGURES FOR MONOTYPE AND PHOTON

The figures against Monotype composition were understandably lower, since Monotype is easily the most expensive form of conventional hot metal composition. "The Group" did break even here, Mr. Lannon said, but at a substantial figure: 10,547 pages per month on 14.98 keyboards. "Policy" required 5486 pages per month on 7.27 keyboards to reach break-even against Monotype; "Prices and the Production Plan," 7233 pages per month on 10.95 keyboards; "Pleistocene," 7616 pages on 15.9 keyboards; "The American Bar," 1658 on 6.6; the directory page, 924 on 7.9; the book catalog index, 1141 on 6.0; and the telephone book page, 732 pages per month on 9.1 keyboards.