States Code, to extend certain retention preference, dual employment and pay, leave, and retirement benefits to employees with service-connected disabilities resulting from injury or disease incurred while under detention by an enemy of the United States, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. LONG of Maryland:

H.R. 16747. A bill to amend the Federal Water Pollution Control Act to ban polyphosphates in detergents and to establish standards and programs to abate and control water pollution by synthetic detergents; to the Committee on Public Works.

By Mr. MIKVA:

H.R. 16748. A bill to provide supplemental appropriations to fully fund the urban renewal, model cities, rent supplement, and low-income homeownership and rental housing assistance programs for the fiscal year 1970, and for other purposes including jobs in housing; to the Committee on Appropriations.

By Mr. MILLER of Ohio:

H.R. 16749. A bill to amend title 38 of the United States Code to increase the rates and income limitations relating to payment of pension and parents' dependency and indemnity compensation, and for other purposes; to the Committee on Veteran's Affairs.

By Mr. MILLER of Ohio (for himself, Mr. ANDERSON of Tennessee, Mr. ASHLEY, Mr. BUCHANAN, Mr. FRIEDEL, Mr. FLYNT, Mr. FULTON of Tennessee, Mr. GETTYS, Mr. GOLDWATER, Mr. GOODLING, Mr. HANSEN of Idaho, Mr. HECHLER of West Virginia, Mr. MIKVA, Mr. MORSE, Mr. NEDZI, Mr. O'KONSKI, Mr. RUPPE, Mr. RANDALL, Mr. WHALLEY and Mr. WYATT):

H.R. 16750. A bill to provide for annual adjustments in monthly monetary benefits administered by the Veterans' Administration, according to changes in the Consumer Price Index; to the Committee on Veterans' Affairs.

By Mr. MIZE:

H.R. 16751. A bill to provide for the disposition of funds appropriated to pay a judgment in favor of the Iowa Tribe of Kansas and Nebraska and of Oklahoma in Indian Claims Commission docket No. 79–A and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. PATMAN (for himself, Mr. REUSS, Mr. MOORHEAD, and Mr. GONZALEZ):

H.R. 16752. A bill to amend the Defense Production Act of 1950, and for other purposes; to the Committee on Banking and Currency.

By Mr. POLLOCK:

H.R. 16753. 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.

H.R. 16754. A bill to amend the Interstate Commerce Act and to extend regulation under the Interstate Commerce Act to carriers not previously regulated under this act; to the Committee on Interstate and Foreign Commerce.

By Mr. ROGERS of Florida:

H.R. 16755. A bill to amend title XVIII of the Social Security Act to provide payment for chiropractors' services under the program of supplementary medical insurance benefits for the aged; to the Committee on Ways and Means.

By Mr. RUPPE:

H.R. 16756. A bill to provide for certain minimum payments to States from receipts derived from national forests located within such States; to the Committee on Agriculture.

H.R. 16757. A bill to provide for the designation of the Mackinac Bridge as part of the National System of Interstate and Defense Highways; to the Committee on Public Works.

By Mr. RYAN:

H.R. 16758. A bill authorizing the entry or parole into the United States of Cuban refugees; to the Committee on the Judiciary.

H.R. 16759. A bill authorizing the entry or parole into the United States of Cuban refugees; to the Committee on the Judiciary.

By Mr. TAYLOR:

H.R. 16760. A bill to authorize and direct the Administrator of Veterans' Affairs to accept certain land in Buncombe County, N.C., for cemetery purposes; to the Committee on Veterans' Affairs.

By Mr. TEAGUE of California (by request):

H.R. 16761. A bill to amend title 38, United States Code, in order to authorize the Administrator to make advance educational assistance payments to certain veterans; to make improvements in chapter 37 of such title; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. TEAGUE of Texas (by request):

H.R. 16762. A bill to amend title 38, United States Code, in order to authorize the Administrator to make advance educational assistance payments to certain veterans; to make improvements in chapter 37 of such title; and for other purposes; to the Committee on Veterans' Affairs.

By Mr. THOMPSON of New Jersey:

H.R.16763. A bill to establish a National Film Center and Archive; to the Committee on House Administration.

By Mr. WIDNALL:

H.R. 16764. A bill to authorize an increase in the resources of the International Monetary Fund and the International Bank for Reconstruction and Development, and for other purposes; to the Committee on Banking and Currency.

By Mr. WYMAN:

H.R. 16765. A bill to provide for the acquisition of additional information with respect to the legal residence of the total population of the United States in connection with the 1970 Decennial Census of Population and Housing; to the Committee on Post Office and Civil Service.

By Mr. SAYLOR:

H.J. Res. 1154. Joint resolution authorizing the President to proclaim National Volunteer Firemen's Week from September 19, 1970, to September 26, 1970; to the Committee on the Judiciary.

By Mr. BUSH:

H. Res. 902. A resolution to express the sense of the House of Representatives with respect to travel at Government expense by Members of the House who have been defeated, resigned, or retired; to the Committee on House Administration.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BURTON of California:

H.R. 16766. A bill for the relief of Sze Wing Tsao and his wife, Ching Kwong Chiu Tsao; to the Committee on the Judiciary.

By Mr. COUGHLIN:

H.R. 16767. A bill for the relief of Ritva Rauhala; to the Committee on the Judiciary.

By Mr. GALLAGHER:

H.R. 16768. A bill for the relief of Mrs. Angela (Angelina) Merola Squitieri and daughter, Ida Squitieri; to the Committee on the Judiciary.

MEMORIALS

Under clause 4 of rule XXII,

348. The SPEAKER presented a memorial of the Legislature of the State of Hawaii, relative to increasing assistance to the U.S. Department of Agriculture laboratory in Hawaii for the eradication of fruit flies; to the Committee on Agriculture.

PETITIONS, ETC.

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

429. By the SPEAKER: Petition of Henry Stoner, York, Pa., relative to opposing an increase in postal rates for first class mail; to the Committee on Post Office and Civil Service.

430. Also, petition of American Textile Manufacturers Institute, Inc., Washington, D.C., relative to textile imports; to the Committee on Ways and Means.

SENATE—*Monday, April 6, 1970*

(Legislative day of Friday, April 3, 1970)

The Senate, in executive session, met at 10 o'clock a.m., on the expiration of the recess, and was called to order by Hon. GEORGE MCGOVERN, a Senator from the State of South Dakota.

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

Almighty God, in whom we live and move and have our being, at the beginning of this new week and faced with crucial decisions, we seek Thy higher wisdom. Release divine energy within us. May Thy presence in us be more intimate, more real, and more decisive than any outer force or influence. Make us to know that under Thy sovereignty every day is judgment day, and that "with what judgment we judge we shall be judged." Strengthen our will to obey the voice of conscience. When evening comes and our work is done, may we hear Thy voice saying, "Well done good and faithful servant."

In the name of Him who said, "whoever would be greatest among you let him be the servant of all." Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication to the Senate. The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., April 6, 1970.

To the Senate:

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

RICHARD B. RUSSELL,
President pro tempore.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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

THE JOURNAL

Mr. MANSFIELD. Mr. President, as in legislative session, I ask unanimous consent that the Journal of the proceedings of Friday, April 3, 1970, be approved.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, as in legislative session, 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.

SUPREME COURT OF THE UNITED STATES

The Senate resumed the consideration of the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the nominations on the Executive Calendar under New Reports.

The ACTING PRESIDENT pro tempore. Without objection, the nominations will be stated.

AMBASSADORS

The bill clerk proceeded to read the nomination of Arthur K. Watson, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to France.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Ambassadors listed be considered en bloc, but before the Chair rules, let me say that I am delighted with the appointment of Arthur K. Watson of Connecticut to be Ambassador Extraordinary and Plenipotentiary of the United States of America to France.

I have known Mr. Watson for many years. He has a strong and abiding interest in the welfare of this country and in its relations with France. I think his is an extraordinarily good appointment.

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

ASSISTANT SECRETARY OF STATE

The bill clerk read the nomination of David M. Abshire, of Virginia, to be an Assistant Secretary of State.

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

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

The bill clerk read the nomination of Vice Adm. John Marshall Lee, U.S. Navy, of Virginia, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency.

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

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

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

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time to be taken out of both sides.

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

The pending question is the motion to recommit the nomination of Judge Carswell, offered by the Senator from Indiana. Who yields time?

Mr. MANSFIELD. Mr. President, has any business been transacted?

ADDRESS BY SENATOR MILLER BEFORE THE COLORADO GRAIN AND FEED DEALERS ASSOCIATION

Mr. HRUSKA. Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks a speech made recently by the Senator from Iowa (Mr. MILLER) before the Colorado Grain and Feed Dealers Association. The Senator from Iowa is a member of both the Joint Economic Committee and the Committee on Finance. During the course of his remarks he treats with the material that has to do not only with various farm plans as they bear upon the economic status of this country, but also on the plans of experts of various agricultural products.

Mr. BYRD of West Virginia. Mr. President, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

CALL OF THE ROLL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum and in view of the fact that there seems to be a lack of speakers, it will be a live quorum, with the time to be taken from both sides.

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

The bill clerk called the roll, and the following Senators answered to their names:

[No. 114 Ex.]

Allen	Bellmon	Cranston
Allott	Boggs	Dole
Baker	Byrd, W. Va.	Dominick
Bayh	Cotton	Gurney
Hansen	McCarthy	Schweiker
Harris	McGovern	Scott
Hatfield	Murphy	Smith, Ill.
Hruska	Nelson	Sparkman
Hughes	Packwood	Spong
Javits	Percy	Stennis
Jordan, N.C.	Prouty	Yarborough
Kennedy	Proxmire	Young, N. Dak.
Mansfield	Ribicoff	Young, Ohio

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON) is necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL) is absent on official business.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The ACTING PRESIDENT pro tempore (Mr. McGOVERN). A quorum is not present.

Mr. KENNEDY. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

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

The motion was agreed to.

The ACTING PRESIDENT pro tempore. The Sergeant at Arms will execute the order of the Senate.

After some delay, the following Senators entered the Chamber and answered to their names:

Aiken	Goldwater	Miller
Bible	Goodell	Mondale
Brooke	Gore	Montoya
Burdick	Gravel	Moss
Byrd, Va.	Griffin	Muskie
Cannon	Hart	Pastore
Case	Hartke	Pearson
Church	Holland	Randolph
Cook	Hollings	Russell
Cooper	Inouye	Saxbe
Curtis	Jackson	Smith, Maine
Dodd	Jordan, Idaho	Stevens
Eagleton	Long	Symington
Eastland	Magnuson	Talmadge
Ellender	Mathias	Thurmond
Ervin	McClellan	Tower
Fannin	McGee	Tydings
Fong	McIntyre	Williams, N.J.
Fulbright	Metcalf	Williams, Del.

The ACTING PRESIDENT pro tempore. A quorum is present.

SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Mr. KENNEDY. Mr. President, I yield 5 minutes to the Senator from Maine.

The ACTING PRESIDENT pro tempore. The Senator from Maine is recognized for 5 minutes.

Mr. MUSKIE. Mr. President, it is almost 2 months since I first announced my intention to vote against the confirmation of the nomination of Judge G. Harrold Carswell as an Associate Justice of the Supreme Court. Since that time, tens of thousands of words have been written and spoken on the nomination. They have not changed my position, because the facts have not changed, but they have deepened my conviction

that Judge Carswell should not be a member of the Supreme Court.

I do not intend to prolong the debate today, Mr. President; but I do have a few observations which were triggered by the President's assertion that he has the prerogative to appoint, and that the Senate's role is limited to offering advice and consenting to his decision.

As a constitutional theory, Mr. President, that assertion is novel, but it is not sustainable. As a statement of the President's view of the federal system, it has an ominous ring.

Presidents may fret at the resistance of the Senate to certain of their proposals and nominations, but the authors of the Constitution knew what they were doing when they established our system of checks and balances. We tamper with that system at our peril.

The immediate question, however, is not the President's constitutional theories. The question each of us must answer is whether Judge Carswell meets the standards we believe should be met by a member of the highest court of the land. What we decide on this nomination, Mr. President, will hold not merely for the remainder of President Nixon's term, it will hold for many years, and it cannot be recalled by a change of political sentiment or a shift of political power.

Whenever an appointment to the Court becomes controversial, there is discussion of the respective roles of the President and the Senate. What does advise and consent mean? Does it impose a positive or a negative responsibility on the Senate? Does it limit the Senate's role to consideration of technical competence? Does the Senate have any responsibility or, indeed, any right to consider the quality of an appointee's background, experience, performance, understanding, judgment, insight?

Such discussion and debate, Mr. President, is useful in the long run, to shape and sharpen our understanding of the responsibilities of the President and the Senate in connection with these appointments.

However, Mr. President, I have no doubt as to the intent of the Founding Fathers in framing the applicable provisions of the Constitution. The result hoped for by them, I am sure, was a Court whose competence, judgment, and wisdom would inspire confidence among all Americans that the quality of justice to be dispensed by the Court would be the highest attainable quality. I am also sure that it is the responsibility of the President and the Senate to so interpret their respective roles under the Constitution as to contribute to that result.

Such a result, at any given point in our history, may well raise different questions as to specific nominees, as well as some obviously recurring questions relating to character, competence, and capability.

What questions are raised by this appointment? Was it the President's intent, in making this appointment, to bring the Nation together, having in mind the ugly divisiveness in the land? If so, he has failed to meet that objective.

Was it the President's intent, in making the appointment, to apply the test of highest judicial competence to nominees for the Supreme Court, in the tradition of Holmes, Cardozo, Brandeis, and Frankfurter, who have held this seat? If so, he has clearly failed to meet that objective.

Was it the President's intent to continue the Supreme Court as the honored place of last resort, in the protection of liberty, privacy, and freedom of all Americans? If so, then he has failed to reassure millions of Americans that the record of this nominee shows a genuine concern or commitment to the cause of equal rights and equal justice for all Americans.

Was it the President's intent to provide the South with a representative on the Supreme Court of the United States worthy of the highest traditions of that region? If so, then again he has failed.

Was it the President's intent to strengthen the federal system of checks and balances? If so, then he has failed both in the candidate he has submitted to the Senate and in the approach he has taken to the Senate on the issue of confirmation.

Mr. President, I support the motion to recommit the nomination of G. Harrold Carswell to the Judiciary Committee, and I will vote against confirmation of Judge Carswell. I do so because I do not believe this nomination to be consistent with the needs of our country and our people in this divisive time.

Mr. PASTORE. Mr. President, will the Senator from Indiana yield me a minute or 2?

Mr. BAYH. I yield 2 minutes to the distinguished Senator from Rhode Island.

Mr. PASTORE. First of all, I want to congratulate the Senator from Maine for a very lucid and rational observation on this appointment.

I think, without casting any aspersions upon the President, and saying this in the most kindly fashion one can, facing the historical situation that presents itself now and also accepting the realities of life, the fact still remains that beyond the opportunity, possibly, or beyond the responsibility given to most Presidents, President Nixon will end up at the completion of his term with a so-called Nixon court. This in my humble opinion, points up the necessity and the responsibility on the part of Congress to be especially careful in the consideration of each nominee who comes before us.

Much has been said about our indulging in politics, so to speak, on this appointment. The senior Senator from Rhode Island as well as the junior Senator from Maine, I know, having had the right of appointment ourselves when we were Governors, would be the last two persons to play politics with an official Executive appointment.

I have spoken about the realities of life—the reality that the span of life will determine the makeup of the Supreme Court—its departures and its replacements. Here we are: We have a Justice Black, who is advanced in years. It is only a question of time before nature will necessitate his retirement from the Court. Then we have Justice Harlan and Justice Douglas. Three appointments will be coming up, with an existing vacancy.

In the case of Chief Justice Burger, we had no trouble. That appointment received almost the unanimous approbation of this body. There were only three "nays"—and that was a Nixon appointment. That was for the Chief Justice of the United States, the court of last resort. Then we were confronted with the Haynsworth appointment, which was repudiated by the Senate. Now we have this appointment. I do not know how this body is going to vote today or on Wednesday, but it is going to be a cliffhanger. I wonder if it is good for the country that we should be so extremely divided on this particular issue, as we are on many, many issues which confront the people of this country.

I think the time has come when there ought to be greater care in the matter of nominations. The thing that has mystified me in both the Haynsworth appointment and the Carswell appointment is that there have been so many developments during the progress of the hearings before the Judiciary Committee and in the Senate debate that apparently were not known at the time the appointment was made. It strikes me that they could be a little more careful in research in the first place, and in the next place, these questions and doubts should go back to the committee for confrontation and consideration. That would be fairer to the nominee and to the Senate.

Frankly, I find it extremely difficult to vote against an official appointment. I said that at the time of the Haynsworth appointment. I think the first time I ever voted against an official appointment was in the case of Mr. Hickel, and the Senator from Maine knows why. He knows the oil situation in my State. The declarations that had been made by Mr. Hickel gave me cause to doubt whether or not he was the right man for the office. Since then he has adequately proved himself and I am very happy to know that.

Take the Haynsworth appointment. The President stood behind him to the end. I suppose that may be a mark of courage of one's convictions. I would like to be the first to give a helping hand to the President of the United States. I have said time and time again, whether it was an Eisenhower or a Nixon, I want to give the President of the United States the benefit of the doubt in any case because of the heavy burden he carries at this time.

The thing that frightens me at this time—and I use the word advisedly—is that here are two appointments to the court of last resort, and they say that beyond the Supreme Court of the United States, your only appeal is to God, Himself.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. I yield 1 additional minute to the Senator.

Mr. PASTORE. It strikes me that here we are confronted with a very, very sensitive, very soul-searching situation. This is nothing against the integrity of Mr. Carswell. I forgive him for the things he said as a youth. What kind of men are we, when we do not forgive a young man

for having said something in his twenties that he repudiates in his older years? I do not hold that against him. But much doubt has been raised as to the competence of the man. Associates of his who at first agreed to recommend him then withdrew their endorsement, and we do not yet know why. Certain responsible members of the committee have asked that the nomination be brought back for further hearing, and we got from the Senator from Arkansas——

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

Mr. PASTORE. If I have the time.

Mr. GURNEY. The Senator made the statement that colleagues of Judge Carswell seconded his nomination and then withdrew it.

Mr. PASTORE. No, I did not say that.

Mr. GURNEY. What did the Senator say?

Mr. PASTORE. How did the Senator interpret what I said? I did not say that at all.

Mr. GURNEY. I thought the Senator was talking about the judge colleagues of Judge Carswell.

Mr. PASTORE. Yes. Judge Tuttle.

Mr. GURNEY. All right.

Mr. PASTORE. Does the Senator from Florida dispute that?

Mr. GURNEY. Let us set the record straight and see what he actually did.

Mr. PASTORE What did he do?

Mr. GURNEY. He wrote a letter to the Judiciary Committee, offering to testify.

Mr. PASTORE. And then——

Mr. GURNEY. And the Judiciary Committee never asked him to testify. And he has never contacted the Judiciary Committee to this day. He did have an exchange of telegrams with the Senator from Maryland (Mr. TYDINGS).

Mr. PASTORE. Why does not the committee call him before the committee and have him testify?

Mr. GURNEY. I do not know why.

Mr. PASTORE. Is it not strange to the Senator from Florida——

Mr. GURNEY. Let me complete this. I know why he did not testify. It was because he was confused about the Tallahassee golf club incident. I would rather expect that if you could get into the judge's mind today, you would find that he was very embarrassed about the fact that he did misunderstand the golf club incident. That is what the thing was all about. He never did give this endorsement and then withdraw it. That is the point I am trying to correct, because there has been too much representation and misrepresentation of that by a great many Senators.

Mr. PASTORE. I do not know about that.

Mr. GURNEY. When the Senator says he gave——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. I yield 5 additional minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 5 additional minutes.

Mr. PASTORE. The fact still remains that we are talking about confusion. More than 35 Senators——

Mr. GURNEY. There certainly is confusion——

Mr. PASTORE. I permitted the Senator from Florida to speak. Now I ask that he give me a chance to make an observation on his observation.

The fact still remains that more than 35 Senators are still confused about what Judge Tuttle did or did not do. I, for one, am like the Senator from Arkansas, who said, "Let it go back to committee, and let us find out what Judge Tuttle did say."

If anybody can prove to me that a nominee has the competence to serve on the Supreme Court of the United States, I do not care whether he comes from Florida or Alaska, this is one country where if the President of the United States wants a constructionist, if he wants a southerner, of course he has a perfect right to nominate anyone from any part of the country. But what I am saying is that there has been almost a deliberate attempt—I do not know on the part of whom, but one can almost smell it—a deliberate attempt to keep Judge Carswell away from that committee.

I ask the question, Why? Why?

If this man has an explanation about that golf club, then let him come in here and tell us about it.

The point he made—as I read it in the newspapers—was that he came before the committee, and when they asked him whether he was a charter member of that golf club, he said, "No."

Then an affidavit or a memorandum has been produced on the floor of the Senate by two members of the American Bar Association who claim that only the night before, he admitted that he was a charter member.

These things have not cleared up. We are not talking about a minor ward committee. We are not talking about an executive committee in city or State. We are talking about the Supreme Court of the United States of America.

I think we have a right to know all the facts. I repeat, I wish that something would transpire so that I could find it in my heart to hold up the hand of Richard Nixon. I have nothing against him. I have supported him when many of my colleagues found it necessary not to do so.

I have said to the President of the United States that any time there is a doubt in my mind, I will resolve it in his favor.

But, this is more than a doubt. This is a factual situation. I think that we should have an explanation.

They say this is a question as between liberals and conservatives. That is not so at all. They talk about politics. My goodness gracious, there are half a dozen Republicans who want to stand behind the President and who are going to campaign with the President, yet they are going to vote against this appointment.

I ask the question, Why? Why?

Mr. AIKEN. Mr. President, will the Senator from Rhode Island yield?

Mr. PASTORE. I yield.

Mr. AIKEN. I noticed that the Senator looked in my direction, and I am quite flattered. I stand for law and order, and it is about time we had a little more of it. It is time to stop apologizing to every criminal that gets hauled into court. That is the issue today. It is time to face it squarely.

Mr. PASTORE. It is. I am the first one who said just that. I am the first one who criticized the Supreme Court on pornography. I am the first one who said that the Court went way out on the question of pornography. I am against that. I stood up for Burger. I will stand up for any Nixon appointment, provided it is proved to me that he should be the man.

The allegation of playing politics is poppycock. Any reasonable man on that side of the aisle knows it.

Let us cut out the subterfuge. Let us stand up and look at the facts.

That is all I have to say, and, Mr. President, if my 5 minutes have not been used up, I yield back the remainder of my time.

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

Mr. PASTORE. Has it expired again?

Mr. KENNEDY. Mr. President, I yield 5 additional minutes to the Senator from Rhode Island.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island is recognized for 5 additional minutes.

Mr. GORE. Mr. President, will the Senator from Rhode Island yield?

Mr. GURNEY. Mr. President, will the Senator from Rhode Island yield?

Mr. PASTORE. I yield to the Senator from Tennessee and then I will come back to Florida. I will come back to Florida [Laughter.]

Mr. GORE. Mr. President, the Senator has just said that we should look at the facts.

Should we not first have the facts to look at?

Mr. PASTORE. That is what I mean. That is certainly what I mean. As a matter of fact, the Senator from Tennessee has used reverse English. But, it is plain either way. It is very plain.

Now I am glad to yield to the Senator from Florida.

Mr. GURNEY. Mr. President, again I want to set the record straight. Does the Senator from Rhode Island know—I know he did not do it intentionally—but I believe that he made a misstatement——

Mr. BAYH. Mr. President, will the Senator from Florida yield?

Mr. GURNEY. No; not at this time.

Mr. BAYH. The Senator will recall——

Mr. HRUSKA. Mr. President, I yield 2 minutes to the Senator from Florida——

Mr. PASTORE. They have given me 5 minutes. We should be generous and let him speak. Let us be generous here.

Mr. BAYH. Yes, but we do not want to use all the Senator's time——

Mr. PASTORE. We do not want to be picayunish here. Let us stand up like men. Let us discuss this thing openly.

Mr. GURNEY. That is what I want to do about the golf club incident. The Senator stated that Judge Carswell denied he was a charter member of the corporation. He never did any such thing

at all. As a matter of fact, he admitted or readily answered a question of the Senator from Massachusetts (Mr. KENNEDY) that he signed the charter of incorporation.

What he did say, so as to keep the record straight, in answer to a question of the Senator from Nebraska (Mr. HRUSKA), whether Judge Carswell was an officer or a director, and he said "no"—which is true. Senator HRUSKA asked him if he was an incorporator and he said that he was not. That is a technical point, but it is an interesting thing that the charter of incorporation says nothing about the incorporator, but it does talk about subscribers.

But the point made in this business about the golf club is that what the judge was testifying to during that testimony on the first day—and a little on the second day, too—was that he was not one of the originators of the golf club and never had anything to do with it beyond putting in $100 which was returned to him a few months later. That was the whole of the business. That is what the argument is about.

We should check the record and get it straight, that he never denied that he was a charter member of the corporation.

Mr. PASTORE. That is not the way I read it. But, if that is all there is to the case, why can he not come before the committee and explain it, and that will make everyone happy.

I wonder why this resistance not to allow him to do it? That is what mystifies me, because this is the one place we should be open and aboveboard, in the case of a Supreme Court nomination.

If a Senator is in doubt among the people, they can take care of him at the next election.

If a Congressman is in doubt with the people, they can take care of him at the next election.

If a President is in doubt with the people, then the people can take care of him at the next election.

But a member of the Supreme Court, once confirmed, if the people become in doubt about him, cannot be touched as to his qualifications—only as to his conduct. Even the question of his salary cannot be touched. That is, we can raise it, but we cannot lower it.

Mr. GURNEY. Mr. President, will the Senator from Rhode Island yield further?

Mr. PASTORE. Yes, I yield further.

Mr. GURNEY. On the point of not sending the nomination back to committee, if the Senator will read the record carefully, he will note that all the events which happened and all the testimony surrounding the golf course incident shows nothing to be cleared up. It is all in the record as plain as day—every bit of it.

The answers were candid and honest. Why replow the ground all over again, just for the sake of turning over new earth? There is no point in doing that.

Mr. PASTORE. I have the highest respect for the Senator's point of view. I have the highest respect for those who differ with what the Senator has just said and their doubts should be resolved in committee with the judge before them.

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

Mr. HRUSKA. Mr. President, I yield 10 minutes to the Senator from Mississippi (Mr. STENNIS).

The ACTING PRESIDENT pro tempore. The Senator from Mississippi is recognized for 10 minutes.

ORDER OF BUSINESS

Mr. JORDAN of North Carolina. Mr. President, will the Senator from Mississippi yield me 1 minute to take care of a little item?

Mr. STENNIS. I yield for that purpose.

ESTABLISHMENT OF AN INTERNATIONAL QUARANTINE STATION

Mr. JORDAN of North Carolina. Mr. President, as in legislative session, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2306.

The ACTING PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 2306) to provide for the establishment of an international guarantine station and to permit the entry therein of animals from any country and the subsequent movement of such animals into other parts of the United States for purposes of improving livestock breeds, and for other purposes which was to strike out all after the enacting clause, and insert:

That the Secretary of Agriculture is authorized, in his discretion, to establish and maintain an international animals quarantine station within the territory of the United States. The quarantine station shall be located on an island selected by the Secretary of Agriculture where, in his judgment, maximum animal disease and pest security measures can be maintained. The Secretary of Agriculture is authorized to acquire land or any interest therein, by purchase, donation, exchange, or otherwise and construct or lease buildings, improvements, and other facilities as may be necessary for the establishment and maintenance of such quarantine station. The Secretary of Agriculture, on behalf of the United States, is authorized to accept any gift or donation of money, personal property, buildings, improvements, and other facilities for the purpose of conducting the functions authorized under this Act. Notwithstanding the provisions of any other law to prevent the introduction or dissemination of livestock or poultry disease or pests, animals may be brought into the quarantine station from any country, including but not limited to those countries in which the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists, and subsequently moved into other parts of the United States, in accordance with such conditions as the Secretary of Agriculture shall determine are adequate in order to prevent the introduction into and the dissemination within the United States of livestock or poultry diseases or pests. The Secretary of Agriculture is authorized to cooperate in such manner as he deems appropriate, with other North American countries or with breeders' organizations or similar organizations or with individuals within the United States regarding importation of animals into and through the quarantine station and to charge and collect reasonable fees for use of the facilities of such station from importers. Such fees shall be deposited into the Treasury of the United States to the credit of the appropriation charged with the operating expenses of the quarantine station. The Secretary is authorized to issue such regulations as he deems necessary to carry out the provisions of this Act.

SEC. 2. The provisions and penalties of section 545 of title 18, United States Code, shall apply to the bringing of animals to the quarantine station or the subsequent movement of animals to other parts of the United States, including Puerto Rico and the Virgin Islands.

SEC. 3. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

Mr. JORDAN of North Carolina. Mr. President, I move that the Senate concur in the amendment of the House of Representatives to the bill, S. 2306, with an amendment, which I send to the desk at this point and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The BILL CLERK. It is proposed to strike out "and the Virgin Islands" where it appears before the period at the end of section 2 and insert the following: ", Guam, and the Virgin Islands, contrary to the conditions prescribed by the Secretary in regulations issued hereunder".

Mr. JORDAN of North Carolina. Mr. President, this amendment would restore to the bill, language which was in the bill when it passed the Senate and which is necessary to the bill's clarity. It would also extend the penalties provided by the bill to the importation of animals into Guam contrary to the provisions of the bill.

Both of these amendments were recommended by the Department of Agriculture, and I ask unanimous consent to have the letter from the Department making these recommendations printed in the RECORD.

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

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., April 1, 1970.

Hon. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry, U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your request for a report on S. 2306, as amended and passed by the House. The bill is entitled "To provide for the establishment of an international quarantine station and to permit the entry therein of animals from any other country and the subsequent movement of such animals into other parts of the United States for purposes of improving livestock breeds, and for other purposes."

The House amended S. 2306 by striking out all after the enacting clause and substituting the text of H.R. 11832 as previously passed by the House. The text of H.R. 11832 differs in certain respects from that of S. 2306, as passed by the Senate. Our comments are directed toward those differences.

We recommend the restoration of the language deleted by the House from Section 2 of H.R. 11832 (Union Calendar No. 349), page 3, lines 11–13 which reads as follows: "contrary to the conditions prescribed by the Secretary in regulations issued hereunder". This language, included under the Senate-passed version of S. 2306, is intended to make

the provisions and penalties of 18 U.S.C. 545 applicable to the bringing of animals to the quarantine station or the subsequent movement of animals therefrom to other parts of the United States when such actions are contrary to the conditions prescribed in the regulations which Section 1 of the bill would authorize the Secretary of Agriculture to issue. The deletion of the language makes the bill ambiguous. The bill would be susceptible of being construed as applying the penalties of 18 U.S.C. 545 even when the prescribed conditions are met, which is clearly not the intent. Such deletion, in the light of the House Report on the bill (H. Rept. 91-776, page 9), leaves a question whether these penalties are to apply in case of a failure to comply with the conditions. We believe that it is essential that clear provision be made for the application of such penalties to the bringing of animals to the quarantine station or the subsequent movement of animals therefrom to other parts of the United States contrary to the conditions prescribed in the regulations under the bill.

We concur in the addition by the House on page 3, lines 13 and 14 of the bill, of the phrase "including Puerto Rico and the Virgin Islands" but also suggest that a reference be added to Guam so as to protect all the areas within the definition of the term "United States" in the Act of July 2, 1962 (21 U.S.C. 134).

There is no objection to omission of the commas in lines 13 and 14 on page 2 of the bill after "including" and "to".

The Bureau of the Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

Mr. JORDAN of North Carolina. Mr. President, this bill provides for an international quarantine station and the bringing into the United States through the quarantine station under proper proposed safeguards of animals which might otherwise be excluded from the United States by the quarantine laws. The necessary safeguards are provided in the bill by making the penalties of the Anti-smuggling Act applicable to animals brought into the quarantine station, or through the quarantine station into other parts of the United States, "contrary to the conditions prescribed by the Secretary in regulations issued" under the act. The House amendment omitted from this provision the words "contrary to the conditions prescribed by the Secretary in regulations issued hereunder". Since the entire purpose of the provision is to prohibit the importation of animals brought in contrary to the regulations, the omission of the quoted language leaves the meaning of the provision in doubt. The amendment I have just proposed would restore this language and eliminate this ambiguity.

The House amendment extended the penalty provision of the bill to cover the bringing of animals through the station into Puerto Rico and the Virgin Islands. The Department of Agriculture has recommended that this part of the House amendment be extended to cover animals brought through the quarantine station into Guam, and the amendment just proposed would make this extension. This would conform the definition of "United States" used in section 2 of the act with that in the act of June 2, 1962, entitled "An act to provide greater protection against the introduction and dissemination of diseases of livestock and poultry, and for other purposes"—21 U.S.C. 134.

Mr. HRUSKA. Mr. President, I rise to support the motion of the Senator from North Carolina regarding S. 3206.

The amendment will make restoration of language which is necessary to clarity of the bill; and extend the bill's penalties to importation of animals into Guam contrary to provisions of the bill.

The amendment will not adversely affect the amendments of the other body—but will make them more clearly effective.

Approval of the amendment is in order. I urge its approval.

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

The motion was agreed to.

SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Mr. STENNIS. Mr. President, I thank the Senator from Nebraska.

I support, with great confidence, the nomination by President Nixon of the Honorable G. Harrold Carswell for membership on the Supreme Court.

My reasons for doing so are clear, to me, and simple.

When Judge Carswell's name was proposed for membership on the court of appeals, I went over his entire record and discussed him with several colleagues, in this Chamber, and in their offices. I also discussed him with several personal friends of long standing of mine who now live in Florida and know the gentleman intimately.

I went around to see him when he was here for the hearing as I wanted to get a personal impression of him. All of the things that I learned and observed and the impression I gained of him were good. He was later confirmed to the court of appeals unanimously by this body.

Furthermore, since the present nomination, which is a highly important one, came before the Senate, I have gone over the record again. I have closely examined his services as a member of the court of appeals, checking on him there through people I know.

I have gone through a great deal of the debate that has occurred here. And I have followed the rest of it in the record. I have examined the high points of the hearings in the matter. I have watched and observed the man at those hearings. I got the impression one gets of a man that is on television. He impressed me all the way through as being honest and straight and wanting to tell the truth. And I believe he did tell the truth about everything when he was asked.

A man's memory is not altogether perfect all the time as to small transactions over years past. But I have no doubt about the basic, fundamental character and qualifications of this man.

There has been a very active and legitimate opposition to him by able men, encouraged and supported by an active and vigilant press, that has been very thorough. They have used all their resources, but they have not found one single circumstance of any substance to discredit Judge Carswell or his record or that mitigates against his qualifications.

Several points on the positive side of the nomination are outstanding. Those Members who personally know Judge Carswell and his record approve him and his record in a very firm, solid way. There are a few exceptions, but very few.

The opposition comes largely from those who do not know him and do not have personal knowledge of his record. Their opposition is based on what they have been told. I do not believe they have obtained the true facts throughout all of Judge Carswell's services.

Through all the record of the hearings and the record of the debates and the discussion, there is not one single fact or allegation that reflects on his character, his honor, or his integrity. For a judge, these qualities are the essentials.

On the other hand, his entire conduct, his record, his appearance, his outlook on life show in a positive way that he does have these qualities and this integrity. They reflect sturdy character. Further, these qualities are fully and admirably reflected in his official record as a practicing lawyer and as a judge over a number of years.

Those are the qualities that will guide him and sustain him when he becomes a member of the Court.

Mr. President, the President of the United States has gone to the marketplace, so to speak, and picked a judge for our highest court. He went to the place where lawyers and judges are made—the courtroom. The administration of justice is not a theory. It is not an academic matter. It is not just a matter of the cold learning of the law. It is not a matter of academic rating.

The administration of justice involves the day-to-day application of a set of facts from real life to the law of the subject matter. And this is what Judge Carswell has been doing now for years. And his record shows that he has been doing it well. This is the area where Judge Carswell has special valuable knowledge and experience. This is the area where many who have been criticizing him do not have knowledge or experience.

Law professors and law school deans have opposed him. No one honors law professors and law school deans more than I do. No one owes them any more than I owe those I had the privilege of attending law school under. But their points are not the questions to be decided by a judge. A judge must take the hard facts of a case as he finds them and apply these facts to the law.

Those who have criticized Judge Carswell are valuable to the profession, but their field is limited to learning. And the exercise of responsibility by a judge on an important court, especially the highest court in our land, requires an additional quality that I will mention now.

I have not heard it mentioned heretofore in the debate.

A good judge must have an abundance of commonsense. He must have, to use an old, homely word, gumption. He must be practical, and he must have reasoning ability and an understanding of life as it is—rather than as it should be.

Judge Carswell has these qualities and he possesses the character that will sustain him in his work on the Court.

I believe his nomination will be confirmed and that he will be of special value to the Supreme Court, where I believe he will render fine services.

Mr. President, I thank the Senator from Nebraska, and I yield back such time, if any, as I have remaining.

Mr. HRUSKA. Mr. President, I yield 2 minutes to the Senator from California.

The PRESIDING OFFICER (Mr. TALMADGE in the chair). The Senator from California is recognized for 2 minutes.

Mr. MURPHY. Mr. President, I thank the distinguished Senator from Nebraska for yielding.

I would like to say that I have been pleased to be here to listen to the discussion and the indication is that there is a difference of opinion here.

I think that is proper. I think it is up to the Members of the Senate to decide and to sift out the values with respect to the differences of opinion that exists.

I have been concerned for some time about the difference of opinion that exists on the Court itself where we have so many very important decisions made on the basis of 5-to-4 opinions. They are determined many times by the decision of one man. The Court itself has been uncertain on many occasions. A remark was made about political considerations. I can remember when that started. I can remember years ago when there was a definite, designed attempt to pack the Supreme Court in order to achieve certain considerations and plans of the Chief Executive. I lived through that. Maybe some of our younger colleagues have forgotten that phase of our history.

I point out that in this case I have read the long document consisting of the hearings that went on for 5 days. And I have looked at the resulting vote of the members of the committee. And I must say that this is a very impressive group. They saw fit to approve the nomination not by a cliff-hanger, but by quite a majority.

I have reread the record, and I have listened to the debate. And I have seen all sorts of attempts, I believe, to create the impression of impropriety and to create the appearance that there may be a lack of quality in this candidate. I am not impressed.

This morning I listened to the "Today" show, and I am going to do something that I do not think is customary here. I will ask the distinguished minority leader if he will do the Senate a favor and repeat some of the things he said this morning.

I think it was one of the most conclusive presentations of the facts that has been made in this case that I have heard. There was some historical background which might bear repetition.

I would respectfully request that the Senator from Michigan repeat for the Senators present and for the RECORD some of the things he mentioned this morning with respect to this nomination.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. HRUSKA. Mr. President, I yield 5 minutes to the distinguished Senator from Michigan.

Mr. GRIFFIN. Mr. President, I appreciate the very kind words of the distinguished Senator from California. I am not altogether sure what the Senator might have reference to.

Those who have bandied about very freely and loosely the word "mediocre" with respect to this nominee, in many cases have not read the record.

I have said before, and I repeat on the floor of the Senate, that this nominee is among the best qualified ever to be nominated to the Supreme Court. I say that because in terms of his judicial experience and training, his qualifications far exceed many who have been appointed to the Court and confirmed in the past.

Judge Carswell, at the age of 33, after graduating from Duke University, which I believe is the university the President of the United States attended, and also receiving his law degree after attending the University of Georgia and the Mercer University Law School, was designated and appointed district attorney and served in that capacity for 5 years with distinction. At a very early age he was made a district judge and served in that capacity for 11 years. More than one-half of the trials he conducted, I understand, were criminal trials.

There has been something made of the fact that he has been reversed in a number of his decisions. I would offer the comment that it may be too bad that many of his criminal decisions were reversed; the Nation would be better off if we had somebody on the Supreme Court with the kind of experience he has had in criminal trials, someone who might see that such decisions were not reversed in the future. He also served for nearly 1 year on the court of appeals. This is more judicial experience than anyone now sitting on the Supreme Court had when he appointed, other than Chief Justice Burger. If one were to exclude Chief Justice Burger and Justice Brennan from consideration, it can be said that Judge Carswell has more judicial experience than all the other sitting justices of the Supreme Court put together; I refer, of course, to their judicial experience at the time of appointment.

I know that some in this body disagree with his philosophy, but I do not think he should be rejected on that ground.

I do not agree with those who say he is not qualified. I believe he is well qualified, and that there is more likelihood with respect to his appointment that he will develop into a great and distinguished justice than was the case with respect to many appointments in the past.

Mr. MURPHY. Mr. President, will the Senator yield briefly?

Mr. GRIFFIN. I yield.

Mr. MURPHY. Is it not true that a precept laid down by the Nixon administration has been to look for experience in these appointments?

Mr. GRIFFIN. That certainly was true in the case of Chief Justice Burger and also with respect to Judge Carswell.

Mr. MURPHY. Is it not true there has been no indication here of pals, cronies, or good friends; that the attempt has been made to go to the legal profession to find out their selection and feeling in these matters before nominations are sent up?

Mr. GRIFFIN. I cannot answer all the Senator's questions, but the fact that the President has sought out those with extensive judicial experience is obvious in the nominations so far.

Mr. MURPHY. The three things which I have heard mentioned here have been, first, mediocrity. The Senator from Michigan has taken care of that very well.

The PRESIDING OFFICER (Mr. MONDALE). The time of the Senator has expired.

Mr. MURPHY. Mr. President, will the Senator yield to me for 1 additional minute?

Mr. HRUSKA. I yield 1 minute to the Senator from California.

Mr. MURPHY. The Senator from Michigan has taken care of the matter of mediocrity. Another matter seems to be a statement which was made some 22 years ago, which I understand Judge Carswell has completely repudiated; he said he was sorry it had been made and that he does not feel that way now. The third point has something to do with the lease on a golf club, which has turned into a great deal of confusion, as I listened to my distinguished friend from Florida and the Senator from Rhode Island (Mr. PASTORE). Outside of that, there seems to be no objection whatever. If these are the three points, as far as I am concerned, they seem to be very sketchy, indeed, and it seems to be an attempt, once again, to give an appearance of validity to something that does not exist.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HRUSKA. I yield 5 additional minutes to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I yield to the Senator from Tennessee (Mr. BAKER).

Mr. BAKER. Mr. President, I thank the Senator for yielding to me so that I may join the Senator from California in paying just and richly deserved praise to the distinguished minority leader for his appearance this morning on the "Today" show. I thought the Senator handled himself with his typical calm and accuracy. I was also impressed with the blunt portion of the colloquy between the commentator on that sector of the program and the distinguished Senator from Michigan, dealing with forces of change.

It has been pointed out on the floor of the Senate and in the press that Judge Carswell made a speech in 1948 which dealt with racial concern. Judge Carswell has totally indicated he no longer entertains any such views. The Senator from Michigan pointed out very correctly that 1948 was a long time ago and that things do change, even as this Senate has changed.

As I recall from that program this morning, the U.S. Armed Forces were segregated in 1948; public facilities in the city of Washington, the city of New York, the city of Los Angeles, as well as throughout the South, were segregated by law at that time; and in the fateful year of 1948 there was an amendment to a bill before the Senate to desegregate the Armed Forces and that amendment, seeking to desegregate the Armed Forces, failed by 70-odd votes to a handful of votes, less than 10.

The point of these observations, so appropriately made by the assistant minority leader, in my opinion, is that if we seek to judge this nominee on the basis of a static situation, we would exclude everyone who has any sense of compassion and decency and who wants to move forward from that day to the present. This country has moved forward just as Judge Carswell moved forward.

Mr. President, I commend the Senator from Michigan for his eloquent and accurate statement this morning on the "Today" show.

Mr. GRIFFIN. I thank the Senator. I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, let me say briefly that I will make comment later, but there has been an abundance of attention paid to those who may disagree with Judge Carswell. I speak of the list of some 457 lawyers and law professors. We read about and heard about that list clearly on the floor of the Senate. It might be well to point out that 126 of these 467 are practicing attorneys. We have 300,000 attorneys in America. Of the 354 law professors, we have 4,500 law professors in America from some 150 law schools.

But more important, yesterday was another example where people who know Judge Carswell best support him. There was a telegram released yesterday from the White House endorsing Judge Carswell. It came from 57 judges who know him and his work, and who know him personally. I fail to understand, frankly, why so much attention is paid by the media to such a small fragment of three-tenths of 1 percent of the lawyers in America who probably never voted for President Nixon, or never would.

Mr. GRIFFIN. Mr. President, will the Senator yield to me very briefly?

Mr. DOLE. I yield.

Mr. GRIFFIN. Very few of whom helped the Senator from Michigan when he was waging a battle against the nomination of Mr. Justice Fortas.

Mr. DOLE. The Senator is correct. This is the point I make. It is fine to oppose. That is the right we have in America. We have a right also to support. I cannot understand why disproportionate attention was paid to 457 as compared with 300,000. Those who know him best support him; perhaps as high as 85 to 95 percent support him.

Mr. GRIFFIN. While I am impressed that almost all of his fellow district judges in the fifth circuit endorsed him for nomination over the past weekend, I am even more impressed by the fact that in 1968, before he was nominated, the same fellow judges elected him as their representatives to the Judicial Conference, the highest administrative council in our judicial system.

And it seems to me obvious that this man could not be mediocre. Those judges would not pick somebody for whom they did not have high regard and high respect to serve them on this council.

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

Mr. GRIFFIN. I yield.

Mr. GURNEY. During the colloquy between the Senator from Tennessee and the Senator from Michigan, the Senator from Tennessee made the observation that the armed services——

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. HRUSKA. Mr. President, I yield 5 minutes to the Senator.

Mr. GURNEY. The armed services were segregated back in 1948. George Carswell had some interesting attitudes on segregation while he served in the Armed Forces, which were brought out in a letter by Allan Levine. Allan Levine was a young officer who served with George Carswell in the Navy. Incidentally, Judge Carswell served for 4 years in the Navy in World War II.

George Carswell and Allan Levine were bunkmates on a ship for a whole year. I do not know how anyone can get to know a man any better than to serve on a ship with him at sea. Here are some excerpts from that letter from Allan Levine:

> During all that time, I never heard George utter any point of view that could be described as racist or illiberal. His attitude was a truly humanistic and liberal one in that he reacted to people as individuals and not as stereotypes. This was especially apparent in his behavior toward black sailors. At that time Navy policy was segregationist, and black sailors afloat could only serve in the wardroom mess as stewards mates. There were other officers who were outspokenly antagonistic to the steward's mates for racial reasons, but George Carswell was always pleasant and considerate to all.

Then there came a time when a question arose as to whether steward's mates should be given additional duties serving as other sailors did, actually manning guns, in addition to their wardroom jobs. George Carswell, so Mr. Levine said, was most enthusiastic about this and advocated that those who were steward's mates be given additional regular sailor duties.

What I am saying is that I think the record shows that George Carswell was in favor of desegregating the Navy away back in World War II and was actively in support of such a thing.

Mr. GRIFFIN. I thank the Senator.

I yield now to the distinguished minority leader.

Mr. SCOTT. Mr. President, I want to thank the assistant minority leader very much and commend him for his appearance on the "Today" show, and I want also to commend the distinguished Senator from Florida for his appearance yesterday and his logical and effective presentation of his views in this matter.

I served in the Navy in World War II, and I think one of the most depressing situations existing in those days was the clear discrimination against those who were black and wore the uniform of the U.S. Navy.

Following that experience, I take a great deal of pride in making a flat statement that it was my representation to General Eisenhower in the summer of 1951, conveyed to him by Arthur Vandenberg, Jr., that, in my judgment, his first act as President, if elected, should be to desegregate the Armed Forces and to do it fully and thoroughly, and to desegregate those areas under executive authority, the District of Columbia. This was done.

I began my service in the House of Representatives by supporting the Fair Employment Practices Commission. Since I assumed the present responsibilities which I hold, there have been 14 amendments on civil rights legislation, and I think I have been of some help in securing a successful outcome on all 14 of those 14 amendments—a 100-percent record made possible by the recent Senate decision in effecting certain changes in the so-called Stennis amendment.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HRUSKA. Mr. President, I yield 5 minutes to the Senator.

Mr. SCOTT. Therefore I can take certain pride in that.

If I thought Judge Carswell were a racist, I would be against him. If I thought he had ethical, fiscal shortcomings, I would be against him, as indeed the actions of the distinguished acting minority leader and myself demonstrated on another occasion.

The influential and vigorous support that the nomination of Judge Carswell has received in this last week has served, in my judgment, to remove all reasonable doubt as to the fitness of Judge Carswell to serve on the U.S. Supreme Court.

I am, therefore, confident that the Senate today will deny attempts to return this matter to the Judiciary Committee and on Wednesday will vote to confirm President Nixon's nomination.

The support has come both from Members of the Senate who until last week had remained silent while they studied all the charges and countercharges, and from outside of this body.

I agree with the statement of the assistant minority leader that the Senate does have a right to reject nominations. The Senate does have an important function in the advise and consent procedure. I am not entirely in agreement with other statements on that matter. I do not regard this as a vote on a civil rights issue. If I did, my vote would probably be otherwise. But I am not at all convinced that a case has been made against Judge Carswell.

I think it began to become evident to large numbers of Americans as early as last Saturday a week ago that much of the sound and fury about Judge Carswell was politically inspired and had nothing to do with whether or not Judge Carswell is qualified to sit on the Supreme Court.

In the previous nomination, I was very much influenced and very much affected by the statements of the distinguished Senator from Kentucky (Mr. COOPER)

and the distinguished Senator from Delaware (Mr. WILLIAMS), and I grounded a good deal of my reasoning on the same approach used by those distinguished Senators. They, too, like myself, do not find here a parallel to warrant their action against this nomination by the President.

Last Sunday, the distinguished senior Senator from Kentucky, JOHN SHERMAN COOPER, announced his unqualified support of the nomination of Judge Carswell. At that time, he said:

My announcement in the Senate in 1968 that I would vote against the confirmation of Justice Fortas to be Chief Justice, and my vote against the confirmation of Judge Haynsworth, were based on the tangible grounds of violations of the Canons of Judicial Ethics. I consider that the absence of such claims against Judge Carswell and his experience as a trial and Appeals judge are positive factors supporting his confirmation.

The argument against Judge Carswell rests upon subjective judgments concerning his ability and capacity for growth, which are a matter of speculative opinion.

I shall vote against the motion to recommit the nomination, and for confirmation.

On Sunday, March 29, 10 of the 14 active judges of the U.S. Court of Appeals for the Fifth Circuit, other than Judge Carswell, sent a telegram to the President, urging confirmation of Judge Carswell as an Associate Justice of the Supreme Court. Judges Walter Gewin, Griffin Bell, Homer Thornberry, James P. Coleman, Robert A. Ainsworth, Jr., David W. Dyer, Bryan Simpson, Louis R. Morgan, Charles Clark, and Joe Ingraham, all joined in sending this telegram to the President. I think my colleagues will agree that more than one judicial philosophy is represented among this group.

Last Monday, Judge Carswell's opponents renewed their attack with a press conference called by a Senator. He charged that a black lawyer who had tried many cases in Judge Carswell's court, Charles F. Wilson, had been "pressured" by the administration into sending a letter to the Judiciary Committee stating that he had been treated fairly by Judge Carswell.

It shortly appeared, however, that the information furnished to the Senator in the form of hearsay affidavits had been wholly misleading, and that his conclusions were entirely in error. Mr. Wilson stated that the sentiments expressed in the letter had been his at the time it was written, and were his as of last Monday. He said he had "absolutely not" been pressured by the administration.

Charges based on uncorroborated hearsay can fairly be described not only as reckless, but also as desperate. It should be a lesson that they were so quickly refuted.

I know some of the distinguished judges who have announced their support of Judge Carswell, and I hold them in high regard. I think the charges made against him have fallen short in the burden of proof which must fall upon those who oppose a President's nomination.

On Tuesday, March 31, the Carswell cause added two strong supporters in the persons of the senior Senator from Vermont and the senior Senator from Delaware. Senator AIKEN made some telling points when he announced his support for Judge Carswell:

I do not know Judge Carswell and I do not know for sure how good a Justice of the Supreme Court he would make, he said. Neither do those who so enthusiastically condemn him.

Certainly, if the same microscopic scrutiny had been applied to all nominees to this court over the last 30 years as is being applied to Mr. Carswell, I fear that the Court might have a quite different complexion today.

In fact, we might not have any sitting judges at all if each one had to qualify under the strict requirements for brilliance and purity demanded by Judge Carswell's critics.

And yet, strangely enough, most of these Justices who for one reason or another might have been disqualified have turned out to be very good judges.

There is no man in this Senate who does not have the highest regard for Senator JOHN WILLIAMS. It is not for nothing that he is called "the conscience of the Senate." He is not only a man of impeccable character, but also he believes that honesty and morality are not too much to ask of others in high office. On Tuesday, Senator WILLIAMS stated that Judge Carswell "is a man of high integrity, well qualified to be a member of the Supreme Court, and I shall vote for his confirmation." The Senator pointed out that some oppose Judge Carswell only because they do not want a Conservative on the Supreme Court. Senator WILLIAMS rejected this argument, saying:

As I have stated on earlier occasions, in my opinion, agreement or disagreement with a man's political philosophy is not a valid basis for support or opposition to the confirmation of a Presidential appointment.

He pointed out that if philosophy were a valid basis for opposing a nomination, then all conservatives would have voted against such men as Justice Goldberg. Yet, he and many others supported Justice Goldberg's confirmation when he was nominated by President Kennedy.

On Wednesday, the President gave a ringing reaffirmation to his support of Judge Carswell in his letter to the junior Senator from Ohio. The President wrote that he considered the charges of racism, mediocrity, and lack of candor on the part of Judge Carswell to be wholly without support, and urged that the Senate confirm him. Since the President's letter was set forth in full in most of the metropolitan dailies, as well as in the CONGRESSIONAL RECORD, I will not repeat its contents further.

However, it is important to note that the President's interpretation of the Constitution has the support of most constitutional authorities, and even the Washington Post used this argument in support of both Judge Haynsworth and Justice Fortas.

On Thursday, Senator BENNETT, of Utah, pointed out in a statement on the floor another aspect of the misleading campaign which has been carried on by some of Judge Carswell's opponents. He pointed out that he had received mail postmarked Logan, Utah, purporting to be statements of residents of Logan opposing Judge Carswell.

Upon checking the city directory, it was discovered that no such names as those appended to the post cards lived in the city of Logan at all. Who knows how many such fraudulent communications may have been placed in the mail in an effort by the Carswell opponents to win their case?

In a similar vein, some Senators have been sent anti-Carswell mail which originated outside of their States and was sent to their home States for remailing.

Another case of deception is the effort to make anti-Carswell petitions from law schools seem spontaneous. Yet, in at least two instances, the wording of the petitions was identical.

Likewise, on Thursday, the junior Senator from Illinois, Senator SMITH, announced his support for Judge Carswell. He made what I thought was a very cogent point, and one that we may all bear in mind in further debate and voting on this nomination. He said:

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

On Friday, 10 members of the Judiciary Committee—a majority of the full committee of 17—sent a letter to all Senators stating that no useful purpose would be served by recommitting the nomination to that committee, and urging their colleagues to vote against the motion for recommittal. When Senator GRIFFIN made this letter public, he commented that some Carswell opponents "are frantically, desperately, trying to find something that would justify recommittal."

The address on Friday by the assistant Republican leader was a most significant one, in my view. He pointed out that during his campaign for President, Richard Nixon had defined the kind of men he expected to nominate to the Supreme Court if he were elected. The people voted for Richard Nixon's philosophy and thereby clearly indicated a preference to have him, rather than a candidate of a different philosophy, nominate Justices to the Court.

I was especially interested in Senator GRIFFIN's discussion of his conversation with Mason Ladd, who served as first dean of the law school at Florida State University. Judge Carswell is one of those who had a major part in establishing that law school. Dean Ladd speaks highly of the role of Judge Carswell in establishing a school "free of all racial discrimination."

Senator GRIFFIN has followed this nomination perhaps as carefully as any Senator, and I trust his judgment when he declares:

There is much evidence in the record, most of which has been ignored, that Judge Carswell not only abhors racial bias but, in fact, has been sympathetic and, at the very least, moderate in his views on this subject.

To carry on the chronology of events, on Friday, 50 of the 58 district judges in the fifth circuit, and seven out of nine of the senior district judges of that circuit, wired the President that Judge Carswell is "well qualified to serve as Associate Justice of the Supreme Court."

To me, this is an overwhelming number, especially when we consider that most of these judges are appointees of Democratic Presidents.

And we know, of course, that 79 lawyers who have practiced before Judge Carswell have endorsed him, compared to 10 whom the opposition found who would not.

This is typical. As we add up the evidence, the sound and fury have been all on the side of those who oppose Judge Carswell for reasons of their own. The facts have clearly been on the judge's side.

The fact that so much effort has been made to seek out and magnify even the most trivial charges against Judge Carswell, the fact that so much effort has been made to twist and distort and make much of his every word and action over 22 years, and the fact that despite this all-out effort, so little of any substance has been found, testifies better than I can to the merits of Judge Carswell.

He has a solid and unsullied record in his professional and personal life. He is quite well equipped by experience.

He is a man who meets the President's philosophic requirements.

Nowhere in the record do I find that he has attempted to distort the law in catering to the times, nor sought to curry favor with the pressure groups of either side. He has ruled against civil rights groups when the law required, but he has desegregated the barber shops of Florida and he integrated the Florida State University Law School. Neither his whims nor his prejudices have been his guide; only the Constitution has guided him.

Mr. President, I have stated before, quite candidly, that I would not have agreed with some of Judge Carswell's decisions. I have no doubt that I would not agree with some of his decisions as a Justice on the Supreme Court. I doubt if any Justice could please me all the time, any more than I could please any Justice all the time, either as a practicing lawyer or as a Senator.

I think his philosophy, in all probability, is to some degree different from mine. But I think that is not the issue. This is a difficult decision for me, as it seems nowadays almost all of them are. The same people who urged me to vote against Judge Haynsworth have urged me to vote against Judge Carswell.

This I cannot do, and this I will not do, because, in this case, as a lawyer and as a Senator, I do not believe a case against the nominee has been made.

If it were, I would have no question whatever, and no hesitation, in voting against the wishes of the President of the United States. I have had to do so before, though I have regretted it every time. I hope such occasions in the future will be fewer. I expect them to be fewer. I expect my influence to be heard.

This time, Mr. President, I am satisfied that, since no case has been made against Judge Carswell, his nomination should be confirmed.

He is a man whose record on the bench indicates clearly that, like the umpires at the baseball game, he calls them as he sees them.

We need that kind of man on the Supreme Court today. I am certain that my colleagues will give him the opportunity to serve that he so clearly deserves.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

Prof. Felix Frankfurter in his landmark lectures on "Mr. Justice Holmes and the Supreme Court," just a year before Frankfurter himself became a Justice, said, "There is no inevitability in history except as men make it."

Today we in the Senate are destined to make history.

In narrow terms we are to decide whether or not George Harrold Carswell is unqualified or disqualified for Supreme Court service. I believe that, partisan political and regional loyalties aside, the Senate would decide overwhelmingly that Mr. Carswell is both unqualified and disqualified for one of the nine seats on our highest tribunal.

But over the course of 2½ months, the questions we must answer have been recast and reframed by the nominee's supporters. And in history's terms, our decision today will respond to much broader issues:

First. Should the qualifications for Supreme Court service include a requirement of eminence and excellence in the law, or may any lawyer no matter how pedestrian or marginal his talents, aspire to a justiceship as long as his politics and sponsorship are adequate?

Second. May the President and the Senate ignore the fact that a substantial proportion of the bar and of the populace considers the nominee incapable of offering fair and impartial justice to all citizens?

Third. Shall the Senate renounce its constitutional power and responsibility of advice and consent, and become a rubberstamp for all presidential nominations, no matter how inferior, and regardless of what insights the Senate's own inquiries add to the information available to the President?

To me the answers are clear and compelling and controlling.

Appointment to the Supreme Court should be a reward for outstanding qualities as a legal advocate, scholar, or jurist. The Court must be a place of honor for the best the American legal community can produce, and not a happy hunting ground for the worst which a majority of the Senate might accept. The bar and the bench must see clearly that an appointment can stand on its own merits, that the person chosen ranks at the top of his profession, and that he will contribute to the growth of the law, the stature of the Court, and the work of the Justices.

We need only look at the history of the seat which now lies vacant to appreciate the target for our efforts. All the seats on the Court are important, but this one carries special significance. This is the revered "Holmes" seat, occupied by Oliver Wendell Holmes for the first third of this century.

With the possible exception of John Marshall, Holmes was probably the greatest Justice ever to serve. And even before his nomination he had served with distinction on the Massachusetts Supreme Judicial Court for 20 years. Taken together, his 1,300 opinions on that court would have constituted, according to Felix Frankfurter, "the most comprehensive and philosophic body of American law for any period of its history." Holmes had been a brilliant scholar and professor, and the author of "The Common Law," an incisive exposition of American legal history.

And the same seat had been in the 19th century, the "Story" seat, the seat of Joseph Story, probably the most outstanding early American legal scholar. His decisions helped lay the groundwork for all of American law, and his "Commentaries on the Constitution" became a classic legal text in his time.

Holmes was followed by Benjamin Cardozo, universally acknowledged as the most distinguished jurist in the Nation, and author of one of the basic works of American jurisprudence: "The Nature of the Judicial Process."

And Cardozo was replaced by Felix Frankfurter, a superior teacher, scholar, author, and Government official, who brought to the Court an insight and intellect which made him one of its most forceful members.

Story, Holmes, Cardozo, Frankfurter—that is the standard of excellence to which all Presidents must strive. And if, as one Senator argued, "we can't have all Brandeises and Frankfurters and Cardozos and stuff like that there," then the least we can do is to seek to come as close as possible. The fact that we cannot find a Frankfurter is no excuse for nominating a Carswell. There are certainly dozens of distinguished lawyers and judges and professors who stand out above the crowd. They deserve nomination to the Court and the Nation deserves that such men be nominated.

To reach down into the crowd and arbitrarily pick a man with no national stature, with a reversal rate much higher than his peers, a man who does not have the endorsement of judges in his own court, let alone around the Nation, whose only distinction seems to be that he has a worse record on human rights cases than any judge in his State, to make such a choice is to downgrade the Supreme Court of the United States, dilute its authority and credibility, and render it less equal among the branches of Government.

I cannot imagine that the Senate will be a party to such an effort. I cannot believe that we will allow the standard for Supreme Court service merely to be the same as that for membership in the bar. I cannot accept the proposition that nomination is itself proof of eminence and distinction requiring no further burden of proof to be met.

Is the Supreme Court to be the repository of mediocrity or the repository of excellence? That is the first question which history asks us today.

The second is perhaps more difficult. Whether or not each of us agrees on the merits, the fact is that a substantial proportion of our Nation's citizenry and legal profession believes that George Harrold Carswell is unfit for the Supreme Court, and that he will be unable to deal fairly and evenly with the cases presented to him. There is certainly substantial evidence to support their position, at the very least, and to some of us that evidence is overwhelming and irrefutable. Some of it is old, and some recent, some documented, and some subjective, some major, and some minor. But it is all there, and even when the nominee's supporters finish explaining and distinguishing and justifying and minimizing, it is still there. Perhaps some of the nominee's supporters can in their own minds reject the evidence. But can they really overlook the fact that millions of citizens and thousands of lawyers do not reject the evidence? Can they say: "You do not count, and it does not matter to us that you will lose faith in the Court and the law if this nominee is confirmed?"

The other day, I passed on to appropriate Senators about 200 letters which I had received from poverty lawyers all over the country. The words differed but the same theme echoed through them all: We have been trying to demonstrate to the poor and the black and the brown, to the illiterate and the deprived and the discriminated against, that the system can respond to their needs, that legal institutions can provide relief from injustice, that the law is their tool and not just a tool for use against them. We have tried to convince them that the courts are the best forum for resolving conflicts that lawyers and briefs and reason and logic are more useful in the long run than fire and guns and violence and anarchy. But our efforts well be set back starkly if the Carswell nomination is approved. There can be no confidence in the responsiveness of legal institutions if at their apex sits a man who has proven he does not respond. There can be no belief in justice if the man chosen to be raised to the pinnacle of justice is a man who has denied and delayed justice. The Senate, these lawyers for the people say, will strike a stronger blow against law and order than any criminal could, if it places political expediency above conscience by confirming Judge Carswell.

I cannot answer this argument. I hope those who feel this nomination is supportable can. For if it drives our people further apart, and weakens respect for law, and corrodes faith in government, then they will be the ones responsible.

I am not saying that any minority group should have a veto power over any nomination. But I do believe that when a cross-section of the American people and the American bar feels as strongly about a nomination as they do about this one, and especially when the nomination is a lifetime one to the Court from which there is no appeal, and particularly when the nominee has no special eminence which might offset this antagonism, then the Senate must not only look within, but must also look outside. We have a responsibility to keep this Nation peaceful and stable and unified. We must meet that responsibility at every possible opportunity.

History's third question to us is a direct one: Is the President correct in saying that Supreme Court choices are his alone to make, and that the Senate should not butt in? Coming from a man who purports to be a constitutional strict constructionist, the suggestion is almost ludicrous. The Constitution is very clear as to our responsibility—we must give our advice and consent as to any nominee who is presented for our consideration. Only then, may the President appoint him.

Our responsibility is a serious one. It was thought through very carefully by those who drafted the Constitution. They did not consider it safe to leave the appointment of the members of the judicial branch solely in the hands of the executive branch, and so they gave the Senate a substantial role.

The President's now famous "Dear Bill" letter of last week, seems to imply that by rejecting Judge Carswell we would be challenging the President's power to choose Supreme Court Justices. Of course, that is nonsense. We are not contesting his power to choose. We are contesting his choice in this instance. And the reason we do so proves the need for the advice and consent power. The information available to us was not available to the President when he made his choice. He, unfortunately, for his own reasons, is stuck with his choice. We are not.

We might possibly have doubts about our freedom of action if the President offered us facts to rebut the new information. But his letter, if anything, adds to the feeling that there is no rebuttal. Basically, he offers two items of evidence. To rebut the unbroken chain of proof of Carswell's personal and official insensitivity to human rights, he refers to a letter from a man who served with young Carswell on a ship in the early forties. Surely after the vituperation leveled at the Carswell critics for even considering an item of evidence dating to 1948, it is shocking to hear the Carswell supporters cite a 1943 matter, and a "subjective impression" at that. But the substance of the item is even more overwhelming in its irrelevance. The gist of the letter is that Carswell did not abuse the black mess boys on his segregated ship and that he did not object to their being assigned to gun positions during emergency drills.

The other piece of evidence which the President considered strong enough to rebut the case against Carswell was the testimony of Prof. James Moore, a veteran legal teacher and writer. Professor Moore's endorsement of the nominee was based on his contact with him 5 years ago in the establishment of a law school in Tallahassee. What the President does not mention is that a majority of the teachers of that law school oppose the nomination, along with 23 law school deans, substantial faculty groups from 37 law schools, hundreds of prominent members of the American Bar Association, and uncounted thousands of individual lawyers from all over the country. Of course, no one wants to play the numbers game, but it is surprising to see someone play it when his number is only one.

Our votes this week then will very clearly delineate our concept of the division and separation of powers among the branches of Government. The President has been elected for 4 years, with a possible maximum of eight. Each of us has been elected for 6 years and some of us have served the people of the United States in this body for decades. Supreme Court Justices serve for life. Five of them can decide cases. Four of them can make the Court hear a case. Each one of them when sitting as Circuit Justice, makes life and death decisions alone. Under these circumstances, can we accept the proposition that the appointment of Supreme Court Justices is the President's own to make, unfettered by the Senate's review? The Constitution says no; logic says no; history says no; past Senates have repeatedly said no; and I believe this Senate will say no today.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. I yield myself 3 minutes.

Mr. President, there is probably nothing new that can be said either for or against Judge Carswell at this stage. We have debated the nomination off and on for more than 3 weeks, and I suspect most of the Senate has its mind made up one way or the other. I doubt that any more purpose would be served by those of us who favor confirmation of Judge Carswell marshaling the argument in his favor, than would be served by the opponents marshaling their arguments against him. We have had dinned into our ears time and again the names of members of law faculties, former Supreme Court law clerks, and even law students, who have signified their opposition to Judge Carswell. The common bond between virtually all of these opponents is that they do not know, and very likely have never laid eyes upon, Judge Carswell.

On the contrary, the lawyers who know Judge Carswell and have practiced before him, the district judges of the Fifth Circuit who knew him for more than a decade as one of their fellows, and the circuit judges who are now his colleagues, have signified their endorsement of him. Let me read just a few of the names from the list of these supporters:

PARTIAL LIST OF PEOPLE SUPPORTING JUDGE CARSWELL

Malcolm B. Johnson, Editor, Tallahassee Democrat, C.R. E–201, January 21, 1970.

Georgia State Senate by Resolution, C.R. S–662, Jan. 27, 1970.

(See editorials inserted by Sen. Gurney, C.R. S–914, Jan. 30, 1970).

Allan L. Levine, Executive Vice President, Towers Motor Parts Corp., Lowell, Mass., C.R. S–1175, February 4, 1970.

(See editorial inserted by Sen. Gurney, C.R. S–1785, Feb. 17, 1970).

Thomas W. Matthew, M.D., President, Negro, C.R. S–1545, Feb. 10, 1970.

Mike Krasny, former law clerk, C.R. S–2427, Feb. 26, 1970.

William Vandercreek, law professor, SMU, Fla. State U., C.R. S–2427, Feb. 26, 1970.

Richard H. Merritt, Att'y, Pensacola, Fla., C.R. S-2428, Feb. 26, 1970.

William T. Corrouth, bailiff, Tallahassee, Fla., C.R. S-2428.

Winston E. Arnow, U.S. Dist. Judge, Pensacola, Fla., C.R. S-2428, Feb. 26, 1970.

Robert A. Ainsworth, Jr., Judge, U.S. Court of Appeals, New Orleans, La., C.R. S-2428, Feb. 26, 1970

Joe Isenberg, former member Ga. Gen. Assembly, St. Simons Island, Ga., C.R. S-2428, Feb. 26, 1970.

Lewis R. Morgan, Curcuit Judge, 5th Cir. Court of Appeals, Newnan, Ga., S-2428, February 26, 1970

Harry C. Duncan, Att'y, Alachua County, Fla., C.R. S-2428, February 26, 1970.

Joseph H. Lesh, former U.S. Attorney, Huntington, Ind., C.R. S-2428, February 26, 1970.

J. Edwin Holsberry, Att'y, Pensacola, Fla., C.R. S-2428, February 26, 1970.

C. Graham Carothers, Att'y, Tallahassee, Fla., C.R. S-2429, February 26, 1970.

Julian Bennett, Att'y, Panama City, Fla., C.R. S-2429, February 26, 1970.

Charles F. Wilson, Att'y, Deputy Chief Conciliator, U.S.E.E.O.C., Washington, D.C., C.R. S-2429, February 26, 1970.

Lawrence E. Walsh, Chairman, ABA Standing Committee on the Judiciary, New York, N.Y., C.R. S-2600, February 27, 1970.

Resolution of Governor and cabinet of the State of Florida, C.R. S-3809, March 16, 1970.

Pat Thomas, Chairman, Democratic Party of Florida, Quincy, Fla., C.R. S-3810, March 16, 1970.

W. May Walker, Circuit Judge, Tallahassee, Fla., C.R. S-3810, March 16, 1970.

D. C. Smith, Circuit Judge, Vero Beach, Fla., C.R. S-3810, March 16, 1970.

Wallace Sample, Circuit Judge, Vero Beach, Fla., C.R. S-3810, March 16, 1970.

Tom Barkdull, Judge, Dist. Court of Appeals, Miami, Fla., C.R. S-3810, March 16, 1970.

B. C. Muszynski, Circuit Judge, Orlando, Fla., C.R. S-3810, March 16, 1970.

Roger F. Dykes, Judge, Cocoa, Florida, C.R. S-3810, March 16, 1970.

Ben C. Willis, Circuit Judge, Tallahassee, Fla., C.R. S-3810, March 16, 1970.

John T. Wigginton, Donald K. Carroll, Dewey M. Johnson, John S. Rawls, Sam Spector, all Democratic judges, 1st Dist. Court of Appeals, State of Florida, Tallahassee, Fla., C.R. S-3810, March 16, 1970.

Guyte P. McCord, Jr., circuit judge, Tallahassee, Fla., C.R. S-3810, March 16, 1970.

John A. H. Murphree, Presiding Judge, 8th Judicial Court of Florida, Gainesville, Florida, C.R. S-3811, March 16, 1970.

George L. Patten, Circuit Judge, 8th Judicial Circuit, Gainesville, Florida, C.R. S-3811, March 16, 1970.

Hugh M. Taylor, Circuit judge, Tallahassee, Florida, C.R. S-3811, March 16, 1970.

John J. Crews, Circuit Judge, 8th Judicial Circuit of Fla., Gainesville, Fla., C.R. S-3811, March 16, 1970.

Charles Alan Wright, McCormick Prof. of Law, University of Texas, Austin, Texas, C.R. S-3845, March 17, 1970.

Lawrence E. Walsh, Chairman, ABA Standing Committee on the Federal Judiciary, New York, New York, C.R. S-3847, March 17, 1970.

Bryan Simpson, Judge, 5th Cir. Court of Appeals, C.R. S-3847, March 17, 1970.

Robert A. Ainsworth, Jr., Judge, 5th Circuit Court of Appeals, C.R. S-3848, March 17, 1970.

David W. Dyer, Judge, 5th Circuit, C.R. S-3848, March 17, 1970.

Warren L. Jones, Judge, 5th Circuit, C.R. S-3848, March 17, 1970.

Homer Thornberry, Judge, 5th Circuit, C.R. S-3848, March 17, 1970.

Griffin B. Bell, Judge, 5th Circuit, C.R. S-3848, March 17, 1970.

Mason Ladd, Prof. and former Dean, Fla. St. U; Dean Emeritus, U. of Iowa, C.R. S-3850, March 17, 1970.

William Vendercreek, Prof., SMU, C.R. S-3851, March 17, 1970.

Joshua M. Morse III, Dean, Fla. St. U. Law School, Tallahassee, Fla., C.R. S-3851, March 17, 1970

Frank E. Maloney, Dean, U. of Fla. Law School., Gainesville, Fla., C.R. S-3851, March 17, 1970

Murry M. Wadsworth, Att'y, Tallahassee, Fla., S-3862, March 17, 1970.

Marion D. Lamb, Jr., Vice President, Tallahassee Bar Association, Tallahassee, Fla., C.R. S-3862, March 17, 1970.

Steve M. Watkins, Att'y, Tallahassee, Fla., C.R. S-3862, March 17, 1970.

John D. Justice, Lynn N. Silvertooth, Robert E. Willis, Robert E. Hensley, All circuit judges 12th Circuit of Fla., Sarasota, Fla., C.R. S-3862, March 17, 1970.

Philip H. Logan, A. Edwain Shinholser, Att'ys, Sanford, Florida, C.R. S-3862, March 17, 1970.

John A. H. Murphree, Presiding Judge, 8th Judicial Circuit of Fla., Gainesville, Fla., C.R. S-3862, March 17, 1970.

Stanley R. Andrews, Att'y, Titusville, Fla., S-3863, March 17, 1970.

Thomas D. Wood, Att'y, Miami, Fla., S-3863, March 17, 1970.

John F. Miller, Jr., Att'y, Tallahassee, Fla., S-3863, March 17, 1970.

Kike Krasny, Att'y, Melbourne, Fla., S-3863, March 17, 1970.

Robert Eagan, State Attorney, Orlando, Fla., S-3863, March 17, 1970.

B. C. Musynski, Circuit Judge, Orlando, Fl..., S-3863, March 17, 1970.

T m Rumberger, Circuit Judge, 18th Judicial Cir., Fla., Eau Gallie, Fla., S-3863, March 17, 1970.

Tom Barkdull, Judge, Coral Gables, Fla., S-3863, March 17, 1970.

Welch, Ernest W., Att'y, former chairman of the Florida Board of Bar Examiners, Panama City, Fla., S-3863, March 17, 1970.

Martin Sack, Gerald Tjoflat, Lamar Winegeart, Charles Luckie, Albert Graessle, Henry Martin, Marion Gooding, Thomas Larkin, Judges, Jacksonville, Fla., S-3863, March 17, 1970.

H. John Moore, Circuit Judge, Ft. Lauderdale, Fla., S-3863, 3-17-70.

Lyn Gerald, Archie M. Odom, Circuit Judges, Fort Myers, Fla., S-3863, March 17, 1970.

F. Perry Odom, Att'y, Tallahassee, Fla., S-3863, March 17, 1970.

Keith Young Mateer, Att'y, Orlando, Fla., S-3863, March 17, 1970.

Charles F. Isler, Jr., Att'y, Panama City, Fla., S-3863, March 17, 1970.

James A. Nance, Att'y, Eau Gallie, Fla., S-3863, March 17, 1970.

Sammy Cacciatore, Att'y, Eau Gallie, Fla., S-3863, March 17, 1970.

Lynn C. Higby, Att'y, Panama City, Fla., S-3863, March 17, 1970.

David W. Cunningham, Winter Park, Fla., S-3863, March 17, 1970.

(See editorial from the Sun-Sentinal (Fla.) quoting letter written by Chester Gillespie, former president of the Cleveland, Ohio, chapter of the NAACP, S-4464, March 25, 1970.)

CONGRESSIONAL RECORD—MARCH 19, 1970

J. R. Wells, Jr., Atty, Orlando, Fla., letter dated March 18, 1970, S4030.

H. M. Voorhis, Atty, Orlando, Fla., letter dated March 18, 1970, S4035.

R. F. Maguire, Jr., Atty, Orlando, Fla., letter dated March 18, 1970, S4035.

L. Pharr Abner, Atty, Winter Park, Fla., letter dated March 17, 1970, S4035.

C. Douglas Brown, Atty, Panama City, Fla., letter dated March 17, 1970, S4035.

Larry G. Smith, Atty, Panama City, Fla., letter dated March 17, 1970, S4035.

Grover C. Bryan, Orlando, Fla., letter dated March 17, 1970, S4035.

Richard L. Fletcher, Orlando, Fla., letter dated March 17, 1970, S4035.

Ronald A. Harbert—Mateer, Frey, Young & Harbert, Orlando, Fla., letter dated March 17, 1970, S4035.

Eldon C. Goldman, Orlando, Fla., letter dated March 17, 1970, S4035.

Fletcher G. Rush, Former President of Florida Bar, Dallas, Tex., letter dated March 17, 1970, S4035.

Gerald Mager, Former Asst Atty General, Florida, Tallahassee, Fla., letter dated March 17, 1970, S4035.

William H. Adams III, Atty, Jacksonville, Fla., letter dated March 17, 1970, S4035.

Jack H. Chambers, Earl B. Hadlow, George L. Hudspeth, Fred H. Steffey, Thomas M. Baumer, Linden K. Cannon III, Phillip R. Brooks, John G. Grimsley, Wade L. Hopping, James Mahoney, J. Frank Surface, Brian H. Bibeau, David W. Carstetter, Walton O. Cone, Guy O. Farmer II, Mitchell W. Legler, Rolf H. Towe, William D. King, Bryan Simpson, Jr., Attys, Jacksonville, Fla., letter dated March 17, 1970, S4035.

Robert G. Ferrell III, Public Defender, 18th Judicial Circuit, Cocoa, Fla., letter dated March 17, 1970, S4035.

Monroe W. Treiman, County Judge, Hernando County, Brooksville, Fla., letter dated March 17, 1970, S4035.

Davis W. Duke, Jr., Atty, Ft. Lauderdale, Fla., letter dated March 17, 1970, S4035.

W. J. Daniel, Walter H. Woodward, E. N. Fay, Jr., Attys, Bradenton, Fla., letter dated March 18, 1970, S4035.

James M. Crum, Atty, Ft. Lauderdale, Fla., letter dated March 18, 1970, S4035-6.

K. Odel Hiaasen, Atty, Ft. Lauderdale, Fla., letter dated March 18, 1970, S4036.

James D. Camp, Jr., Atty, Ft. Lauderdale, Fla., letter dated March 18, 1970, S4036.

Richard G. Gorden, Atty, Ft. Lauderdale, Fla., letter dated March 18, 1970, S4036.

James M. Wallace, Atty, Bradenton, Fla., letter dated March 18, 1970, S4036.

Dewey A. Dye, Kenneth W. Cleary, James M. Nixon II, Robert L. Scott, David K. Deitrich, Attys, Bradenton, Fla., letter dated March 18, 1970, S4036.

Richard S. Sparrow, Atty, Sarasota, Fla., letter dated March 18, 1970, S4036.

Thomas F. Icard, Atty, Sarasota, Fla., letter dated March 18, 1970, S4036.

William Dean Barrow, Atty, Crestview, Fla., letter dated March 18, 1970, S4036.

Ben L. Holley, Atty, Crestview, Fla., letter dated March 18, 1970, S. 4036.

M. Craig Massey, Member Fla. Bar Board of Governors, Lakeland, Fla., letter dated March 18, 1970, S. 4036.

David J. William, Member Fla. Bar Board of Governors, Lakeland, Fla., letter dated March 18, 1970, S. 4036.

Woodrow M. Melvin, Presiding Judge, Milton, Fla., letter dated March 18, 1970, S. 4036.

Charles R. Holley, Circuit Judge, Clearwater, Fla., Belleair, Fla., letter dated March 18, 1970, S. 4036.

Parker Lee McDonald, Circuit Judge and Chairman of Committee, Orlando, Fla., letter dated March 18, 1970, S. 4036.

J. Hardin Peterson, Sr., J. Hardin Peterson, Jr., Eugene W. Harris, George C. Carr, Attys, Lakeland, Fla., letter dated March 18, 1970, S. 4036.

Ben F. Overton, Circuit Judge, St. Petersburg, letter dated March 18, 1970.

L. Clayton Nance, Circuit Judge, St. Petersburg, letter dated March 18, 1970, S. 4036.

W. Troy Hall, Jr., Circuit Judge, Tavates, Fla., letter dated March 17, 1970, S. 4036.

Enrique Esquinaldo, William V. Arbury, William R. Neblett, Allan B. Cleare, Jr., W. C. Harris, M. Ignatius Lester, J. Lancelot Lester, Jack A. Saunders, Paul E. Sawyer, Jr., Tom O. Watkins, Hillary U. Arbury, Members Monroe County Bar Assn., Key West, Fla., letter dated March 18, 1970, S. 4036.

W. M. Smiley, Atty, Brandenton, Fla., letter dated March 18, 1970, S. 4036.

R. H. Wilkins, Orlando, Fla., letter dated March 18, 1970, S. 4036.
C. W. Abbott, Orlando, Fla., letter dated March 18, 1970, S. 4036.
R. W. Bates, Orlando, Fla., letter dated March 18, 1970, S. 4037.
D. L. Gattis, Jr., Orlando, Fla., letter dated March 18, 1970, S. 4037.
M. W. Wells, Jr., Orlando, Fla., letter dated March 18, 1970, S. 4037.
M. W. Wells, Orlando, Fla., letter dated March 18, 1970, S. 4037.

MARCH 20, 1970

Mark Hulsey, Jr., President, Fla. Bar, letters to Senators Bayh and Holland, S. 4160–61.

MARCH 23, 1970

Helen Carey Ellis, Atty, Tallahassee, letter dated March 20, 1970, S. 4257.
Wilfred C. Varn, Atty, Former AUSA and USA, letter dated March 20, 1970, S. 4258.
D. L. Middlebrooks, Atty, Tallahassee, letter dated March 20, 1970, S. 4258.
Robert T. Mann, Judge, District Court of Appeals, letter dated March 16, 1970, S. 4259.
Frank A. Orlando, Presiding Judge, Juvenile Court of Broward County, Ft. Lauderdale, letter dated March 20, 1970, S. 4259.
James W. West, County Judge, Sumter County, Bushnell, Fla., letter dated March 18, 1970, S. 4259.
John W. Booth, Circuit Judge, letter dated March 17, 1970, S. 4259.
David H. Levin, Atty ". . . member of a so-called minority group . . .," Pensacola, Fla., March 19, 1970, S. 4259.
Cher Clem, Atty, Vero Beach, Fla., letter dated March 19, 1970, S. 4259.
Robert Jackson, President, Indian River County Bar Assn., Vero Beach, letter dated March 20, 1970, S. 4259.
R. Robert Brown, County Judge, Juvenile Court Judge, Marianna, Fla., letter dated March 19, 1970, S. 4259.
Kenneth E. Cooksey, Judge, Monticello, Fla., letter dated March 19, 1970, S. 4259.
Joe Dan Trotman, Judge, Walton County, De Funiak Springs, Fla., letter dated March 19, 1970, S. 4259.
David Popper, Dade County Courthouse, Miami, letter dated March 20, 1970, S. 4260.
Stewart F. LaMotte, Jr., Circuit Judge, 17th Judicial Circuit, Ft. Lauderdale, letter dated March 20, 1970, S. 4260.
Dayton Logue, Atty, Panama City, Fla., letter dated March 20, 1970, S. 4260.
George W. Hersey, Palm Beach, Fla., letter dated March 20, 1970, S. 4260.
William Fisher, Jr., Pensacola, Fla., letter dated March 20, 1970, S. 4260.
Mark R. McGarry, Jr., Circuit Judge, St. Petersburg, letter dated March 20, 1970, S. 4260.
Dewey R. Villareal, Jr., Atty, Tampa, Fla., letter dated March 21, 1970. S. 4260.
Flower White, Gillen, Humkey, and Kinney.
Rowlett W. Bryant, Atty, Panama City, Fla., letter dated March 21, 1970, S. 4260.
Robert W. Rust, US Attorney, Miami, letter dated March 21, 1970, S. 4260.
Thomas E. Lee, Jr., Circuit Judge, letter dated March 21, 1970, S. 4260.
Dr. Thomas W. Matthew, President, Negro, letter to Sen. Gurney quoting telegram sent to Judge Carswell, letter dated March 20, 1970, S. 4260.
Julian Bennett, Atty, Panama City, Fla., letter dated March 19, 1970, S. 4260–61.

MARCH 24, 1970

Richard W. Ervin, Chief Justice, Florida Supreme Court for members, Tallahassee, letter dated March 16, 1970, S. 4280.
Fred O. Dickinson, Jr., Comptroller of Florida, Tallahassee, letter dated March 17, 1970, S. 4280.
Woodrow M. Melvin, Presiding Judge, First Judicial Circuit, Milton, Fla., letter dated March 18, 1970, S. 4280.
Martin Sack, Gerald Tjoflat, Lamar Winegeart, Charles Luckie, Albert Graessle, Henry Martin, Marion Gooding, Thomas Larkin, Judges, Fourth Judicial Circuit, Jacksonville, letter dated March 17, 1970, S. 4280.
W. Troy Hall, Jr., Circuit Judge, Leesburg, Fla., Tavares, Fla., letter dated March 17, 1970, S. 4280.
John W. Booth, Circuit Judge, Fifth Judicial Circuit, letter dated March 17, 1970, S. 4280–81.
Ben F. Overton, Circuit Judge, Sixth Judicial Cir., St. Petersburg, Fla., letter dated March 17, 1970, S. 4281.
Mark R. McGarry, Jr., Circuit Judge, St. Petersburg, Fla., letter dated March 17, 1970, S. 4281.
Robert O. Beach, Circuit Judge, Sixth Judicial Cir., St. Petersburg, Fla., letter dated March 17, 1970, S. 4281.
Charles R. Holly, Circuit Judge, Clearwater, Fla., Belleair, Fla., letter dated March 17, 1970, S. 4281.
Parker Lee McDonald, Circuit Judge and Chairman of Comm't, Orlando, Fla., letter dated March 17, 1970, S. 4281.
Claude R. Edwards, Circuit Judge, Orlando, Florida, S. 4281.
James Lawrence King, Miami, Florida, S. 4281.
David Popper, Circuit Judge, Dade Co. Courthouse, Miami, Florida, S. 4281.
Thomas E. Lee, Circuit Judge, Miami, Florida, S. 4281.
John D. Justice, Lynn N. Silvertooth, Robert E. Willis, Robert E. Hensley, Circuit Judges, Twelfth Jud. Cir., Sarasota, Florida, S. 4281.
H. John Moore, Circuit Judge, Fort Lauderdale, Florida, S. 4281.
O. Edgar Williams, Circuit Judge, Fort Lauderdale, Florida, S. 4281.
L. Clayton Nance, Circuit Judge, Fort Lauderdale, Florida, S. 4281.
Stewart F. Lamotte, Jr., Circuit Judge, Ft. Lauderdale, Florida, S. 4281.
Lynn Gerald, Archie M. Odom, Circuit Judges, Fort Myers, Florida, S. 4281.
Joe Dan Trotman, County Judge, Walton Co., De Funiak Springs, Florida, S. 4281.
Kenneth E. Cooksey, Jefferson County, Monticello, Fla., S. 4281.
Monroe E. Treiman, Hernando County, Brooksville, Fla., S. 4282.
R. R. Brown, Jackson County, Jun. Ct., Marianna, Fla., S. 4282.
James W. West, Sumter County, Bushnell, Fla., S. 4282.
NOTE.— Each of the above sent in a separate letter.
Robert W. Rust, United States Attorney, Miami, Fla., S. 4282.
Robert Eagon, State Attorney, Ninth Circuit, Orlando, Florida, S. 4282.
J. M. Morse III, Dean, College of Law, Florida State University, Tallahassee, Florida, S. 4282.

As I have pointed out before, virtually none of those who have opposed Judge Carswell have had the benefit of knowing him personally. Indeed, one is bound to wonder just what some of the opponents do know about Judge Carswell; whether they have themselves made a painstaking search of the record, or whether they have simply, like lemmings, joined the brigade which the liberal establishment has marshaled for this occasion. Let me call attention to a couple of interesting portions of the communications that have been received in opposition to Judge Carswell. The statement of the former Supreme Court law clerks contained the phrase, and I quote:

There is widespread lack of confidence in many of our institutions, including the Court.

I have heard this expression from the Chicago conspiracy defendants, and from others of the new left. But can it be fairly said that the great majority of American people lack confidence in many of our institutions? I suspect if a poll were taken, those who lack *confidence* in the courts because they were too lenient with criminals might be found to be a good deal more numerous than those who lack confidence in the courts for some other reason. What is the meaning of this vague phrase that is found in the ex-law clerks' statement? Do they subscribe to the same view of the courts as Abbie Hoffman, Jerry Rubin, Mark Rudd, and others of their ilk?

Further along in this learned document, we find this sentence regarding Judge Carswell:

His performance on the lower courts—and as United States Attorney—reflects the absence of the quality which, we believe, all Supreme Court nominees should possess.

I am curious to know just what it is in Judge Carswell's 5-year record as U.S. attorney which these distinguished ex-law clerks would fault. Throughout all of these debates I have not heard one suggestion from any of the opponents that there was anything in Judge Carswell's service as U.S. attorney which could be criticized. The information I have about his tenure in that office is that he was uniquely successful in prosecuting and convicting a Mafia ring operating out of Phenix City, Ala., across the State line from Florida. Does a vigorous career as prosecutor somehow disqualify Judge Carswell as Supreme Court material in the eyes of these ex-law clerks? If not, what is it about his service as U.S. attorney that they fault?

The truth of the matter is, I believe, that this is a blanket indictment, drawn not to fit any known facts in the hands of the signers of the document, but drawn instead to have its maximum effect on potential readers. Any citizen has a right to communicate with his Senator, and urge him to vote one way or another on any issue, for good reason or bad reason, or no reason. But this letter is not of that sort. Its ponderous introduction, announcing that all of the signers are former law clerks, with the usual disclaimer that they are of various political persuasions, is meant to be treated not just as a registration of opinion by these 200-odd signers, but as the pronouncements of a distinguished collection of scholars of the law. I would be curious to know whether any one of the 200-odd signers had any familiarity whatsoever with Judge Carswell's career as a U.S. attorney. And if none of the signers did, why is this phrase inserted in their communication?

We then come to a statement signed by 86 members of the graduating class of the University of Virginia School of Law. This statement is headed, and I quote:

Act now against the nomination of G. Harrold Carswell.

Here is the text of their statement:

The integrity of the Supreme Court is a matter of concern to all citizens. Evidence overwhelmingly shows that G. Harrold Carswell is unqualified to sit on the nation's

highest court. As third-year students of the Law School we urge all opposed to the nomination to express their views to their Senators and to urge their relatives and friends to do the same.

This would be a perfectly acceptable approach for a political handbill in a campaign for sheriff, or for a pamphlet in opposition to some referendum or initiative proceeding. But is this the atmosphere in which we wish to decide whether to advise and consent to the President's nomination of a man to be an Associate Justice of the Supreme Court?

Another interesting communication in opposition to Judge Carswell is that of Prof. Charles R. Nesson, professor of law at Harvard Law School. He states his reasons for opposing Judge Carswell, and then concludes with this paragraph:

In a time when law and courts are seen increasingly as instruments of political repression, it is particularly important that judicial appointees be men of legal and moral distinction.

The question that comes to my mind, after examining a few of these letters, is what sort of views do the letterwriters have of the judicial process? Does Professor Nesson feel that the courts are increasingly becoming instruments of political repression? Does he disagree with the decision to apply the law passed by Congress prohibiting the movement in interstate commerce for the purpose of starting riots to people who violate that law? I think this is a factor that the Senate is entitled to take into consideration in its deliberations regarding Judge Carswell. I think this is one of the many small pieces of evidence that suggests that the outpouring of anathemas on Judge Carswell is coming from a portion, and rather a small portion at that, of the entire political spectrum. Certainly a great majority of the people of this country do not view courts as an instrument of repression. Those who do are entitled to have their voices heard, but I rather seriously question whether their voices would prevail in this body if properly identified.

At this point I might mention that one witness who has been quoted frequently by Carswell supporters is Leroy Clark, professor of law at New York University. He is the witness who testified before the Judiciary Committee that prior to trial he would instruct civil rights lawyers and harass them the night before so they would be prepared for abuses the next day in Judge Carswell's court. It is interesting to note that this Leroy Clark sat through the first portion of the Black Panther trial in New York and gave informal advice and counsel. He also represented the defendants in habeas corpus proceedings in New York. In that case the New York Supreme court said:

'VILE' BEHAVIOR CITED

"The conduct and language of the petitioners . . . the unending vilification heaped upon the Court, the almost uninterrupted flow of vile, demeaning, vicious, base and threatening language shouted by the petitioners in open court must be unparalleled in court history," he wrote.

"It is very apparent from an examination of the minutes of the pretrial hearings that these defendants, with the knowledge and silent acquiescence of their counsel, indulged in a course of conduct for the sole purpose of disrupting this trial, with the ultimate view of depriving the People of the State of New York of trying these defendants for the crime which it is alleged they have committed," Justice Leahy asserted.

Today, together with the Senator from Florida (Mr. GURNEY), I have sent a telegram to the Attorney General, asking the Justice Department what they know about Leroy Clark, and what his association may be with the Black Panthers, if any, other than being one of their defense attorneys. Of course, he has that right to associate with and represent the Black Panthers or anyone else. But he is the one who has been quoted in the papers and on the networks as a most damaging witness in the Carswell hearings and we have the right to know his background.

Professor Leroy Clark has been quoted by approximately 15 Senators on this floor, and by some three or four times. He was quoted day after day on this floor. Let us learn more about Leroy Clark and other opponents of Judge Carswell. We have heard about 457 professors and lawyers opposing Carswell. There are 300,000 lawyers in America. What do they say about Judge Carswell? But above all, what do the people say about Judge Carswell who know him best, nearly all endorse him and support his confirmation.

Mr. President, the long and often bitter debate over Judge Carswell's nomination has made him, and the issue of whether the Senate shall advise and consent to the nomination, into something symbolic of a larger issue. The President, fortified by the mandate he received in the 1968 presidential election, has exercised his constitutional power to appoint a Justice of the Supreme Court. The President's opponents, disliking the political philosophy of the nominee, but realizing that they cannot successfully oppose him on that ground, have contrived numerous other cloaks for their opposition. The two principal ones, of course, have been the charge of "racism" and the charge of "mediocrity." But beneath these charges, the real opposition to Judge Carswell is that he is a conservative. The liberal establishment has marshaled its forces to defeat his confirmation. The nominal reasons they assign, in the hopes of appealing to as wide a spectrum of opinion as possible, are demonstrably without any real support in the evidence. On those issues, and on the political issue as well, they deserve to fail.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 3 minutes.

Mr. HRUSKA. Mr. President, very soon we shall vote on a motion to recommit Judge Carswell's nomination to the Judiciary Committee. This motion raises several questions in which the American people are interested. First, of course, is the question whether Judge Carswell will be confirmed to the Supreme Court. I believe strongly that he should be, but I realize that some of my colleagues sincerely hold the contrary view. I suggest, however, that the position one takes on the ultimate question of confirmation should not be determinative of his vote on the motion to recommit. I do not oppose the motion because I support Judge Carswell's confirmation. I oppose it because the American people have a right to expect this body to discharge its constitutional responsibilities directly and forthrightly. A vote for recommittal cannot, in my judgment, be squared with directness and forthrightness.

Judge Carswell was nominated by the President in mid-January, nearly two and a half months ago. Hearings were held by the Judiciary Committee at the end of January, and they extended over 5 days, terminating on February 3. More than 20 witnesses personally appeared before the committee. The hearing record covers nearly 500 pages. At the conclusion of the hearings, the nomination was voted out of committee by a vote of 13 to 4. Reports were filed by the majority and minority. Several members of the committee prepared individual views. Each of the reports is of high quality and reflects great care in its preparation. The committee report runs nearly 40 pages.

I have recounted the committee's actions regarding the nomination to indicate why I regard the committee hearings as extensive and thorough, not superficial or perfunctory. Judge Carswell testified before the committee for a day and a half. Examination of the hearing record reveals the searching nature of the inquiries addressed to him. The questioning was as wide ranging as it was penetrating.

Members of the academic community appeared before the committee. Attorneys who had litigated cases in Judge Carswell's court appeared. Representatives of civil rights groups, women's rights groups, and organized labor appeared. Each was afforded a full opportunity to state his or her views on the nomination. In addition, numerous communications were received by the committee—from the Judge's colleagues, educators, court personnel, and attorneys who had appeared in his court. No one was denied the opportunity to make his views known to the committee.

Debate on the nomination did not begin until nearly 3 weeks after the filing of the committee's report. We are now completing the third week of debate.

The Senate, in discharging its advise and consent function, may either accept or reject the President's nominee. I believe that it is our duty to do either one or the other. We should not be derelict in this duty. The American people have come to look to their elected representatives for candor, not evasion, and for decisive and responsible action, not shirking, irresolute inaction. They should not be disappointed. Judge Carswell's nomination has excited wide public interest. This, of course, is understandable, for the question of who will sit on the Supreme Court is one of immense importance. For nearly 3 months, the public

eye has been focused on this body. The people want to know how we stand on the Carswell nomination. They want to know if we are for it or against it. They are not interested in a wishy-washy resolution of the issue.

The reasons stated by those who support recommittal are not persuasive. Some take the position that material questions have arisen subsequent to the public hearings which necessitate further inquiry by the committee. The distinguished Senator from Arkansas, in recording his support for recommittal, stated his belief that additional investigation should be made with respect to the positions of Judge Carswell's colleagues on confirmation and the claim that Judge Carswell has been discourteous to civil rights attorneys appearing in his court.

None of these issues requires additional consideration by the committee. During the hearings, several witnesses who had appeared as attorneys in Judge Carswell's court testified that he had been hostile to them and to their clients' claims. The committee carefully weighed this testimony, but found the evidence to the contrary clearly preponderating. Moreover, anyone who now wishes to come forward to testify could have done so at the committee hearings. Plainly this is not a case of newly discovered evidence. There may well be numerous persons who now desire to testify before the committee, either in support of or against confirmation. I, for one, however, believe that at some point information gathering must end. It is always possible to get more information, for it exists in an inexhaustible supply. However, our processes would grind to a halt if we refused to act on anything less than total knowledge. Our judgment should be informed; it need not be omniscient.

I say, then, that we have the information necessary to permit us to take final action. The facts have been fully developed and widely disseminated. The hearings were exceedingly thorough, and our debate has been lengthy. We have lingered long enough in resolving this critical issue.

In sharp contrast to the plenary consideration given this nomination was the senatorial inquiry into the nomination of Justice Black in 1937. In that instance, a subcommittee of the Judiciary Committee recommended favorable action on the nomination after a short meeting and without holding public hearings. The committee immediately reported the nomination to the floor of the Senate, again without hearings. During debate of the nomination, as is now well known, several Senators raised the question whether the nominee had been a member of the Ku Klux Klan. Since no hearings had been held, this question had never been asked of the nominee himself. A motion to recommit the nomination for inquiry into the matter was made, but it was decisively defeated and the nomination was quickly approved. How much stronger is the case against recommittal here, where exhaustive hearings have already been held?

Others support recommittal in the present instance on the ground that it will permit either the President or the nominee to withdraw the nomination gracefully and avoid the embarrassment to both of outright rejection of the nomination. I reject this argument as patently fallacious. It will be no less crushing to Judge Carswell and no less embarrassing to the President for the nomination to be defeated indirectly by recommittal than directly by senatorial rejection. The result is the same in either case—President Nixon's nominee to the Supreme Court will have been denied confirmation. If that be the will of a majority of this body, we should say so forthrightly. I am confident that such is not the will of the majority, but, whatever the result, we should act finally and decisively.

In summary, Mr. President, I believe that we have sufficient information to afford the opportunity for an informed judgment. I reject out-of-hand the suggestion that this is a "nice way" to defeat the nomination. Finally, our duty to the American people requires us to take a position, one way or the other, either for or against confirmation.

I am ready to cast my vote. I urge my colleagues to oppose recommittal. Proper performance of our advise-and-consent function permits no other course.

Mr. DOLE. Mr. President, will the Senator from Nebraska yield?

Mr. HRUSKA. I yield.

Mr. DOLE. Mr. President, as a matter of interest, a history of recommittal motions is contained in this week's Congressional Quarterly, pointing out that there have been only two successful recommittal motions, both by unanimous consent, and five others, which were defeated.

I would guess that the argument, which goes back to 1870, 1922, 1930, 1937, and 1949—the other two I do not have—was very much the same, that we in the Senate have a responsibility to vote the nomination up or down.

We have the same responsibility today in 1970 that we had in 1870, when President Grant's nomination of Joseph P. Bradley was before the Senate.

Mr. KENNEDY. Mr. President, I yield 4 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 4 minutes.

Mr. JAVITS. Mr. President, on the subject of the nomination of Judge G. Harrold Carswell, about which there has been so much debate recently, there are a few points to which I should like to refer in summing up.

It seems that the argument made and the opinions expressed, regarding the capacity of the judge, are critically important, and are points which have not been refuted except by the fact that various judges are alleged to be in his favor and many others are the other way, many of them law school deans. I think it is fair to say that the law school deans preponderate in terms of expressing themselves the other way.

I am very much impressed with the fact that relatively conservative members of the New York bar of great distinction, men such as Judge Rosenman, and Bruce Bromley—a former judge of the New York State Court of Appeals—do not think Judge Carswell should be confirmed to the Supreme Court.

Now, that might be an area which the committee would want to go into again if the nomination were to be recommitted.

The other aspect of the matter is the famous 1948 speech of his. There also seems to have been raised serious questions of fact as to whether Judge Carswell did or did not belong to the golf club, based upon the conference alleged to have taken place the night before the hearing, and as to the continuance of that state of mind through his activities in respect to a segregated golf club. I think that is important. In my judgment, a case can be made out for recommittal and the consideration of these facts, and perhaps others.

I shall vote to recommit; but, Mr. President, I should like to deal with one major argument that I have heard time and again, that is, the prerogatives of the President, the prerogatives of the Senate, and what the Senator from Michigan (Mr. GRIFFIN) called the power of the people.

Now, Mr. President, this is very important because I have heard it said time and again by Senators, especially on my side of the aisle, that they are unhappy about turning down the President for a second time.

It seems to me that we have to be equal to our responsibility. That is what we are here for. Our responsibility is to turn down the President as many times as the conscience of any Member of this body dictates he should be turned down in respect to an appointment.

We must not be afraid to do that. If we are, then we automatically forfeit the responsibility which the Constitution has given us.

I deeply believe and rise to assert again, that the Constitution gives us the authority and the responsibility to examine the same criteria the President does for a lifetime appointment. If we are not satisfied, then we turn the man down. This responsibility has been exercised in good faith by this Congress, and I think has been shown irrevocably by what happened on the Burger nomination, that it is possible to get a conservative and a strict constructionist from any part of the country, including the South.

If the President has to try twice or three times, that is the essence of our democracy. Perhaps by that kind of attrition, by that experience, he makes an even better President, whatever may be his party.

I believe that, just as solemn, is the responsibility of a President, and the responsibility of the people. The people can be heard only through us. That is the essence of our republican form of government. But, if we are to slough off that responsibility by some kind of specious reasoning that we are really not "it" in any given situation like that, then we are not favoring the strength of our institutions but are very materially weakening them.

Therefore, I hope very much that Senators will set that criteria as they do

their duty today, and when they vote for confirmation.

I thank the Chair.

Mr. TYDINGS. Mr. President, will the Senator from Massacushetts yield me 7 minutes?

Mr. KENNEDY. I yield 7 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 7 minutes.

Mr. TYDINGS. Mr. President, I should like to speak for a few moments about the record of Judge Carswell as a judge.

The point was made earlier today that Judge Carswell has had experience on the bench.

One of the incredible parts of his record is that the longer he has been on the bench the more he has been reversed.

During the 11 years Judge Carswell sat on the Federal district court, 58.8 percent or more of all cases where he wrote printed opinions and which were appealed resulted ultimately in reversals by higher courts. That is over double the average of his own circuit and double the average of the United States. And Judge Carswell's rate of reversal for all of his printed cases was 11.9 percent. That is also double the national average and double the average of his own fifth circuit.

Moreover, to my knowledge there has been no judge nominated for the Supreme Court of the United States in this century who was a sitting judge on a bench who did not have every member of the bench sign a letter in support of his nomination.

Six members of the first circuit have declined for one reason or another to support Judge Carswell's nomination.

The point has been made that the lawyers in Florida, including those who practice before Judge Carswell, support him. That is not the fact of the matter.

Mr. President, I have received this morning a telegram from 35 black lawyers in the State of Florida. Mr. President, I shall ask unanimous consent to have the telegram printed in the RECORD. However, I will read part of it first.

The telegram reads:

MIAMI, FLA., *April 4, 1970.*

HON. JOSEPH TYDINGS,
Senate Office Building,
Washington, D.C.

SENATOR TYDINGS: Although the Board of Governors on the Florida Bar went on record as supporting Harrold Carswell's nomination to the U.S. Supreme Court, there are many lawyers in Florida unalterbly opposed to this nomination. A recent poll of 37 black lawyers residing and practicing in this State showed 35 of them to be steadfastly opposed to the Carswell's nomination. The black lawyers poll, in addition to considering Judge Carswell unqualified for this position, were extremely critical of his attitude toward civil rights lawyers and litigants.

Although all of the lawyers opposing this nomination has not had the misfortune of having practiced before Judge Carswell, they are acutely aware of his reputation, as being less than cordial to black litigants.

Two of the thirty-seven black lawyers contacted did not express support for this nomination, but did not desire to have their names used in this it is noteworthy that not one black lawyer contacted favored Harrold Carswell's appointment to Supreme Court. We strongly urge you to vote against the Carswell nomination. To confirm this nomination would be a great tragedy.

Mr. President, I ask unanimous consent that the entire telegram from which I have read, including the signatures, be printed at this point in the RECORD.

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

MIAMI, FLA., *April 4, 1970.*

HON. JOSEPH TYDINGS,
Senate Office Building,
Washington, D.C.

SENATOR TYDINGS: Although the Board of Governors on the Florida Bar went on record as supporting Harrold Carswell's nomination to be U.S. Supreme Court, there are many lawyers in Florida unalterably opposed to this nomination. A recent poll of 37 black lawyers residing and practicing in this State showed 35 of them to be steadfastly opposed to the Carswell nomination. The black lawyers poll, in addition to considering Judge Carswell unqualified for this position, were extremely critical of his attitude toward civil rights lawyers and litigants.

Although all of the lawyers opposing this nomination have not had the misfortune of having practiced before Judge Carswell, they are acutely aware of his reputation as being less than cordial to black litigants.

Two of the thirty-seven black lawyers contacted did not express support for this nomination but did not desire to have their names used in this. It is noteworthy that not one black lawyer contacted favored Harrold Carswell's appointment to Supreme Court. We strongly urge you to vote against the Carswell nomination. To confirm this nomination would be a great tragedy.

James W. Matthews, Norris Woolfork, James Collier, J. Best, Edward Duffie, James Sanderlin, T. J. Cunningham, Ralph Flowers, William Holland, Jessie McQuarry, L. E. Thomas, Arthenia Joiner, Delano Stuart, Leo Adderley, John Lee, Ernest Jackson, R. W. Gray, Earl Johnson, Reese Marshall, D. W. Perkins, Calvin Mapp, Theodore Bowers, Alcee Hastings, T. J. Reddick, W. George Allan, Rowley Rawles, Benjamin Lamplins, Gwendolyn Cherry, Wilkie Gergusen, Horace Goode III, Henry Adams, Perry Little, Edward Rogers, Malcolm Cunningham, and Harold L. Braynon.

Mr. TYDINGS. Mr. President, I point out that of the 35 lawyers listed, two are sitting judges in the State of Florida.

I further point out that a majority of the full-time faculty of four of the greatest law schools in the South, including the law school which is in Judge Carswell's hometown in the State of Florida, oppose the nomination because he is unfit.

Those law schools are the University of Virginia—one of the great law schools in the South and, indeed, in the Nation; Washington and Lee Law School; the University of North Carolina Law School; and Judge Carswell's own hometown law school, the Florida State Law School at Tallahassee.

I might add that for those professors from his own hometown to go on record took a considerable amount of courage.

Let me read some of the statements now contained in the record that were made by Florida lawyers, including Judge Braynon, municipal judge for the city of Miami and former assistant to the attorney general of the State of Florida; James W. Matthews, associate municipal judge for the city of Opa Locka, and former assistant U.S. attorney for the southern district of Florida; and one member of the Florida bar who practiced before Judge Carswell for almost 7 years. I have already put the entire statements of each one in the RECORD. They are highly opposed to the nomination of Judge Carswell.

Here are some excerpts from their statements:

I have practiced in Judge Carswell's Court . . . Judge Carswell has shown bias toward civil rights litigants on many occasions.

That is from Judge Matthews.

Judge Braynon says in part:

His attitude toward civil rights cases and the lawyers that handle those cases was indeed outright hostile.

Mr. James Senderlin says in part:

Could not be relied upon for a fair, impartial and equitable disposition of civil rights matters.

Mr. Theodore Bowers said in part:

The most prejudiced judge before whom I have had the honor to practice.

Mr. Tobias Simon said in part:

A hostile opponent of all civil rights matters brought before him.

These are Florida lawyers. We know what the record states with respect to the lawyers who testified before the Judiciary Committee. But these are Florida lawyers and that is what they have to say about the fairness of Judge Carswell on the central issue before the Senate today and on the central issue that was before the Senate Judiciary Committee.

When Judge Carswell was U.S. attorney, the chief Federal law enforcement officer in the northern district of Florida and one sworn to uphold the Constitution, he cooperated in the evasion of a court decision requiring all municipal golf courses to be kept open for all taxpayers, regardless of their color.

The evidence before the Senate now is that Judge Carswell did not tell the truth before the Judiciary Committee and before the U.S. Senate when he testified with respect to those facts.

Let me refresh the recollection of my colleagues as to what the circumstances were. On the morning that Judge Carswell appeared before the Judiciary Committee, a newspaper report in a leading national newspaper was entitled, "Carswell is Linked to a Segregated Club." The report indicated that he had joined as an incorporator in a successful attempt to put Tallahassee's only public golf course into private hands in order to evade a mandate of the Supreme Court.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. Mr. President, I yield 3 additional minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 3 additional minutes.

Mr. TYDINGS. Mr. President, when Judge Carswell was before our committee, Senator HRUSKA, who has been the principal supporter of Judge Carswell from the beginning of the hearings and

throughout the Senate debates, interrogated him. I read from page 11:

Now, this morning's paper had some mention that you were a member of a country club down in Tallahassee.

Then Senator HRUSKA put the specific question to him:

Were you an incorporator of that club . . .?

And under oath, Judge Carswell said, "No."

Then Senator HRUSKA said again:

Are you and were you at that time familiar with the bylaws of the articles of incorporation?

Again under oath, Judge Carswell said, "No, sir."

Now, I believed Judge Carswell when he said that under oath, and I am sure the other members of the committee did also. He had a good memory. As a matter of fact, only about 3 minutes before, he had corrected his biographical sketch to reset the date when he entered the Navy some 28 years before.

I had no cause to disbelieve him, and neither did anyone else.

Last Thursday, 2 months after those committee meetings, we were informed in the Senate of a memorandum from two of the members of the ABA Committee on Nominations, that the night before the hearing—the night before—Judge Carswell testified that he was not an incorporator and that he never had spoken to anyone about this matter—Judge Carswell was advised by these two men of this matter and was shown the articles of incorporation and his signature.

Judge Carswell that evening even said that he remembered some of the other names of those who actually asked him to become an incorporator.

The very next morning, under oath, Judge Carswell denied familiarity with the articles of incorporation and flatly denied that he was an incorporator.

So, we had a man under oath who could remember the very day he went into the Navy 28 years before but could not remember what happened the night before in his own hotel room on a central issue that was before the committee.

He either has an extremely convenient and flexible memory or he was deceiving the Senate committee.

I think the Senate ought to take this into consideration when it votes today.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 3 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 3 minutes.

Mr. HARRIS. Mr. President, I believe that the administration has made a tactical error in so strongly opposing the motion to recommit this nomination.

The distinguished Senator from Michigan (Mr. GRIFFIN) quoted, I believe, 10 of the 17 members of the Senate Judiciary Committee, who said that if this nomination were referred back to the committee, the majority of that committee would vote to report it back to the Senate.

Mr. President, it seems to me that the administration, from a tactical standpoint, would have been far better advised to have agreed gracefully to this motion.

Otherwise, it seems to me, Mr. President, those of us who have opposed the nomination of Judge Carswell must say that this record is incomplete and those Senators who have doubts about the nomination now should resolve those doubts against confirmation. I can assure the Senate that will be our position should the motion to recommit be rejected.

More than that, and more importantly for the country, I believe the administration made a very substantive error in disagreeing with the motion to recommit. I know there are Senators who opposed the last nomination to the Supreme Court who worry about possibly appearing to be partisan if they oppose the nomination. However, I am afraid that Senators do not realize how terribly depressed black people in America are, as a result of the President sending to the Senate a man who is demonstrably less qualified than a man should be to serve on the highest court in the land, a man who by his own background and judicial record is suspect in the field of basic and fundamental human rights.

We have seen the serious objections which have been raised to this nominee by lawyers, jurists, and law school faculties throughout the Nation. It seems to me that, based on these objections alone, the Senate would want to have the Committee on the Judiciary again consider this nominee's qualifications.

Confidence in the Supreme Court is at stake in the consideration of this nominee, and we must be very careful to preserve this confidence for all segments of our society.

I believe black people in this country are depressed by this nomination. I do not believe Senators understand how depressed they are.

I believe questions raised in regard to the treatment of civil rights lawyers who appeared before Judge Carswell are important. Opponents have tried to respond to that by attacking personally one of those who testified in that regard.

Mr. President, that is not an answer. That is what the Romans called an "ad hominem" argument and it was not used by quality debaters in Roman times and it should not be raised in the Senate.

The PRESIDING OFFICER (Mr. YOUNG OF OHIO). The time of the Senator has expired.

Mr. HARRIS. Mr. President, will the Senator yield to me for 1 additional minute?

Mr. KENNEDY. I yield 1 minute to the Senator from Oklahoma.

Mr. HARRIS. Mr. President, those who raise that kind of argument attacking those who testified about the treatment by Judge Carswell of the civil rights lawyers should want the matter looked into again by the Committee on the Judiciary.

The Tallahassee golf course case raises very serious questions. I just learned a few moments ago from a reporter of a national newspaper who was a resident of Tallahassee at the time that golf course was transferred from a public to a private corporation, that at that time, according to this reporter, a new golf course was being built for black people. Under these circumstances it would have been terribly difficult for Judge Carswell or anyone else not to know the course of action engaged in by him and others was for the purpose of denying black people their right to use a public facility.

These are issues which must be answered and they demonstrate why Senators should support the motion to recommit this nomination.

Mr. HRUSKA. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator is recognized for 2 minutes.

Mr. HRUSKA. Mr. President, on April 2 there was directed to the Attorney General a letter signed by the Senator from Maryland, the Senator from Massachusetts, the Senator from Indiana, and the Senator from California. That letter was released to the press on the day it was written. For that reason, the Attorney General, in formulating and transmitting a reply thereto, distributed the letter and made it available to the remaining Senators of the Senate as well.

I will read only two pertinent parts of the letter and then, I ask unanimous consent that the entire text of the letter addressed to the Honorable JOSEPH D. TYDINGS be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HRUSKA. Mr. President, the paragraphs I wish to read are as follows:

The instructions issued in 1965 regarding investigation of the racial views of judicial nominees remain in effect. The same procedures were followed in the case of Judge Carswell as have been followed in the case of anyone else in his position.

The 1948 speech made by Judge Carswell was not unearthed as a result of these procedures, nor were any of the other allegations which you describe in paragraph (4) of your letter. While you refer to this information as "easily discovered", I think that this is the judgment of hindsight. The speech, for example, was carried twenty-two years ago in a small town newspaper long since defunct, and with no "morgue" any longer in existence. Consequently, it does not surprise me that the strong interest and motivation stimulated in countless citizens by the announcement of a Supreme Court nomination should turn up information not found in the normal investigative process.

Sincerely yours,

JOHN MITCHEL,
Attorney General.

EXHIBIT 1

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 6, 1970.

Hon. JOSEPH D. TYDINGS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I am happy to furnish to you, and to Senators Brooke, Bayh, and Cranston, such information as is appropriate in response to your letter to me of April 2. Since I notice that you released that letter to the press on the day it was written, I am taking the liberty of making this letter available to the remaining members of the Senate as well. Several of your questions relate to the methods employed by the Department or the FBI in conducting an investigation; in the past, both the Department and the FBI have consistently de-

clined to reveal this type of information, and I intend to adhere to that policy.

The instructions issued in 1965 regarding investigation of the racial views of judicial nominees remain in effect. The same procedures were followed in the case of Judge Carswell as have been followed in the case of anyone else in his position.

The 1948 speech made by Judge Carswell was not unearthed as a result of these procedures, nor were any of the other allegations which you describe in paragraph (4) of your letter. While you refer to this information as "easily discovered", I think that this is the judgment of hindsight. The speech, for example, was carried twenty-two years ago in a small town newspaper long since defunct, and with no "morgue" any longer in existence. Consequently, it does not surprise me that the strong interest and motivation stimulated in countless citizens by the announcement of a Supreme Court nomination should turn up information not found in the normal investigative process.

Sincerely yours,

JOHN MITCHELL,
Attorney General.

Mr. DOLE. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HRUSKA. I yield.

Mr. DOLE. Mr. President, at this point I ask unanimous consent to have printed in the RECORD representative opinions of Judge Carswell as a district judge and as a circuit judge.

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

[U.S. Court of Appeals for the Fifth Circuit, No. 27117]

FERDINAND HENRY SCHUTTEN, ET AL PLAINTIFFS-APPELLANTS *v.* SHELL OIL COMPANY, DEFENDANT-APPELLEE

(Appeal from the U.S. District Court for Eastern District of Louisiana, January 30, 1970)

Before Wisdom, Goldberg and Carswell, Circuit Judges.

CARSWELL, Circuit Judge: Appellants filed suit in the District Court seeking to evict the appellee, Shell Oil Company, and seeking an accounting for the removal of oil, gas, and other minerals from land in Plaquemines Parish, Louisiana. Appellants, who are not in possession, claim ownership of the land and demand an accounting from Shell because of its failure to deal with appellants in removing the minerals.

Appellee filed a Motion to Dismiss on the ground that its lessor, the Board of Commissioneers of the Orleans Levee District, who also claims title to the land .n question, is an "indispensable party" who cannot be joined since such action would destroy the District Court's diversity jurisdiction. The District Court granted the appellee's motion and dismissed the case.

Both parties agree that if the Levee Board is indispensable to the action the suit would have to be dismissed since both appellants and the Levee Board are citizens of Louisiana and diversity jurisdiction under 28 U.S.C. § 1332 would not be obtainable. Thus the sole issue before this Court is that of the indispensability of the Levee Board.

In deciding this issue it is clear that the provisions of Rule 19 of the Federal Rules of Civil Procedure control. *Provident Trademens Bank & Trust Co.*, v. *Patterson*, 390 U.S. 102 (1967). Rule 19 provides in pertinent part:

"(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring doubt, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or in a proper case, an involuntary plaintiff. If he joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

"(b) Determination by the Court Whenever Joinder not Feasible. If a person described in subdivision (a) (1)–(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent party being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be aequate; fourth, whether the plaintiff will have an adequate remedy, if the action is dismissed for nonjoinder."

The reformation of Rule 19 in 1966 was the result of judicial inequities which had slowly but steadily grown under the concept of the "indispensable" party. The reform of Rule 19 was preceded by more than a decade of scholarly inspection and debate.[1] Under its predecessor, it was often held that absence of an "indispensable" party deprived the court of any power to render relief to the parties before it. See *Young* v. *Powell*, 179 F. 2d 147 (5th Cir. 1950). The 1966 revision of Rule 19 sought to give the courts greater latitude in deciding whether a case should be dismissed for nonjoinder of a supposedly "indispensable" party. Before discussing Rule 19, and the present controversy, a look at the origin and development of the doctrine of "indispensability" is required in order to properly assess the scope and effect of the 1966 amendment of Rule 19.

Prior to the Federal Rules the biggest problem in litigation over joinder of parties stemmed from the distinction which was required to be drawn between "necessary" and "indispensable" parties. This distinction is set forth in the hoary case of *Shields* v. *Barrow*, 58 U.S. 130, 139 (1854):

"The court here points out three classes of parties to a bill of equity. They are: 1. Formal parties. 2. Persons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. These persons are commonly termed necessary parties; but if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties. 3. Persons who not only have an interest in the controversy but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." (Footnote omitted).

The *Shields v. Barrow* formula was a concerted attempt to formalize the joinder doctrines which had arisen in the courts of equity. Up until the eighteenth century equity required joinder of all interested parties, but recognizing that practical difficulties and obstacles often made this impossible, relaxed its standard of complete adjudication of a controversy when faced with compelling equity.[2] As noted by Professors Kaplan and Hazard, supra n. 2, equity's attitude changed during the 1700's when the concept of "complete adjudication" gained the upper hand. On the other side of the aisle, the common law had developed joinder criteria which paralleled the parties substantive rights and obligations. The essence of the common law joinder doctrine was that joint rights or obligations demanded joint adjudication.[3] The common law's approach, to say the least, lacked the flexibility of the earlier equity practice.

The rise of the concept of the "complete decree" encroached upon the flexible and rather pragmatic approach to joinder problems which the earlier equity practice had enjoyed and fostered. It was this encroachment which Professor Hazard believes gave rise to the "indispensable" party concept[4] which was formalized in this country in *Shields* v. *Barrow*, supra.

In its most favorable light *Shields* v. *Barrow* states the proposition that "if a court can proceed to a meaningful decree without affecting the interest of the absent person, that absent person is at most a necessary party; if the circumstances are such that the court cannot so proceed, then the absent one is an indispensable party."

Reed, supra n. 1 at 343. While this formulation, as an abstract proposition, is consistent with the present Rule 19, any flexibility or pragmatism envisioned by the Supreme Court in Shields was soon eliminated by courts which latched upon such unguarded words as "separable" and ". . . without affecting that interest. . ." in an attempt to devise a mechanical test to apply to joinder problems.[5] Thus the concept of "severability" arose in equity joinder decisions. As under the common law the substantitive rights of the parties became paramount.[6]

To a great extent, the severability test was carried over with the adoption of the original Rule 19. Though those drafting the rule envisioned a more flexible approach akin to that which existed under the "earlier" equity practice, they lost all hope of achieving that end when they resorted to the use of the terms "indispensable" and "joint interest" without redefinition. As pointed out by the Advisory Committee on Rules,[7] the use of these terms "directed attention to the technical or abstract character of the rights or

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[1] See eg.g., Hazard, Indispensable Party: The Historical Origin of a Procedural Phantom, 61 Colum. L. Rev. 1254 (1961); Reed, Compulsory Joinder of Parties in Civil Actions (pts. 1–2), 55 Mich. L. Rev. 327, 483 (1957).

[2] Kaplan, Continuing Work of the Civil Committee: 1966 Amendments of the Federal Rules of Civil Procedure (I), 81 Harv. L. Rev. 356, 359 (1967); Hazard, supra n. 1 at 1256–82. In his article Professor Hazard has done an excellent job of documenting the rise of the indispensability doctrine and its application under equity, common law and the precedessor of the present Rule 19.

[3] See Clark, Code Pleading § 56 (2d ed. 1947).

[4] Hazard, supra, n. 1 at 1271–82.

[5] See Provident Tradesmens Bank & Trust Co. v. Patterson, supra at 123–125.

[6] For applications of the severability test see Halpin v. Savannah River Electric Co., 41 F. 2d 329 (4th Cir. 1930); Washington v. United States, 87 F. 2d 421 (9th Cir. 1936).

[7] See Notes of Advisory Committee on Rules, 28 U.S.C.A. F.R. Civ. P. 19 (as amended 1966).

obligations of the persons whose joinder was in question, [an approach which characterized the decisions prior to the original rule 19] and correspondingly distracted attention from the pragmatic considerations which should have been controlling."

The 1966 amendment of Rule 19 attempts to remedy this situation by conditioning a finding of "indispensability" upon "pragmatic considerations." *Provident Tradesmen Bank and Trust v. Patterson,* supra, at 106–107.

Subdivision (a) of Rule 19 categorizes those persons whose joinder is desirable from the standpoint of complete adjudication and elimination of relitigation. If there are no procedural or jurisdictional bars to joining such a party, Rule 19 requires that he be joined. It is to be noted that subdivision (a) eliminates reference to the "abstract" or "substantive" interests involved by avoiding such terms as "joint" and "separable."[8]

Subdivision (b) of Rule 19 requires a court to examine four "interests" before deciding whether "in equity and good conscience" the court should proceed without a person whose joinder is impossible. The distilled essence of these "criteria" of subdivision (b) is the attempt to balance the rights of all concerned. See *Provident Tradesmens Bank & Trust Co. v. Patterson,* supra. The plaintiff has the right to "control" his own litigation and to choose his own forum. This "right" is, however, like all other rights, "defined" by the rights of others. Thus the defendant has the right to be safe from needless multiple litigation and from incurring avoidable inconsistent obligations. Likewise the interests of the outsider who cannot be joined must be considered. Finally there is the public interest and the interest the court has in seeing that insofar as possible the litigation will be both effective and expeditious.

As pointed out by the Advisory Committee, supra n. 7, the term "indispensable" as utilized in the present Rule 19 is not "definitive" but "conclusionary." The term simply denotes a conclusion reached upon due consideration that the person is one who should be joined but whose joinder is impossible and that it is preferable to dismiss the case than to proceed without him. It is to be stressed that the criteria set forth in Rule 19 are not to be applied mechanically nor are they to be used to override compelling substantive interests. As pointed out in *Provident Tradesmens Bank & Trust Co. v. Patterson,* supra at 119, 125, Rule 19 does not foreclose consideration of substantive interests, it simply acts as a guide to enlightened consideration of those interests. Stated otherwise, substantive rights are no longer the be all and end all of the joinder question.

In applying Rule 19 the courts must refrain from taking a view either too broad or too narrow in determining "prejudicial" effect of a judgment. The watchwords of Rule 19 are "pragmatism" and "practicality." The court must, however, always consider the possibility of shaping a decree in order to adjudicate between the parties who have been joined. In this vein the court must guard against the formulation of "paper" decrees which neither adjudicate nor, in the end, protect rights.

Considering the present case in the light afforded by Rule 19 we cannot say that the district court erred in dismissing the action and declaring the Levee Board an "indispensable" party.

Under subdivision (a) the Levee Board is clearly a party "to be joined if feasible." Its joinder is impossible, however, since it would destroy the District Court's diversity jurisdiction. Appellants argue that under Louisiana substantive law their action is merely personal against Shell for trespass and that the Levee Board has no "interest" in the action. As pointed out above, the concept of substantive severability is no longer the guiding star of the joinder problem. Nevertheless, a review of the relevant statutory provisions and their interpretation by the Louisiana courts leads us to reject the appellants' argument that the interests of the lessor and lessee of mineral rights are "severable" under Louisiana law. See *Le Sage v. Union Producing Co.,* 184 So. 2d 727 (La. 1966). It cannot be denied that appellants' action in trespass is based upon its claim of ownership of the land overlying the mineral deposits. This claim is directly opposed to the Levee Board's claim of ownership which is "backed up" by its possession in fact. This question of actual ownership must necessarily be adjudicated before the trespass and accounting issues are reached. There is no doubt that the Levee Board has an interest in this litigation and is a "party to be joined if feasible." Since it is not feasible to join the Levee Board we must now consider what alternatives are available under the "equity and good conscience" standard. To do this we must apply the pragmatic criteria of subdivision (b) of Rule 19.

The first factor that must be considered is the extent to which a judgment might prejudice the unjoined Levee Board or those already parties. Appellants argue that the Levee Board would not be prejudiced because it would not be bound, in the res judicata sense, by any judgment which might be rendered. Nor would the Board be precluded from asserting its rights in another action presumably in Louisiana state courts. We decline to accept the appellants' narrow and technical view of what would constitute prejudice to the Levee Board. It is clear that courts should not proceed simply because the unjoined party is not "bound" in the technical sense. *Provident Tradesmens Bank & Trust Co.* v. *Patterson,* supra at 110. Furthermore, one of the purposes, though not the sole purpose, of Rule 19 is the avoidance of multiple litigation of essentially the same issues.

The possibility of prejudice to the Levee Board is most certainly not superficial. First, if Shell is ousted the Levee Board's royalty interest would cease in practically the same manner as if the court had decreed a cancellation of the lease. This would happen despite the fact that the Levee Board's claim of ownership would be technically unimpaired by the judgment in the sense that it would not be bound by the judgment.

Second, though not technically bound a judgment would most assuredly create a cloud on the Levee Board's title and greatly diminish the value of the property. This result would be adverse to both appellants and the Board and would require yet more litigation. A judgment in favor of the appellants would in effect adjudicate the Levee Board's claim of ownership without giving them the right to present their defense and assert their own claim on its merits. While Shell does have a substantial interest in the Levee Board's claim this "interest" would not justify placing the burden of proving the Levee Board's ownership on Shell.

Third, a judgment might result in inconsistent obligations for the defendant Shell Oil Company. Furthermore, a judgment in appellant's favor might render the Levee Board liable to Shell for loss or damage for the peaceable possession of mineral rights. See La. Civ. Code Arts. 2692, 2696. Again all of this could come about without affording the Levee Board the opportunity to defend its interests even though the Board would not be bound by the judgment.

A conclusion that as a practical matter the Levee Board would be prejudiced by a judgment rendered in their absence leads us to consider the second and third "factors" of Rule 19: "the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided," and whether a judgment rendered in the Levee Board's absence will be adequate. Appellants have suggested no way in which these objectives could be accomplished and we are unable to discover any ourselves. Since the litigation revolved around the conflicting claims of ownership, we are unable to envision a decree which would effectively settle any controversy between the appellants and the present defendant, Shell, without doing substantial practical injury to the Levee Board's unassertable claims. Any attempt to fashion a judgment which would lessen this harm would result in a meaningless decree.

A judgment rendered at this time and without the Levee Board would simply result in additional costly litigation no matter how such judgment was formulated. This fact leads us to consider the fourth and final criteria of Rule 19: whether the appellant has an adequate remedy elsewhere. The answer to this question is that appellants will by no means be prejudiced themselves if forced to pursue their remedy in the courts of the State of Louisiana. Both the Levee Board and Shell are amenable to process in Louisiana. This litigation concerns land situated in Louisiana, is governed by Louisiana law and involves a claim of ownership asserted by an agency of the State of Louisiana. Appellants cannot be heard to complain about the competence of the courts of Louisiana in such matters. There is, however, an even more compelling reason for appellants to seek relief in the Louisiana courts. Even if the district court below could fashion a judgment which was adequate while at the same time protective of unassertable rights, additional litigation would most assuredly develop later in the Louisiana courts. By dismissing the case now and directing the appellants to proceed in the Louisiana courts most if not all issues can be settled in one bout of litigation. As noted above, the expeditious and effective disposition of litigation is desirable if not always obtainable. In the present case it is not only desirable but obtainable and is indeed made necessary under the circumstances.

We therefore conclude that under Rule 19, Federal Rules of Civil Procedure, the present case in all "equity and good conscience" should not proceed without joinder of the Orleans Levee Board. Moreover, this decision is made easier by the knowledge that the courts of the State of Louisiana offer a forum in which a complete adjudication of all interests can be obtained without fear of needless multiple litigation.

The order of the District Court dismissing the complaint for nonjoinder of the Orleans Levee Board is

AFFIRMED.

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[8] See Notes of Advisory Committee, supra n. 7.

[U.S. District Court, Northern District of Florida, Pensacola Division, Aug. 14, 1959]

LOCAL UNION NO. 1055, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO, AND LOCAL UNION NO. 624, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO, PLAINTIFFS, *v.* GULF POWER COMPANY, DEFENDANT

(Civ. A. No. 1016)

Action by union for a declaration of its contractural rights with employer, and for mandatory injunctive relief. The United States District Court, Carswell, Chief Judge, held that where employer entered into a collective bargaining agreement with union, wherein union, through employer recognition of foremen along with other employees in the wage scale agreement, was made the bargaining representative of such foremen, and such agreement provided that after expiration of five years it would run from year to year for the purpose of termination, but in the absence of termination the agreement was

binding on the parties until notice of alteration was given, and employer did not give union notice of termination of the contract in its entirety, and contract did not provide for partial termination, such contract was enforceable in regard to union representation of foremen, notwithstanding statute providing that no employer shall be compelled to deem supervisors as employees for the purpose of collective bargaining, and notwithstanding fact employer seasonably notified union that it would no longer recognize it as bargaining agent for foremen.

Order in accordance with opinion.

1. COURTS—289

Specific Performance—80:

Grievances arising under a collective bargaining agreement, when arbitrable, are unequivocally enforceable through specific performance in the United States District Courts.

2. LABOR RELATIONS—411

Private arbitration in the labor management field is to be afforded broad liberalities.

3. LABOR RELATIONS—510

While an act may be both an arbitrable contract violation and an unfair labor practice, the former is nevertheless enforceable in the courts, for parties may agree in the collective bargaining agreement to submit matters involving unfair labor practices to private arbitrators, and the District Court should retain jurisdiction over the contract violation until the National Labor Relations Board in the exercise of its discretion elects to effectuate the statutory policy of the National Labor Relations Act. Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185.

4. LABOR RELATIONS—248

Labor contracts may contain severable portions which are unenforceable.

5. CONTRACTS—217

A contract is terminable in the manner agreed to, although, usually, a partial termination is not favored unless the parties have expressly agreed thereto.

6. LABOR RELATIONS—261

Where a collective bargaining agreement between a union and an employer provided that it was terminable from year to year after its fifth anniversary by giving notice at least 60 days prior to August 15 of year in which termination was desired, such contract was capable of having a definite duration, and therefore did not expire in a reasonable time.

7. LABOR RELATIONS—510

Only the National Labor Relations Board has the policy making power and machinery to settle representation grievances.

8. CONSTITUTIONAL LAW—89(1)

The principle of freedom of contract renders bargains freely made enforceable unless the law makes the subject matter thus bargained for illegal.

9. LABOR RELATIONS—176

Statute providing that no employer shall be compelled to deem supervisors as employees for the purpose of collective bargaining, does not make it illegal for management to bargain collectively or to contract with supervisors as employees, if it chooses to do so. National Labor Relations Act, §§ 2(11), 14 (a) as amended by Labor Management Relations Act, 1947, 29 U.S.C.A. §§ 152(11), 164(a).

10. LABOR RELATIONS—249,261

Where employer entered into a collective bargaining agreement with union, wherein union, through employer recognition of foremen along with other employees in the wage scale agreement, was made the bargaining representative of such foremen, and agreement provided that after expiration of five years it would run from year to year for the purpose of termination, but in the absence of termination the agreement was binding on the parties until notice of alteration was given, and employer did not give union notice of termination of the contract in its entirety, and contract did not provide for partial termination, such contract was enforceable in regard to union representation of foremen, notwithstanding statute providing that no employer shall be compelled to deem supervisors as employees for the purpose of collective bargaining, and notwithstanding fact employer seasonably notified union that it would no longer recognize it as bargaining agent for foremen. National Labor Relations Act, §§ 2(11), 14(a) as amended by Labor Management Relations Act, 1947, 29 U.S.C.A. §§ 152(11), 164(a).

11. LABOR RELATIONS—433

Where there is a genuine dispute arising from a collective bargaining contract, the agreement itself is controlling as to provisions for arbitration.

12. LABOR RELATIONS—434

Where a collective bargaining agreement between a union and employer provided that all questions and grievances that might arise between the parties during the life of the agreement be handled through certain successive steps, and that any grievances under the agreement or any violation of the employees' rights under the agreement which could not be settled by employer and union should be submitted to an arbitration board, attempted withdrawal by employer, of foremen, from their prior coverage under the contract, and purported working of supervisory personnel contrary to the express prohibitions of the contract, were arbitrable grievances under such agreement.

Louis Sherman, Washington, D.C., Philip D. Beall, Pensacola, Fla., Poole Pearce & Hall, Atlanta, Ga., for plaintiffs.

Bert Lane, Yonge, Beggs & Lane, Pensacola, Fla., for defendant.

CARSWELL, Chief Judge.

This suit was initiated under 29 U.S. C.A. § 185 for a declaration of contractual rights by the plaintiffs, hereinafter called the Union, against the defendant, a public utility, hereinafter called the Company. Assuming a determination in its favor, the Union seeks a mandatory injunction to compel compliance therewith, or in the alternative an injunction requiring the Company to submit any grievances arising out of those contract rights to arbitration. There are two breaches of the contract alleged, from which the Union asks declaration and specific performance: (1) the Company refuses to negotiate with the Union as the collective bargaining representative of certain "foremen" and to afford such "foremen" any rights under the collective bargaining contract, as is alleged, the Company agreed to do under the contract, and (2) certain "supervisory" personnel are being required by the Company to work contrary to the contract.

The factual backdrop surrounding this dispute appears as follows: The Union and Company entered into the present collective bargaining contract on October 27, 1953. That instrument, while silent as to recognition of "foremen" per se, nevertheless included "foremen" along with other employes in the wage scale agreement which was appended to the contract. The contract was to remain in effect for five years unaltered and thereafter would run from year to year for the purpose of termination, but, absent termination, the agreement was binding on the parties until notice of alteration was timely given and agreed to by both Union and Company. In June, 1958, just prior to the five year anniversary date of the covenant, the Company gave notice to the Union that it would no longer recognize the Union as the collective bargaining agent for "foremen", since they were supervisory personnel. The Union did not agree to this action, whether it be denominated a proposed alteration or termination of the contract. Demand was subsequently made by the Union to submit this question to arbitration, since it took the position that the Company had voluntarily agreed under the contract to recognize it as the bargaining agent for the "foremen" as well as employee personnel, and, further, having agreed to submit all grievances arising from the contract to arbitration that the Company had a duty to live up to the contract, or at least abide by it until changed by arbitration agreements. This the Company refused, with the contention that since it could not be compelled under the law (29 U.S. C.A. § 164(a)) to recognize individuals defined as supervisors under such law for the purpose of collective bargaining, then such contractual provisions had been effectively terminated by its notice or that such provisons were unenforceable against it.

The Company assigns some seventeen grounds by motions to dismiss for failure to state a claim or, in the alternative, to strike. The legal questions with merit thus raised are grouped and will be discussed separately.

JURISDICTION

[1–3] When it appeared on the pleadings that unfair labor practices were prospectively lurking in the identical contract violations alleged, the Court examined jurisdiction. The existence of such is no bar to the jurisdiction of this Court for grievances arising under a collective bargaining contract when arbitrable are unequivocally enforceable through specific performance in the United States District Courts (24 A.L.R. 2d 752). Such private arbitration in the labor management field is to be afforded broad liberalities. Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448, 77 S.Ct. 912, 1 L. Ed. 2d 972, and Lodge No. 12, District No. 37, International Association of Machinists v. Cameron Iron Works, Inc., 5 Cir., 257 F.2d 467, 474. While an act may be both an arbitrable contract violation and an unfair labor practice, the former is nevertheless enforceable in the courts, for parties may agree in the collective bargaining agreement to submit matters involving unfair labor practice to private arbitrators, and the District Court should retain jurisdiction over the contract violation until the National Labor Relations Board in the exercise of its discretion elects to effectuate the statutory policy of the National Labor Relations Act. Lodge No. 12, District No. 37, International Association of Machinists v. Cameron Iron Works, Inc., 5 Cir., 257 F.2d 467, certiorari denied 358 U.S. 880, 79 S.Ct. 120, 3 L.Ed.2d 110.

WAS THE CONTRACT TERMINATED?

[4, 5] As a bar to the arbitration of this alleged breach of contract, the Company contends the collective bargaining agreement was a divisible one under which provisions relative to recognition of the foremen were terminated. Labor contracts may contain severable portions which are unenforceable (14 A.L.R.2d 846). It is elementary that a contract is terminable in the manner agreed to (17 C.J.S. Contracts § 385). Usually a partial termination is not favored unless the parties have expressly agreed for such provisions. 17 C.J.S. Contracts § 403; Oil Workers International Union, Local No. 463, v. Texoma Natural Gas Company, 5 Cir., 146 F.2d 62, certiorari denied 324 U.S. 872, 65 S.Ct. 1017, 89 L. Ed. 1426.

The contract states that it is terminable after its fifth year of operation by giving notice "* * * at least sixty (60) days prior to August 15 of the year in which termination * * *" is "* * * desired * * *". It is silent as to partial termination. The first purported notice of termination was seasonably given on June 14, 1958, and it provided:

"Since Foremen are supervisory employees and the Company is not required to bargain with any Union for supervisory employees, we advise you that effective August 15, 1958, the anniversary date of our Agreement, the

classification of Foremen will no longer be included in coverage under our Agreement and the Company will no longer recognize the Union as bargaining agent for these supervisory employees."

Thereafter, on August 15, 1958, the Company again gave identical notice extending the projected date for termination to November 15, 1958. And again on November 17, 1958, identical notice was given extending the operative date for termination to January 1, 1959.

The question of termination then is resolved by a construction of the Company's letters. If they were a partial termination, it was a nullity for partial termination was not agreed to. It was not a complete termination, because no indication was given to cease recognition of the Union altogether, and, indeed, the Company has recognized the Union as the representative of the employees to date.

IS THE CONTRACT VOID AS BEING ONE FOR AN INDEFINITE DURATION?

[6] The contract was plainly terminable from year to year after its fifth anniversary by giving notice "* * * at least sixty (60) days prior to August 15 of the year in which such termination * * *" is "* * * desired * * *". Since the contract in its entirety was terminable, likewise its recognition of foremen vel non was not in perpetuity. Upon cancellation of the entire contract, the unambiguous language of 29 U.S.C.A. § 164(a) would completely insulate the Company from any attempt whatsoever to insist upon the inclusion of bona fide foremen in any subsequent contract or negotiations therefor.

Because the contract was one capable of having a definite duration, it does not expire as the Company contends in a reasonable time.

CONTRACT BAR RULE AND REPRESENTATION

It is urged on behalf of the Company that because the policy of the National Labor Relations Board prevents the operation of any collective bargaining contract from extending the duration of appropriateness of the agency to represent the bargaining unit of the composition of the same beyond a period of two years (Pacific Association of Pulp & Paper Workers, 121 N.L.R.B. 134) that accordingly the Union should receive certification as to the foregoing (since the contract has on its face exceeded a period of five years) from the National Labor Relations Board and thus exhibit its authority to sue here (42 A.L.R.2d 1415).

[7] It is apparent that such argument preoccupies itself with a remedy available through another route of redress, 29 U.S.C.A. § 159; Franks Brothers Co. v. National Labor Relations Board, 321 U.S. 702, at pages 705 and 706, 64 S.Ct. 817, at page 818, 88 L.Ed. 1020, for only the National Labor Relations Board has the policy making power and machinery to settle representation grievances.

It should be carefully noted that no question is raised concerning the agency or duration of the Union's authority to represent the statutory employees, rather the thrust of the Company's argument only reaches the agency of the Union to represent foremen.

Such petition ignores the obvious that the Company has recognized the Union as the bargaining agent for employees and we are now only concerned with what the parties contracted for as comprising the bargaining unit. Under 29 U.S.C.A. § 185 the District Courts are given jurisdiction over labor contracts by a "labor organization representing employees".

The real question here is did the Company agree under the contract to recognize the Union as the collective bargaining agent for foremen (notwithstanding that they might be statutory supervisors) with employees as comprising the bargaining unit. Our problem then is one of contract rather than representation, for if there is appropriate agency to represent employees, then it likewise extends to foremen as well.

Nor does the declaration of such legal question here on the contract preclude either party from later raising the question of representation, at the appropriate time and place, for denial of that right then would give rise to an unfair labor practice.

IS THE CONTRACT WITH FOREMEN ENFORCEABLE?

[8–10] The Company takes the position that under 28 U.S.C.A. § 164(a), it cannot be compelled to bargain collectively with a worker bearing the statutory definition of a supervisor under 29 U.S.C.A. § 152(11), and, hence, the contract thus entered is unenforceable against it. The principle of freedom of contract renders bargains freely made enforceable unless the law makes the subject matter thus bargained for illegal. Corbin on Contracts, Vol. 6, Sections 1373–1376. What is the meaning of Section 164(a), supra? Stripped of its qualifying verbiage, the nub of its substance is "* * * no employer * * * shall be compelled to deem * * * supervisors as employees for the purpose of * * * collective bargaining." This section has received a literal interpretation and application. L. A. Young Spring & Wire Corp. v. National Labor Relations Board, 82 U.S. App.D.C. 327, 163 F.2d 905, certiorari denied 333 U.S. 837, 68 S.Ct. 607, 92 L. Ed. 1121. This decision came on the heels of the Taft-Hartley Amendment to the Wagner version of the National Labor Relations Act. It had formerly been held that there was compulsion in the Wagner Act requiring employers to deal collectively with supervisors. Packard Motor Car Co. v. National Labor Relations Board, 330 U.S. 485, 67 S.Ct. 789, 91 L.Ed. 1040. The Taft-Hartley Act specifically holds to the contrary, but even the latter left supervisors free to join labor organizations. See 29 U.S.C.A. § 164(a). Because of the correlative rights and immunities afforded supervising labor and management, it cannot be said that Congress intended it to be *illegal* for management to bargain collectively or to contract with supervisors as employees. Nor can it be said that compulsion will result in requiring the Company to arbitrate with the Union relative to foremen, where the Company has, in fact, so contracted. While collective bargaining is to some extent a continuing process (see the quotation in Corbin on Contracts, Vol. 6, Section 420, Pocket Part), it has for the present purposes been concluded. Since the present contract was not terminated, it was automatically renewed, thus passing over "the contract opening date", leaving the parties to abide by the terms of the agreement thus renewed. The obligation of the contract does not impair the right of either party to reopen rights guaranteed by the National Labor Relations Act at the appropriate time; for the contract specifically provides a fixed, determinable annual date on which it can be terminated in its entirety by proper notice.

ARE THE GRIEVANCES ARBITRABLE UNDER THE CONTRACT?

By this motion the Company raises the question of whether private arbitration was contemplated by the agreement with the Union. This question is foreclosed by certain articles of the contract: Article VIII reads in part, "* * * all questions and grievances that may arise between the parties hereto during the life of the Agreement shall be handled through the successive steps as follows: * * * That article thereafter enumerates details for private conciliation." Article IX then follows: "* * * (A)ny grievances under this Agreement, or any violation of the employees' rights under this Agreement that cannot be settled by * * * Company and * * * Union * * * shall be submitted to an Arbitration Board * * *".

[11] Where there is a genuine dispute arising from a collective bargaining contract, the agreement itself is controlling as to provisions for arbitration (24 A.L.R.2d 752) and the law favors such arbitration. Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972, and Lodge No. 12, District No. 37, International Association of Machinists v. Cameron Iron Works, Inc., 5 Cir., 257 F.2d 467, 474.

[12] Plainly, the withdrawal of "foremen" from the coverage of the contract was an arbitrable grievance; as is likewise the working of supervisory personnel contrary to the express prohibitions of the contract.

Appropriate order in conformity with this Memorandum-Decision will be entered.

[In the U.S. District Court, Northern District of Florida, Pensacola Division, April 18, 1960.]

LOCAL UNION NO. 1055, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, AND LOCAL UNION NO. 624, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, PLAINTIFFS, *v.* GULF POWER CO., DEFENDANT

(Civ. A. No. 1016.)

Action by union for declaration of its rights under collective bargaining contract and for injunctive relief requiring employer to recognize contract and comply with the terms therein. The District Court, Carswell, Chief Judge, held that where employer agreed under collective bargaining contract to include supervisory personnel in the bargaining unit, subsequent unilateral declaration by employer of its refusal to recognize union as bargaining agent for foremen was unjustified and refusal to submit question to arbitration was a partial breach of contract, but such partial breach did not justify union in calling a strike in violation of "no strike" clause in contract rather than seeking aid of court in enforcing union's rights under the contract or bringing matter before National Labor Relations Board, and union was not entitled to injunctive relief nor was company entitled to injunctive relief on its counterclaim.

Ordered accordingly.

1. LABOR RELATIONS—264, 291, 800, 816

Where employer agreed under collective bargaining contract to include supervisory personnel in bargaining unit, subsequent unilateral declaration by employer of its refusal to recognize union as bargaining agent for foremen was unjustified and refusal to submit question to arbitration was a partial breach of contract, but such partial breach did not justify union in calling strike in violation of "no strike" clause in contract rather than seeking aid of court in enforcing union's rights under contract or bringing matter before National Labor Relations Board, and union was not entitled to injunctive relief nor was company entitled to injunctive relief on its counterclaim. Labor Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185; National Labor Relations Act §§ 2(3), 8(d), 14(a) as amended 29 U.S.C.A. §§ 152(3), 158 (d), 164(a).

2. LABOR RELATIONS—244, 282

Prevention of strikes is one of principal purposes of labor contracts and of the National Labor Relations Act.

3. DECLARATORY JUDGMENT—147

Specific Performance—62:

Where an employer has been guilty of a partial breach of collective bargaining agreement, relief by declaratory judgment and specific performance are available to union.

4. EQUITY—65(1), 66

One who seeks equity must do equity and must come into equity with clean hands.

5. SPECIFIC PERFORMANCE—88

Equitable relief will be denied to one who seeks to enforce rights under a contract which he himself has breached.

Philip D. Beall, Pensacola, Fla., Louis Sherman Washington, D.C., John S. Patton,

Poole, Pearce & Hall, and Edwin Pearce, Atlanta, Ga., for plaintiffs.

Bert Lane, Yonge, Beggs & Lane, Pensacola, Fla., for defendant.

CARSWELL, Chief Judge.

This suit was initiated pursuant to 29 U.S.C.A. § 185 for a declaration of contractual rights by the plaintiffs, here called the Union, against the defendant, a public utility, here called the Company. Jurisdiction to hear this cause was raised by the Company in a motion to dismiss. This Court disposed of the jurisdictional question in a memorandum-decision filed on August 17, 1959. 175 F.Supp. 315. Other point raised in the motion to dismiss were also decided in that decision, and the Court will refer to that decision as a basis for some of the findings which follow.

[1] The Company and the Union were operating under a collective bargaining agreement wherein the parties agreed to arbitrate matters arising under the contract, when any dispute arose. There was a "no strike" clause wherein the Union and its members agreed that during the continuance of the agreement there would be no authorized or sanctioned strikes, sitdowns or walkouts, or any other concerted cessation or delay of any work of any kind by the Union. The Company agreed that there would be no lockouts.

The Union and the Company had been operating under this agreement satisfactorily since October 1953. There was the usual 60 day "notice to terminate" clause in the contract. Early in 1959 the Company, in streamlining its operations, installed new methods of operation and new type equipment. This new operation resulted in the necessity of fewer employees. The Company offered certain employees supervisory positions, which were accepted. On June 14, 1958, the Company notified the Union that as of August 15, 1958, the Company would no longer recognize the Union as collective bargaining representatives of foremen. The Union subsequently took issue with the Company's right to refuse unilaterally to recognize the Union as bargaining agents for certain foremen, and demanded that the Company arbitrate the matter. The Company contended that under 29 U.S.C.A. § 164(a) it could not be compelled to bargain collectively with a worker bearing the statutory definition of a supervisor under 29 U.S.C.A. § 152(3), and that, therefore, the collective bargaining agreement as to supervisors was unenforceable against the Company.

It must be noted that the Company and the Union had settled most of their problems with respect to wages and working conditions without serious controversy. They were working on a new contract and had, except for the question as set forth above, agreed as to the terms of a new contract which would take the place of the one now under consideration.

The testimony taken shows that the Company's attitude with respect to collective bargaining on the question of foremen was clear. The Company refused to arbitrate the question, contending a legal basis for its action, and seeking to have the National Labor Relations Board take jurisdiction and settle the controversy. The Union, however, was not certified, and the Board, at the instance of the Union, refused to take jurisdiction.

Upon refusal of the Company to arbitrate this question, the Union sent out ballots to its members requesting that they vote to strike. The members voted in favor of the strike, and a work stoppage resulted.

The Company notified the Union that the strike would be deemed by the Company to constitute an abrogation of the existing contract, and has since refused to recognize the Union's rights thereunder.

The Union seeks a declaration of its rights under the contract, as well as injunctive relief requiring that the company recognize the contract and comply with the terms therein. The Union also seeks a declaration that the Company by refusing to arbitrate as to supervisory personnel violated the contract, and prays that injunction issue requiring the Company to recognize the Union as bargaining agents for the Company's employees, as well as for the foremen; that the foremen be declared as part of the Union's bargaining unit; and to prohibit the Company from assigning work to these foremen which had heretofore been their work as employees under the contract. Alternatively, the Union prays that the Company be required to arbitrate on the unilateral withdrawal of foremen from the bargaining unit.

The Company denies the existing of the contract, by virtue of the strike, which it considers an abandonment of the contract. The Company also counterclaims praying for injunctive relief.

In the previous memorandum-decision filed in this cause, this Court held that the contractual obligations of the Company were enforceable with respect to the Company's refusal to submit to arbitration the question of representation. The Company had by contract agreed to include supervisory personnel in the bargaining unit, though there was no statutory compulsion to do so. A unilateral declaration by the Company of its refusal to recognize the Union as bargaining agent for the foremen was unjustified, and their refusal to submit the question to arbitration was a breach of their contract. In view of the other settled questions between the Company and the Union, this breach was not so material as to constitute a total breach. The Union contends that this breach by the Company justified its action in calling the strike, that arbitration was an alternative remedy to their right to strike, and that "no strike" clause was operative only so long as the Company would submit to arbitration. The Company's refusal to arbitrate, it argues, left no other course open, except to strike.

The Court cannot agree with the Union's contention. The president of the local testified that the Union did not seek the aid of the Courts in enforcing the Union's rights under the contract, although it was considered, because the judicial processes were too slow. Testimony of the Union officials shows that there was no effort to bring the matter before the National Labor Relations Board, although that course was also open. In fact, the Company's attempt to have the question of supervisory personnel brought before the Board was thwarted by the fact that the Union was not certified before the Board, and would not seek certification. The Union unquestionably had the power to bring the question before the Board had it so desired. The Courts were open. It appears from the testimony that the Company, although guilty of a breach, acted in good faith in seeking proper determination of the issue through its unsucessful attempt to utilize remedies which were created by Congress for this purpose. The Union contends that the economic retaliation through strike was not an abandonment of the contract, but merely an alternative method to enforce arbitration. It cites as its authority for such action Mastro Plastics Corp. v. National Labor Relations Board, 350 U.S. 270, 76 S. Ct. 349, 100 L.Ed. 309. This is distinguishable from the Mastro case, in that the company there was guilty of interfering with the determination of the bargaining unit, through manipulation of its employees in direct violation of the Labor Act Section 8(d), 29 U.S.C.A. § 158(d), and was also guilty of bad faith through unfair labor practices. This case concerns a breach of a labor contract by a Company not acting in bad faith and attempting to act for the purpose of reconciling the problem through proper channels. While this breach is not condoned, the action of the Company was insufficient to justify the course of action taken by the Union in arbitrarily calling a strike. The position asserted by the Company could not be considered an unfair labor practice.

[2, 3] The Union takes a position inconsistent with the rights it seeks to enforce under the contract. The "no strike" clause is "The chief advantage which an employer can reasonably expect from a collective labor agreement". S. Rep. No. 105, 80th Cong., 1st Sess. 16 (1947). In cases where a breach is a strike in violation of a collective bargaining agreement, application of the rule excusing performance by the other party is supported by the rationale underlying such agreements. The prevention of strikes is one of the principal purposes of labor contracts and of the National Labor Relations Act. United Electrical Radio and Machine Workers of America v. National Labor Relations Board, 1955, 96 U.S.App.D.C. 46, 223 F.2d 338. The call to strike is a material breach of the contract, and not justified in the face of a partial breach which could be enforced through proper judicial or administrative action. The Union cannot and does not contend that the strike route was the only course open. Declaratory judgment and specific performance were available. Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972. Administrative procedures available under the Taft-Hartley Act could have been employed had the Union been disposed to invoke them.

The Union failed to consider the most elementary purposes for having contracts, this purpose being to invoke the Courts' aid to enforce or provide remedies for the breach of rights and duties owing under such contractual relation. The use of "self-help" for enforcement of rights under a contract would negate the benefit of contractual relationships. Where disputes arise as to the meaning of terms in a contract, the parties are prone to interpret ambiguities to suit their own purposes. The Courts must, therefore, define the terms in accordance with established legal guides. This is a judicial function, done with due deliberation. Although such deliberation may at times seem slow, such course cannot be replaced by hasty independent action without suffering the consequences. The Union had it in its power to avert the strike by means of Court order. It chose instead to strike and thus violate the contract.

[4, 5] It is an elementary proposition of equity jurisprudence that one who seeks equity must do equity; that one who comes into equity must come in with clean hands. Equity Courts have historically declined to grant equitable relief to one who seeks to enforce rights under a contract which he, himself, has breached.

The prayer for injunctive relief by the Union is hereby denied, and because of the Company's breach the prayer for injunctive relief in the counterclaim is hereby dismissed with prejudice.

[U.S. District Court, Northern District Florida, Marianna Division, May 28, 1964]

JEAN CAROLYN YOUNGBLOOD ET AL., PLAINTIFFS, *v.* BOARD OF PUBLIC INSTRUCTION OF BAY COUNTY, FLA., ET AL., DEFENDANTS

(Civ. A. No. 572)

School desegregation case. The plaintiffs moved for summary judgment. The District Court, Carswell, Chief Judge, held that plaintiffs were entitled to summary judgment requiring school authorities to submit a plan for receiving applications and assigning children to public schools without regard to race or color, where school authorities admitted that race was considered in assigning children and no assignments had been made without regard to factors of race or color.

Motion granted.

1. SCHOOLS AND SCHOOL DISTRICTS—154

School authorities would be required to submit a plan for receiving applications and

assigning children to public schools without regard to race or color, where school authorities admitted that race considered in assigning children and no assignments had been made without regard to factors of race or color. F.S.A. § 230.232.

2. FEDERAL CIVIL PROCEDURE—2545

Statistics and analyses which purportedly disclosed that there are inherent racial differences in intelligence, in aptitude, and in rate of intellectual attainment at various ages and which were offered by school authorities to justify use of racial index as one criteria in making assignment of pupils to specific schools were totally irrelevant to issues raised on plaintiff's motion for summary judgment in school desegregation case. Fed. Rules Civ. Proc. rule 56, 28 U.S.C.A.

3. SCHOOLS AND SCHOOL DISTRICTS—154

There is no constitutional prohibition against assignment of individual students to particular schools on basis of intelligence, rate of achievement, or aptitude upon uniformly administered program so long as race itself is removed as a factor in making individual assignments

4. SCHOOLS AND SCHOOL DISTRICTS—154

Any school plan which embodies a universal testing basis for assignment of pupils may not be administered in a manner which would defeat essential requirement that factors of race are not to be considered.

5. SCHOOLS AND SCHOOL DISTRICTS—155

Federal district court retained jurisdiction in school desegregation case for the entry of such further orders and decrees as would be deemed proper and according to the law.

Charles F. Wilson, Pensacola, Fla., Constance Baker Motley, New York City, for plaintiffs.

Davenport, Johnston, Harris & Urquhart, Logue & Bennett, Panama City, Fla., for defendants.

CARSWELL, Chief Judge.

This cause came on to be heard pursuant to notice on motion of plaintiffs for summary judgments, and counsel for the respective parties were present and heard.

This class action was brought by minor children of the Negro race through their parents seeking, basically, in their own behalf and for others of the Negro race, establishment and enforcement of reasonable procedures by the Board of Public Instruction of Bay County, Florida, for their applications to attend schools under the jurisdiction of the subject Board to be considered and assignments made without regard to race in accordance with Brown v. Board of Education of Topeka et al., 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1953), and subsequent cases.

[1] Plaintiffs base this motion for summary judgment upon the defendants' answer to the complaint and upon defendants' answers to certain interrogatories which show that the standards employed by the Board in acting upon applications for admission to schools under jurisdiction for the first time and in assignment to schools by promotion are "set forth in the Florida Pupil Assignment Law, F.S. 230.232, 1963, including the child's race." (Defendants' answer to interrogatories 3a–7, inclusive.)

This Court concludes that this admitted fact, in addition to a plaint showing that there have been no assignments to the subject schools without regard to factors of race or color entitles plaintiffs to summary judgment on that portion of its prayer requiring the Board to submit for the consideration of this Court "a plan whereby the plaintiffs and the members of the class represented by them are hereafter afforded a reasonable and conscious opportunity to apply for admission to any schools for which they are eligible without regard to their race, color, and to have that choice fairly considered by the enrolling authorities." See Gibson v. Board of Public Instruction of Dade County, Florida, 272 F. 2d 763, 767 (5th Cir., 1959). The defendants urge that there is no showing that pupils are assigned to schools *solely* on basis of race or color, that its procedures with reference to applications as assignments merely use race as one indicia. The Board cites as authority for its contention here that this motion for summary judgment should be denied on these grounds the case of Stell et al. v. Savannah-Chatham County Board of Education et al., 220 F. Supp. 667 (S.D. Ga. 1963), currently pending on appeal before the Fifth Circuit. Considerable testimony was received in the Stell case on the contentions asserted by the defendant Board here to the effect that there is a reasonable factual basis for concluding that children receive a better education when they attend schools with pupils of their own race. The defendant Board here is plainly correct in contending that that is the holding of the Stell case, which made such findings of fact and concluded that the class action, similar, if not identical to the one before this Court, should be dismissed accordingly.

This Court concludes that Stell, supra, is not in accord with the requirements of the United States Court of Appeals, Fifth Circuit, opinions in Gibson v. Board of Public Instruction of Hillsborough County, Florida, et al., 5 Cir., 277 F. 2d 370 (1960); Augustus v. Board of Public Instruction of Escambia County, Florida, et al., 5 Cir., 306 F. 2d 862 (1962). Nor is the defendant Board's contention here in accord with the holding of this Court in Augustus v. Board of Public Instruction of Escambia County, Florida, et al., 185 F. Supp. 450 (N.D.Fla., 1960), or in the unreported case of Steele v. Board of Public Instruction of Leon County, Florida, et al., Tallahassee Civil Action No. 854 (1963). See also Brown v. School District Number 20, Charleston, S.C., D.C.S.C., 226 F. Supp. 819, affirmed per curiam by the Fourth Circuit in 382 F. 2d 618.

[2–4] In opposition to plaintiffs' motion for summary judgment, defendants have proffered a considerable volume of statistics, and a number of analyses, tending to establish, basically, that there are inherent racial differences in intelligence, in aptitude, and in rate of intellectual attainment at various ages, all of which, it is urged, justifies the use of a racial index as one criteria in making assignment of pupils to specific schools. Without assessing or weighing this data, this contention simply ignores the plain requirement that individual pupils must be assigned to a school without regard to racial consideration. To be sure, there is no Constitutional prohibition against assignment of individual students to particular schools on a basis of intelligence, rate of achievement, or aptitude upon a uniformly administered program so long as race itself is removed as a factor in making individual assignments. By the same token, any plan which does embody a universal testing basis for assignment may not be administered in a manner which would defeat the essential requirement that factors of race are not to be considered.

This Court concludes, therefore, that the factual data proffered by defendant is totally irrelevant to the issues raised on this plaintiff's motion for summary judgment. The determination of this motion, therefore, rests upon defendants' answer to the complaint, its answers to interrogatories and a plain showing that there have been no assignments to the subject schools without regard to racial factors.

With respect to plaintiffs' prayer for establishment of a plan for receiving applications and assigning children to the public schools under the Board's jurisdiction without regard to race or color, plaintiffs are entitled to summary judgment under the provisions of Rule 56, Federal Rules of Civil Procedure, since there is no genuine issue as to any material fact in this regard and the moving party is entitled to judgment as a matter of law.

Minimal requirements of any plan to be approved by this Court must be at least the equivalent of, although not necessarily identical to, plans previously approved by this Court in Augustus v. Board of Public Instruction of Escambia County, Florida, et al., supra, and Steele v. Board of Public Instruction of Leon County, Florida, et al., supra, and such plan shall be made operative by the beginning of the 1964–1965 school year.

It is, therefore, upon consideration, hereby Ordered:

1. Partial summary judgment is hereby granted plaintiffs as herein provided:

(a) The Board of Public Instruction of Bay County, Florida may submit for the consideration of this Court "a plan whereby the plaintiffs and members of the class represented by them are hereafter afforded a reasonable and conscious opportunity to apply for admission to any schools for which they are eligible without regard to their race or color and to have their choice fairly considered by enrolling authorities," on or before June 30, 1964, with copies thereof being served by mail upon opposing counsel.

(b) Hearing on the proposed plan, if filed, and objections thereto, if any, is hereby set for 11:00 A.M., Eastern Standard Time, Wednesday, July 8, 1964, Federal Courtroom, Tallahassee, Florida.

In the event no proposed plan is filed by the Board on or before June 30, 1964, as provided above, then hearing will be held at 11:00 A.M., Eastern Standard Time, Wednesday, July 8, 1964, Federal Courtroom. Tallahassee, Florida, for consideration of such plan or directive as the Court deems in accordance with law.

[5](c) The Court reserves ruling with reference to all issues raised by the complaint and answer concerning teachers, administrative personnel, school system, etc., in accordance with Augustus v. Board of Public Instruction of Escambia County, Florida, et al., 306 F.2d 862 (5th Cir., 1962), and retains jurisdiction for the entry of such further orders and decrees as deemed proper and according to the law.

[U.S. District Court, Western District Missouri, May 27, 1964]

SPRINGFIELD WHITE CASTLE CO., PLAINTIFF *v.* EUGENE P. FOLEY, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION, DEFENDANT

(No. 14763–2)

Action for declaration that decision by Small Business Administration holding that plaintiff, engaged in business of furnishing custodial and janitorial services, was not a small business within purview of Small Business Act. The District Court, Gibson, Chief Judge, held that susbtantial evidence sustained the finding of the Administrator that the plaintiff was not a small business within purview of the Act.

Determination of administrator affirmed.

1. UNITED STATES—53(6)

If determination of Administrator under Small Business Act is supported by substantial evidence then that decision is final unless erroneous as a matter of law. Small Business Act, § 2(2–18, 5), 15 U.S.C.A. §§ 631–647, 634 and §§ 648–651; Administrative Procedure Act, § 10, 5 U.S.C.A. § 1009.

2. UNITED STATES—53(6)

While court might, if making original determination, reach a result different than that reached by Administrator under Small Business Act that a company was not a small business, if finding of Administrator was supported by substantial evidence the finding must stand as final. Small Business Act, § 2 (2–18, 5), 15 U.S.C.A. §§ 631–647, 634 and §§ 648–651; Administrative Procedure Act, § 10, 5 U.S.C.A. § 1009.

3. UNITED STATES—53(6)

In ascertaining whether finding of Administrator under Small Business Act that a certain company was not a small business was supported by substantial evidence court would not look at evidence of administrator in a vacuum, but would look at all of evidence on both sides. Small Business Act, § 2(2–18, 5), 15 U.S.C.A. §§ 631–647, 634 and §§ 648–651; Administrative Procedure Act, § 10, 5 U.S.C.A. § 1009.

4. UNITED STATES—53(6)

Substantial evidence supported finding of Administrator of Small Business Act that a corporation engaged in business of furnishing custodial and janitorial services was not a small business within purview of Act. Small Business Act, § 2(2–18, 5), 15 U.S.C.A. §§ 631–647, 634 and §§ 648–651; Administrative Procedure Act, § 10, 5 U.S.C.A. § 1009.

Neale, Newman, Bradshaw, Freeman & Neale, Springfield, Mo., for plaintiff.

F. Russell Millin and John L. Kapnistos, Kansas City, Mo., for defendant.

GIBSON, Chief Judge.

This is an action brought by Springfield White Castle Company seeking a declaration that the decision by the Small Business Administration holding * * *.

[U.S. District Court, Northern District of Florida, Tallahassee Division, Aug. 13, 1964]

UNITED STATES OF AMERICA *v.* SIDNEY W. LEVY

(Crim. No. 2519)

Prosecution wherein defendant moved for dismissal of indictment on grounds of double jeopardy. The District Court, Carswell, Chief Judge, held that defendant, who had asserted mental incompetence to stand trial after swearing of jury, had not been put in jeopardy and could later be tried on the same indictment although court of its own motion had called for hearing on issue of competence.

Motion denied.

1. MENTAL HEALTH—432

Persons incompetent in legal sense are not triable before our courts for alleged crimes.

2. CRIMINAL LAW—740

Affirmative defense that defendant was mentally incompetent at time of acts alleged in indictment was for jury alone.

3. CRIMINAL LAW—625

Question of mental competency of defendant at time of trial was for court. 18 U.S.C.A. § 4244.

4. MENTAL HEALTH—432

Purported effort to try a person who is mentally incompetent is void ab initio, the entire process of calling the case for trial, selecting jurors, etc., being a complete nullity.

5. CRIMINAL LAW—172

Defendant who had asserted mental incompetence to stand trial after swearing of jury had not been put in jeopardy and could later be tried on the same indictment although court of its own motion had called for hearing on issue of competence. 18 U.S.C.A. § 4244.

Clinton Ashmore, U.S. Atty., Tallahassee, Fla., for plaintiff.

Julius F. Parker, Tallahassee, Fla., for defendant.

CARSWELL, Chief Judge.

The issue presented to the Court here is whether the indictment against defendant should be dismissed on the asserted grounds of double jeopardy.

The factual situation giving rise to this matter is as follows:

Following the return of the indictment by the grand jury it was suggested by counsel for this defendant that the defendant was mentally incompetent to understand the nature of the proceedings against him or to cooperate with counsel in his defense. Acting upon this suggestion the Court directed that he be examined by competent psychiatrists and a full hearing was held to determine his competency. Upon the testimony there adduced the Court determined that the defendant was, in fact, competent to stand trial, that he understood the nature of the proceedings against him and was able to cooperate with counsel in his own defense. Thus the matter stood until the case was called for trial some months later.

Pursuant to previous notice the case was called for trial and the respective parties announced that they were ready to proceed. In the normal course of events a jury was called from the general venire, individual jurors examined by the Court and counsel, and twelve jurors acceptable to the parties were sworn to try the factual issues presented by the indictment and the defendant's plea of not guilty. Witnesses were called and sworn. Counsel for the Government made a brief opening statement.

All proceeded normally until counsel for the defendant stated in his opening statement that the defendant was at that very moment mentally incompetent. The Court at this point interrupted counsel in his statement and excused the jury to look into the matter further. It was made clear that counsel for defendant was, in fact, making the contention that the defendant was then and there mentally incompetent in the legal sense that he was unable to understand the nature of the proceedings against him or to cooperate with counsel in his defense. Counsel for defendant announced that he was ready to proffer testimony by a competent psychiatrist to this effect. Thereupon the court on its own motion called for a hearing on the issue of the defendant's mental competence under the provisions of 18 U.S.C. § 4244. The United States offered no objection to this procedure, stating that it would only ask that the Court consider the testimony and record of the previous hearing, to which there was no objection by counsel for defendant.

Counsel for defendant now moves for dismissal of the indictment on grounds of double jeopardy contending that when the jury was sworn on February 27, 1964, his client was placed in such jeopardy under the law that he could not now be tried again.

Both defendant and the Government cite the case of Downum v. United States, 372 U.S. 734, 83 S.Ct. 1033, 10 L.Ed.2d 100 (1963), as authority for their respective positions. In that case Justice Douglas wrote the majority opinion for a Court divided 5–4, and reversed a conviction obtained at a second trial on grounds of double jeopardy. The factual situation in this case was strikingly different from the one at hand. In Downum a mistrial was declared by the trial judge shortly after the jury had been sworn at the request of Government counsel upon his announcement that one of the chief prosecution witnesses had not been served with a summons and because no other arrangements had been made to assure his presence. After a full review of earlier decisions, including Cornero v. United States, 9 Cir., 48 F.2d 69, the majority in Downum reversed the conviction on a second trial, making it clear that the discretion to discharge the jury before it reached the verdict is to be exercised "only in very extraordinary and striking circumstances" citing these words of Mr. Justice Story in United States v. Coolidge, 25 Fed.Cas. p. 622, No. 14,858, and saying further that the prohibition of the Double Jeopardy Clause is "not against being twice punished; but against being twice put in jeopardy." Justice Douglas notes however that "[e]ach case must turn on its facts."

[1–3] It is clear that the situation here cannot be equated with Downum. In Downum it was the unexcused negligence of the Government attorney in announcing his readiness for trial, when, in fact, he had not subpoenaed a necessary witness that was the basis of the Court's holding of double jeopardy. In the case before this Court the first suggestion that something was awry occurred upon the suggestion of defense counsel when he addressed the jury. It was at this point that the attention of the Court was first called to the fact that the defendant before it was possibly incompetent in a legal sense. Since such persons are not triable before our courts the matter was necessarily clarified before any further steps could be taken. It should be made explicit that the question presented to the Court here was whether or not the defendant, Sidney W. Levy, was at that moment mentally incompetent. Conversely, it should be made clear that the asserted affirmative defense of the defendant, Sidney W. Levy, that he was mentally incompetent at the time of the acts alleged in the indictment was not before the Court. The affirmative defense, of course, was properly a question for the jury and the jury alone to determine. By like token, under the provisions of 18 U.S.C. § 4244 et seq., the question of mental competency of the defendant then and there was one for the Court.

A very careful reading of the cases cited in Downum both by Justice Douglas and in the dissenting opinion of Justice Clark, and the very recent case of United States v. Tateo, 84 S.Ct. 1587, decided June 8, 1964, makes it clear that the factual situation presented to this Court was certainly of such imperious and "urgent necessity" as to require a declaration of mistrial without barring a second prosecution. In Wade v. Hunter, 336 U.S. 684, 69 S.Ct. 834, 93 L.Ed. 974 (1949), the Supreme Court said:

"We are asked to adopt the Cornero rule under which petitioner contends the absence of witnesses can never justify discontinuance of a trial. Such a rigid formula is inconsistent with the guiding principles of the Perez decision [United States v. Perez, 9 Wheat. 579, 6 L.Ed. 165 (1824)] to which we adhere. Those principles command courts in considering whether a trial should be terminated without judgment to take 'all circumstances into account' and thereby forbid the mechanical application of an abstract formula. The value of the Perez principles thus lies in their capacity for informed application under widely different circumstances, without injury to the defendants or to the public interest."

[4, 5] There can scarcely be any argument that there was an urgent and imperious necessity for the Court to declare a mistrial where the defendant before the Court was determined to be mentally incompetent. Any purported effort to try such a person is void *ab initio*, the entire process of calling the case for trial, selecting jurors, etc., being a complete nullity. This is a far cry from the circumstances of failing to subpoena necessary witnesses without excuse.

Accordingly, defendant's motion to dismiss the indictment against him is denied and the case is set for trial at the next ensuing term.

[U.S. District Court, Eastern District of Pennsylvania, Aug. 17, 1964]

UNITED STATES OF AMERICA, *v.* ALUMINUM CO. OF AMERICA, ANACONDA WIRE AND CABLE CO., GENERAL CABLE CORP., KAISER ALUMINUM AND CHEMICAL SALES, INC., OLIN-MATHIESON CHEMICAL CORP., REYNOLDS METALS CO.

(Crim. No. 21243)

Defendants in criminal antitrust case made a motion for the discovery and inspection of all books, papers, documents, or objects which were obtained from a competitor of the defendants by the government by seizure or process. The District Court, Joseph S. Lord, III, J., held that defendants were not entitled to discovery and inspection of all

documents but only those documents which the Government intended to use at the trial.

Motion granted in part.

1. CRIMINAL LAW—627½

Federal Rule of Criminal Procedure dealing with discovery and inspection is discretionary. Fed. Rules Crim. Proc. rule 16, 18 U.S.C.A.

2. CRIMINAL LAW—627½

On motion by defendant for discovery and inspection under Federal Rule of Criminal Procedure, there is no true privilege against discovery of confidential business information. Fed. Rules Crim. Proc. rule 16, 18 U.S.C.A.

3. MONOPOLIES—29

Gist of offense in criminal antitrust case is conspiracy, and proof of its success is unnecessary for conviction

4. CRIMINAL LAW—627½

Defendants in criminal antitrust case were not entitled to discovery and inspection of all competitors' books, papers, documents, or objects, obtained by government by seizure or process, and discovery and inspection would be limited to documents which government intended to use at trial. Fed. Rules Crim. Proc. rule 16, 18 U.S.C.A.

Donald G Balthis, John E. Sarbaugh, John J. Hughes, Richard M. Walker and Stewart J. Miller, Dept. of Justice, Antitrust Div., Philadelphia, Pa., for plaintiff.

Philip H. Strubing, Philadelphia, Pa., for Aluminum Co. of America.

Joseph W. Swain, Jr., Philadelphia, Pa., for Anaconda Wire & Cable Co.

H. Francis DeLone, Philadelphia, Pa., for General Cable Corp.

Edwin P. Rome, Philadelphia, Pa., for Kaiser Aluminum & Chemical Sales, Inc.

George P. Williams, III, Philadelphia, Pa., for Olin-Mathieson Chemical Corp.

Thomas D. McBride, Philadelphia, Pa., for Reynolds Metals Co.

[U.S. District Court, Northern Distrct of Florida, Tallahassee Division, Nov. 18, 1963]

PATRICIA STEPHENS DUE AND RUEBEN RUSHEN KENON, PLAINTIFFS, *v.* FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY, BOARD OF CONTROL FOR THE STATE OF FLORIDA, AND DR. GEORGE W. GORE, JR., PRESIDENT OF FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY, DEFENDANTS

(No. 947)

Proceeding on application for preliminary and permanent injunction requiring reinstatement of suspended students as students of tax-supported university. The District Court, Carswell, Chief Judge, held that contempt convictions of students constituted "misconduct" within student handbook provision that disciplinary action would be taken against students for misconduct, including conviction by university officials or city, county, or federal police for violation of criminal and/or civil law, and that disciplinary committee of university had authority to suspend students for their circuit court convictions for contempt.

Application denied.

1. COURTS—282.2(3)

In view of allegations to effect that suspended students seeking preliminary and permanent injunction requiring their reinstatement as students of state supported university had had no notice of hearing prior to their suspension and had no opportunity to be heard, federal question was presented for decision by federal District Court. U.S.C.A. Const. Amend. 14.

2. COURTS—299(3)

Not every allegation of denial of some constitutional right alone and automatically impels exercise of United States District Court jurisdiction without reference to some framework of established remedy and sound procedure.

3. ADMINISTRATIVE LAW AND PROCEDURE—229

Where tribunals of review are readily available and standards and procedures clearly defined, some recourse to them must be made or at least attempted before courts abort that normal process.

4. CONSTITUTIONAL LAW—318

Student expelled from tax-supported institution has been denied due process if he has not received notice of charges against him or has not had opportunity for hearing. U.S.C.A.Const. Amend. 14.

5. CONSTITUTIONAL LAW—318

Students who were telephoned and asked to come to campus and contact chairman of state supported university disciplinary committee conducting proceedings at normal hours in easily accessible room and who were read text of letter, which they had denied receiving and which advised them of charge, and were permitted to respond to the charge until they had no more to say had not been denied due process. U.S.C.A.Const. Amend. 14.

6. COLLEGES AND UNIVERSITIES—9

Contempt convictions of students of tax-supported university constituted "misconduct" within student handbook provision that disciplinary action would be taken against students for misconduct, including conviction by university officials or city, county, or federal police for violation of criminal and/or civil law.

"See publication Words and Phrases for other judicial constructions and definitions."

7. COLLEGES AND UNIVERSITIES—9

Disciplinary committee of tax-supported university had authority to suspend students for their circuit court convictions for contempt.

8. CONSTITUTIONAL LAW—318

Stenographic or mechanical recording of proceedings before university disciplinary committee is not necessary to due process. U.S.C.A.Const. Amend. 14.

Herbert Heiken, Tobias Simon, Howard Dixon and S. George Albion, Miami, Fla., for plaintiffs.

Ralph E. Odum, Asst. Atty. Gen., and Joseph C. Jacobs, Asst. Atty. Gen., State of Florida, Tallahassee, Fla., for defendants.

CARSWELL, Chief Judge.

STATEMENT

Complaint was filed by plaintiffs on October 24, 1963 alleging that they were each indefinitely suspended from Florida Agricultural and Mechanical University, a State supported institution of higher learning by order dated October 19, 1963. They seek in this proceeding a preliminary and permanent injunction requiring their reinstatement as students on the grounds that they have been denied the guarantees of due process established by the 14th Amendment of the Constitution.

Hearing was held November 1, 1963 at which time counsel for each of the named defendants appeared, waived service and filed motion to dismiss on the grounds: (1) There is no substantial Federal question; (2) The complaint fails to allege that plaintiffs have exhausted their administrative remedies provided by Florida Statutes; and (3) "The complaint shows on its face that defendants were convicted after trial by the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, of contempt of court.

Following rather extensive preliminary consideration of the issues of fact and law thus presented, counsel for plaintiffs and defendants stipulated with reference to certain basic facts, all disclosed by the record, and testimony was taken of the two plaintiffs at their own behest and of two members of the University disciplinary committee who were called by the defendants, most of which relates to the events of October 17, 1963 and which culminated in the indefinite suspension of the plaintiffs as students that day. Plaintiffs' request for time to file memorandum brief within four days was granted with defendants to respond within three days. After preparation of the transcript of this hearing and careful review thereof and consideration of the briefs submitted, the following Findings of Fact and Conclusions of Law are entered pursuant to the Federal Rules of Civil Procedure. The record is virtually devoid of disputed fact, but since the disposition of this case here rests on the facts themselves they are set forth in full detail.

FINDINGS OF FACT

1. Plaintiffs were students at Florida Agricultural and Mechanical University, a State supported institution of higher learning located in Leon County, Florida.

2. On October 3, 1963 in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida plaintiffs Patricia Stephens Due and Reubin Rushen Kenon were adjudged guilty of contempt of that court and each was sentenced to pay a fine of One Thousand Dollars, or, in default thereof, to be confined in jail for a term of six months.

The full text of this order is attached to the complaint here.

Each plaintiff paid the fine under protest and filed notice of appeal to the appropriate reviewing court.

With reference to this order, and for purposes of this litigation before this Court, counsel for plaintiffs has stipulated as follows:

"I will stipulate that they were guilty of criminal contempt and were so held." (TR.)

3. On the morning of October 17, 1963 the Acting Dean of Students telephoned each of the plaintiffs individually, asked if they had received a letter from the University calling for their appearance before the Disciplinary Committee. Each replied they had not received such letter. The Acting Dean then advised each of them to return to the campus and contact Mr. J. Luther Thomas, Chairman of the University Disciplinary Committee.

4. That same day plaintiffs returned from their respective pursuits, Kenon from Marianna, Florida, and Mrs. Due from Jacksonville, and presented themselves, separately, to Mr. Thomas, Chairman of the Disciplinary Committee, in the faculty lounge on the first floor of Tucker Hall, the main classroom building on the campus, sometime between three and five o'clock in the afternoon.

5. The full Disciplinary Committee was present and in the process of considering matters before it with its Chairman, J. Luther Thomas, presiding. Committee members in attendance were:

A. A. Abraham
Mrs. L. B. Clarke
G. W. Conoly
T. A. Jackson
T. M. Jenkins
A. L. Kidd

The Student Handbook states that the Disciplinary Committee shall consist of five members, although by practice established for at least six or seven years this committee has actually consisted of seven members appointed by the University President.

All seven of the members of the committee and its Chairman had been duly designated for such responsibility by the President of the University sometime prior to these events. There was no change in the composition of this committee at any time shortly prior to the pertinent events.

6. Some thirty-seven students appeared before the Disciplinary Committee that day including these two plaintiffs. All the affairs of the committee were conducted in the faculty lounge of Tucker Hall, the main classroom building of the University. Mrs. Due and Kenon appeared separately sometime between three and five o'clock in the afternoon, Mrs. Due for approximately fifteen or twenty minutes and Kenon for a somewhat

longer period of time. Kenon testified that the two doors leading to the hall were locked, while Chairman Thomas and T. M. Jenkins, Dean of the School of Law and also a member of the Disciplinary Committee, contradicted this, each noting that there was intermittent entering and leaving of the room throughout the proceedings with no evidence or suggestion of a locked condition.

The evidence shows that all the proceedings with reference to these plaintiffs were conducted at normal hours, in an easily accessible room. Although the point has not been belabored, the plaintiffs' development of testimony about the general physical arrangements of the hearing room requires a specific finding in this regard. That finding is here made: There is no evidence indicating unusual or oppressive inconvenience to plaintiffs or anyone else in the physical appointments and general atmosphere of the hearing.

7. The hearings followed substantially an identical course. Kenon appeared before the committee first and his hearing lasted approximately forty-five minutes. Mrs. Due's hearing lasted approximately fifteen or twenty minutes. Upon entering the lounge each plaintiff was asked if he or she had received the letter from the Disciplinary Committee referred to above. When each denied having received the letter, the Chairman of the Committee then read the text of the letter to them advising them, individually, of the charge which had been made against them by the Acting Dean of Students, The substance of this charge was that each had been convicted on October 3, 1963 in the Circuit Court, Second Judicial Circuit, in and for Leon County, Florida of contempt of that Court.

This conviction was the stated and sole basis for the charge that these plaintiffs had violated item 6 of the provisions of the University's established rules and regulations as set forth in the Student Handbook which reads:

"Disciplinary action will be taken against students for: * * *.

"6. Misconduct while on or off the campus. This includes students who may be convicted by University officials, or city, county, or Federal police for violation of any of the criminal and/or civil laws."

Following the reading of the charge the plaintiffs were interrogated about the charge of contempt conviction and matters leading to conviction. Each was given opportunity to respond, and each, in fact, did respond.

The fact of conviction for contempt of court was not denied, but each plaintiff stated to the committee their respective views and attitudes about conviction, and gave their version of the events which led to their conviction. Essentially they stated their position before the committee to be that the contempt conviction was the result of the Circuit Court's erroneous findings that they were leaders of student demonstrations and that they had violated the Court's earlier restraining order. They insisted they were not leaders but merely part of a group, and, therefore, they should not have been singled out, in effect, for more severe punishment than was accorded others also charged and convicted in like circumstances.

The secretary of the disciplinary committee testified that "* * * Mr. Kenon talked to us fifteen or twenty minutes about his various ideas and his different abilities and things that he might have done here and there in connection with demonstrations."

There was no indication expressed by either plaintiff that they did not understand the nature of the charges against them, nor was there any request by plaintiffs or comment by the committee with respect to calling witnesses or securing counsel. There was no recording of the proceedings, either by stenographer or mechanical device.

The hearings of Kenon and Mrs. Due were closed in the same manner as all others then conducted. The Secretary, who is also Dean of the School of Law, described it thus: "He (referring to Kenon) was asked if he had any statement, summarizing statements, or anything else that he might like to say to the committee, and when he had completed his final statement he was told he might be excused."

The committee voted to suspend Kenon and Mrs. Due on the charge as stated. On October 19, 1963 the following letter was sent to each of the plaintiffs:

"You are hereby advised that pursuant to the regulations in the Student Handbook, relating to students 'convicted by * * * city, county, or Federal police for violation of any of the criminal and/or civil law,' you are suspended indefinitely from this institution."

Sincerely yours,

A. B. ABRAHAM,
(MRS.) L. B. CLARKE,
G. W. CONOLY,
T. A. JACKSON,
T. M. JENKINS,
A. L. KIDD,
/s/ J. LUTHER THOMAS,
Chairman, University Discipline Committee.

8. The rules and regulations of the Board of Control of the State of Florida, the State's governing board of its educational institutions including Florida Agricultural and Mechanical University, include the provision:

"4. *Appeals by Students*—

"a. The constitutions of the various institutions shall provide for the procedure of appeal by students within the respective institutions on all matters the student feels he has been aggrieved. If after a hearing before institution officials, a student believes a decision is unfair, he may appeal to the Board.

"b. The appeal to the Board shall be in writing and shall be submitted to the Executive Secretary with a copy to the President of the institution concerned within thirty days after the decision is rendered by the institution, and shall cite all reasons for dissatisfaction with the previous decisions. The Board shall investigate the matter thoroughly and make its decision thereon which shall be final and binding for all purposes."

9. Both plaintiffs knew on or before November 1, 1963 of their right to appeal the decision of the disciplinary committee to the Board of Control.

10. The following telegram was sent sometime prior to 10:36 P.M., October 17, but the undisputed testimony of the Disciplinary Committee is to the effect that it has not received the telegram, and from the legend on its face it could not have been received by the addressee President of the University until many hours after the conclusion of the subject hearing.

"TALLAHASSEE, FLA.,
"October 17, 1969.

"DR. GORE,
"President,
"Florida A. and M. University:

"Notice is hereby served upon you, of our demand on behalf of Patricia Due, of all her rights under the 14th Amendment to the United States Consitution (sic), in the Florida A and M University disciplinerary (sic) proceedings now pending against her including without limitation an open and public hearing on specific charges made known in advance with the right to council (sic), the ability to produce witnesses on her behalf, to be confronted with the witnesses against her and the right to cross examine same, a substantial adherence to rules of evidence, and a determination by a fair and impartial tribunal goverened (sic) by standards promulgated in advance. Failure to provide the foregoing constitutes a denial of due process of law and an affront to the American ideal of fair play which should not be forthcoming from you.

"HERBERT HEIKEN and TOBIAS SIMON,
"Attorneys at Law."

CONCLUSION OF LAW

Both plaintiffs and defendants cite the case of Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir., 1961) as authority in point on the determinative issues of law presented by these facts, and this Court concludes that Dixon is, indeed, the most current, explicit and applicable statement of the law governing the disposition of this case. Judge Rives, speaking for the majority there said succinctly: "The question presented by the pleadings and evidence, and decisive of this appeal, is whether due process requires notice and some opportunity for hearing before students at a tax-supported college are expelled for misconduct. We answer that question in the affirmative."

[1] This is language so unequivocal that it can scarcely be denied that there is inherently a substantial Federal question involving the due process clause of the 14th Amendment to the Constitution of the United States. Defendants' motion to dismiss on the ground that there is no Federal question here is untenable in view of the allegations of the complaint to the effect that there was no notice of hearing and no opportunity to be heard.

[2, 3] This is not to say, however, that every allegation of denial of some Constitutional right alone and automatically impels the exercise of United States District Court jurisdiction without reference to some framework of established remedy and sound procedure. Confusion of jurisdiction with the proper exercise of jurisdiction is not novel in the law. Where tribunals of review are readily available, and standards and procedures clearly defined, it has long been held that some recourse to them must be made, or at least attempted, before the Courts abort that normal process.

From concepts of orderliness, itself a vital requirement of fairness and due process, our Courts do not, and should not, lightly dismember this structure of government by short-circuiting fixed responsibility at initial or intermediate stages.

Were all the practical difficulties of step-by-step judicial supervision and review soluble, there is sound reason to recognize and encourage those charged with immediate responsibility in their special field to police their activities with a measure of confidence that their judgment has at least some immediate, though latently reversible authority.

All asserted wrongs may be tested, and we pray, ultimately righted in the Courtrooms of our country after full-scale judicial review, but the sheer diversity and complicity of our society, and the needs for its growth, has produced through necessity a multitude of supervisory and reviewing tribunals in virtually every area of our national life. Some operate under specific legislative authority, state or Federal, with precisely defined powers and procedures. A list of such quasi-judicial bodies would include the National Labor Relations Board, state boards of barbering and cosmeticians, Fish and Game Commissions, regulatory agencies in the broad fields of commerce, medicine, public utilities, and countless others.

No matter how ancient their origin, no matter how specific their power or from what generative source, none of these are islands of autocracy. The immense power to revoke the barber his license to carry on his livelihood, to fix fares, to compel reinstatement of an employee, is subject always to Constitutional requirements of due process and challengeable in an appropriate Court.

Plaintiffs here argue correctly that our appropriate Courts do, and should step in promptly at any point upon certain condi-

tions, among them showing of immediate and irreparable harm to one party without a commensurate jeopardy to the other, or where the action taken is on its very face invalid or taken by a body invalidly constituted. This is equated with violation of due process which demands an immediate staying, a quick remedy.

[4] Applied to the educational field, the Dixon case, as already noted, has made it clear that a student expelled from a tax-supported institution has been denied due process if he has not received notice of the charges against him or if he has had some opportunity for hearing.

Judge Rives went further lest this bare holding on the facts presented in Dixon be misconstrued. His opinion at pages 158–159 for the majority in that case states the minimum criteria of due process governing disciplinary bodies of tax-supported institutions:

"For the guidance of the parties in the event of further proceedings, we state our views on the nature of the notice and hearing required by due process prior to expulsion from a state college or university. They should, we think, comply with the following standards. The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case. The case before us requires something more than an informal interview with an administrative authority of the college. By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witness. In such circumstances, a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required. Such a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the college's educational atmosphere and impractical to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college. In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled."

It is against this criteria that facts of the plaintiffs' cases here fail.

[5] The facts here simply do not support plaintiffs in their premise. The disciplinary committee was duly established and organized by standard, well-defined procedure. It functioned in a normal manner. Its action is not invalid on its face. Nor can it be said that the order of conviction of contempt of Court, upon which the suspension was predicated, is invalid on its face. What has been said earlier about the wisdom of giving some imprimatur of at least immediate authority to those concerned with disciplinary matters at educational institutions applies especially to orders of duly constituted Courts.

[6, 7] Plaintiffs' argument that their conviction for contempt in the Circuit Court cannot be equated with "misconduct" as stated in the Student Handbook is without merit. At the very least such conviction is a violation of law, civil or criminal. The basis of the suspension on this clearly-stated charge is supported fully by the evidence. The disciplinary committee was not bound to suspend, but it plainly had the authority to do so after notice and an opportunity to be heard. Considerations leading the decision of the disciplinary committee obviously involve a whole range of factors affecting the institution, respect for rules and regulations as well as the needs of the plaintiffs themselves.

Its judgment in its field should not be lightly disturbed, especially in view of a quick and ready method of administrative review.

There was notice to each of these plaintiffs, the charge was made explicit, and each was afforded full opportunity to be heard, and, in fact, was heard to the point where each said he had nothing more to say.

[8] A fair reading of the Dixon case shows that it is not necessary to due process requirements that a full scale judicial trial be conducted by a university disciplinary committee with qualified attorneys either present or formally waived as in a felonious charge under the criminal law. There need be no stenographic or mechanical recording of the proceedings.

Procedures are subject to refinement and improvement in the never-ending effort to assure, not only fairness, but every semblance of fairness. More specific routines of notice and advisement may be indicated in this regard, but a foisted system of rigid procedure can become so ritualistic, dogmatic, and impractical as to itself be a denial of due process. The touchstones in this area are fairness and reasonableness.

These hearings were not precipitously or secretively convened "Kangaroo" courts stripping one of a fair and reasonable chance to give account of his version of the case.

There are no magic words of incantation which will guarantee this, but, by the same token, the difficulty cannot be the excuse for not making every effort to see that fairness is accomplished.

This is the standard by which this cast must be decided. We are not here testing the legality of students' activities prompted by whatever view of the status of the law with respect to use of theater facilities, which was the background of the Circuit Court's order of contempt conviction. We are not here testing the legal sufficiency of that conviction. On its face it is unquestionably valid, and the action of the Disciplinary Committee bears a like mark of validity.

Nothing in this opinion is intended to be construed as tending to control or direct the actions of the Board of Control upon any appropriate review by that body. Its authority to affirm the suspension or to reinstate both or either of these students is governed by its Rules and Regulations and by the requirements of due process.

Plaintiffs have made reference to a case entitled Woods v. Wright filed in the United States District Court for the Northern District of Alabama (Southern Division) which neither counsel nor court have found reported. Accepting, however, plaintiffs' statement on brief about this case that "there appears to be good law * * * that where a person stands to be irreparably harmed by action taken by an administrative body which is invalid on its face," such is not the case before this Court.

Appropriate order is entered in accordance herewith this date.

[U.S. District Court, Southern District of Florida, July 24, 1964]

JAMES F. JONES AND BAKER-ALDOR JONES CORPORATION, PLAINTIFFS, *v.* TUCKER ALUMINUM PRODUCTS OF MIAMI, INC., AND MORTON TUCKER, DEFENDANTS

(Civ. No. 63–471)

Suit for infringement of claims 1, 2 and 3 of patent No. 3,030,671 for awning-type windows and locking means therefor. The District Court, Choate, J., held that the claims were invalid.

Judgement for defendants.

[U.S. District Court, Northern District of Florida, Tallahassee Division, May 21, 1965]

WILLIE EUGENE PINCKNEY, IRA SIMMONS AND ANTHONY IRVING, INDIVIDUALLY AND AS REPRESENTATIVES OF A CLASS, PLAINTIFFS, *v.* I. R. MELOY AS OWNER, OPERATOR OR MANAGER OF BILL CLARK'S BARBER SHOP, DEFENDANT

(Civ. A. No. 1024)

Negroes brought action under Civil Rights Act against barber who had refused them service. The Negroes made a motion to strike those portions of the barber's answer which asserted that he was not subject to the provisions of the Civil Rights Act. The District Court, Carswell, Chief Judge, held that barber, who was lessee of space in basement of hotel which was place of public accommodation within meaning of Civil Rights Act, was covered by Civil Rights Act and was required to cut hair of Negroes, though about 95% of his customers were local residents.

Motion granted.

1. CIVIL RIGHTS—4

Essential purpose of Civil Rights Act is to remove discrimination in places of public accommodation with respect to all services rendered within its physical confines by those holding themselves out as serving patrons. Civil Rights Act of 1964, §§ 201 et seq., 201(a), (b) (1, 4), 42 U.S.C.A. §§ 2000a et seq., 2000a(a), (b) (1, 4).

2. CIVIL RIGHTS—4

Relative percentages of local cutomers as compared to transient customers at place of public accommodation may not be used as criteria to determine coverage under provisions of Civil Rights Act that all persons shall be entitled to enjoyment of facilities of place of public accommodation without discrimination or segregation on ground of race, color, religion, or national origin. Civil Rights Act of 1964, §§ 201 et seq., 201(a), (b) (1, 4), 42 U.S.C.A. §§ 2000a et seq., 2000a(a), (b), (1, 4).

3. CIVIL RIGHTS—4

Barber, who was lessee of space in basement of hotel which was place of public accommodation within meaning of Civil Rights Act, was covered by Civil Rights Act and was required to cut hair of Negroes, though about 95% of his customers were local residents. Civil Rights Act of 1964, §§ 201 et seq., 201(a), (b) (1, 4), 42 U.S.C.A. §§ 2000a et seq., 2000a(a), (b) (1, 4); F.S.A. §§ 476.01, 476.05–476.07.

4. CIVIL RIGHTS—2

Civil Rights Act was not unconstitutional as applied to barber who leased space in basement of hotel which was place of public accommodation within meaning of Civil Rights Act. Civil Rights Act of 1964, §§ 201 et seq., 201(a), (b) (1, 4), 42 U.S.C.A. §§ 2000a et seq., 2000a(a), (b) (1, 4); F.S.A. §§ 476.01, 476.05–476.07

5. CIVIL RIGHTS—13

Defense asserted by barber, who leased space in basement of hotel, which was place of public accommodation within meaning of Civil Rights Act, that he was not qualified by training or experience to cut hair of Negroes because their hair was different in texture and growth pattern from that of his regular white customers was not responsive to issues raised by complaint of Negroes, who brought action under the Civil Rights Act, and could not be made basis of affirmative defense. Civil Rights Act of 1964, §§ 201 et seq., 201(a), (b) (1, 4), 42 U.S.C.A. §§ 2000a et seq., 2000a(a), (b) (1, 4); F.S.A. §§ 476.01, 476.05–476.07.

6. CIVIL RIGHTS—4

Civil Rights Act does not purport to cover all barber shops, but it does cover those barber shops which are located within physical premises of place of public accommodation, such as hotel or motel, and which are held out as serving patrons of hotel or motel. Civil Rights Act of 1964, §§ 201 et seq., 201 (a), (b), (1, 4), 42 U.S.C.A. §§ 2000a et seq., 2000(a), (b) (1, 4).

Tobias Simon, Miami, Fla., for plaintiffs.

Weldon G. Starry, of Starry & Thompson, Tallahassee, Fla., for defendant.

Carswell, Chief Judge.

Plaintiffs, members of the negro race, brought this action under Title II of the Civil Rights Act of 1964 (Public Law 88–352) against defendant barber who has refused them service. The issue before the Court is raised by motion of plaintiffs to strike those portions of the answer which assert that defendant is not subject to the provisions of the Act on grounds of: (1) professional exemption, under the Statute itself, and (2) nonqualification of defendant to perform the services requested.

Arguments have been heard and briefs have been filed and considered.

With respect to the professional exemption defense the defendant contends first, that he, as a "professional," is exempt from the operation of the Civil Rights Act, and secondly, that, in the absence of statutory exemption, the Civil Rights Act of 1964 is unconstitutional as applied to him because he has a constitutional right to select his customers. The Court concludes that the Civil Rights Act of 1964, as applied to this defendant, is constitutional under the rulings of the Supreme Court of the United States, and, further, that the Civil Rights Act of 1964 does not afford him statutory exemption.

Counsel for the respective parties have stipulated to the essential facts as follows:

The Duval Hotel is located in the City of Tallahassee, County of Leon, State of Florida, is a place of public accommodation as defined by the Civil Rights Act of 1964, to-wit: a hotel and is covered by the Civil Rights Act.

That the defendant, I. R. Meloy, is the lessee of certain space in the basement of the Duval Hotel under a written lease that does not grant a concession to defendant and does not specify or restrict the use to which the defendant can put the leased space, as shown by Exhibit 1 to defendant's answer. That the defendant owns certain barbering equipment located in said leased space, namely: 4 barber chairs. That defendant uses one barber chair to perform his services upon his clients or customers. That each of the other three barber chairs is leased to a licensed registered barber under a written lease which said sub-lessee uses to perform his personal services on his clients or customers, using his own barber tools, as shown by Exhibit 2 to defendant's answer. That said leases were executed several years before the enactment of the Civil Rights Act. That said sub-leases have been approved by the Bureau of Internal Revenue as to withholding taxes, by the Social Security Administration as to social security taxes, and by the Industrial Commission as to Workman's Compensation and Unemployment Compensation. That each of said sublessees are independent, self-employed individuals and have been so recognized by the above named governmental agencies. The defendant has no control over said sublessees, cannot tell them when to come to work, when to quit, or on whom to perform their services, and the said leased space is reached either by elevator or stairs from the street level of the hotel to the basement, or by an outside entrance at the basement level. There are signs in the hotel elevators listing the various services located in the hotel, including defendant's.

The defendant is a master barber and has been a barber for more than forty (40) years, has been a registered licensed barber in Tallahassee, Florida, ever since the enactment of the first barber commission law in 1931. He has been a member of the State Barber Board under two governors. He does not solicit interstate travellers or guests of the Duval Hotel as his clients, although he does not refuse to render services to them, and 95% of his clients are local Tallahassee residents. He cannot delegate any of his services to anyone not a licensed registered barber under the laws of Florida.

All of the Florida Statutes and regulations of administrative boards pertaining to barbering and the services rendered by barbers may be utilized by the court or counsel for any purpose.

That on or about August 5, 1964 the plaintiffs, being members of the negro race, requested the defendant to cut their hair which the defendant refused to do on the ground he was an independent professional individual, to-wit: a registered barber, and thus was not subject to the Civil Rights Act of 1964, and that he had the right to refuse his services to anyone he desired, and further that he was not qualified by training or experience to cut hair of plaintiffs because their hair was different in texture and growth pattern from that of his regular customers. Plaintiffs were neither interstate travellers nor registered at the Duval Hotel. It is further stipulated that defendant would have refused to render other barbering services to plaintiffs, had they requested them, on the same basis as stated above.

Defendant maintains that barbering is a profession under the laws of the State of Florida; that he is a professional person, to-wit: a registered barber who merely leases space in the Duval Hotel and as such has the right to refuse his personal services to anyone he chooses or the right to select his clients or customers.

Plaintiffs maintain that because defendant leases space in the Duval Hotel, and for this reason only, he is required by the Civil Rights Act of 1964 to perform his personal services as a registered barber upon every person who requests his services, and that defendant's claim of inability to cut plaintiff's hair is not a legal or sufficient defense and have moved to strike said claim.

Neither the State of Florida, Leon County, or the City of Tallahassee, have any law, statute, or ordinance prohibiting a registered barber from performing his services on any person or establishing or authorizing a state or local authority to grant or seek the relief prayed for in the Complaint.

It is further stipulated and agreed that in order to practice barbering in the State of Florida, it is necessary that a person meet the requirements of Section 476.05, Florida Statutes [F.S.A.], have the course of study required by Section 476.07, Florida Statutes, pass an examination as prescribed by Section 476.06, Florida Statutes, and be licensed as a registered barber as required by Section 476.01, Florida Statutes.

The legislative history of this Act is one of the longest in the annals of our national history, and leaves little doubt that the language of Title II ultimately adopted by the Congress applies to this defendant under the stipulated facts.

Section 201(a) of Title II states the broad policy as follows:

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

The parties have stipulated here that the Duval Hotel is a place of public accommodation as defined by the Civil Rights Act and that it is covered by the Civil Rights Act. (Sec. 201(b)(1) of Title II).

Section 201(b)(4) provides coverage of "any establishment * * * which is physically located within the premises of any establishment otherwise covered by this subsection * * * and * * * which holds itself out as serving patrons of such covered establishment. * * *"

Prior to the adoption of this section it was noted in U.S. Code Cong. and Ad. News (1964), p. 2358:

"The term 'integral part' is defined * * * as meaning physically located on the premises of an establishment subject to subsection 3(a) [substantially similar to 201 of the final bill] * * *. Thus, in all instances, to be an integral part, the establishment would have to be physically located on the premises of an included establishment or located contiguous to such an establishment. A hotel barbershop or beauty parlor would be an integral part of the hotel, even though operated by some independent person or entity."

The ultimate language of Section 201(b)(4) reading "physically located within" is, if anything, more specific than the phrase "integral part." In a discussion of this matter on the floor of the House on January 31, 1964, Representative Celler, Chairman of the House Judiciary Committee, stated:

"* * * barber shops, beauty parlors and other establishments are not covered unless they are contained within a hotel or are intended for the use of the patrons of the hotel, if the hotel is covered." CCH Civil Rights Act of 1964, p. 25.

[1–3] The essential purpose of the Act as reflected by both its language and history was to remove discrimination in places of public accommodation such as the Duval Hotel and with respect to all of the services rendered and operated within its physical confines which hold themselves out as serving patrons of the hotel. Defendant asserts, and it is not disputed, that about 95% of his customers are local residents, leaving the clear inference that a relatively small percentage of his customers are transient guests of the hotel itself. From a reading of the Act it is clear that relative percentages of local as compared to transient customers may not be used as criteria to determine coverage. The location of the barber shop within the physical premises of the hotel, a place of public accommodation, and its holding itself out to patrons of the hotel being within a place of public accommodation places this defendant under the coverage of the Act.

[4] Defendant's claim that the Act was unconstitutional as applied to him has been answered and denied by the Supreme Court of the United States. The same rationale applicable to restaurants, hotels and motels was applied in Heart of Atlanta Motel, Inc., v. United States, 379 U.S. 241, 85 S. Ct. 348, 13 L.Ed.2d 258 (1964); and with respect to restaurants in Katzenbach v. McClung, et al., 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed. 2d 290 (1964).

[5] Finally, the defense asserted by defendant that he is not qualified to perform the requested services is not responsive to the issues raised by the complaint and may not be made the basis of an affirmative defense. The degree of skill or proficiency in any occupation or profession which is covered by the Act is irrelevant in this litigation. By the rationale of the legislative history leading to the Act, the Act itself, and the rulings of the Supreme Court of the United States with respect to this Act it is equally clear that only those establishments which are found to be places of public accommodation as specifically set forth in the Act, such as the Duval Hotel admittedly is, are subject to its provisions.

[6] The Civil Rights Act of 1964 does not purport to cover all barber shops, but it does cover those barber shops which (1) are located within the physical premises of a place of public accommodation such as a

hotel or motel and (2) hold themselves out to serve patrons of the hotel or motel. These essential facts are undisputed, and the motion to strike subject portions of defendant's answer is granted by order of this same date.

[U.S. District Court, Northern District of Florida, Tallahassee Division, May 15, 1969]

LAMAR BELL, PETITIONER, *v.* LOUIE L. WAINWRIGHT, DIRECTOR, DIVISION OF CORRECTIONS, STATE OF FLORIDA, RESPONDENT

(Civ. A. No. 1484)

Habeas corpus proceeding. The District Court, Carswell, Chief Judge, held that refusal to allow court reporter to report closing argument of a counsel during indigent's trial was a violation of due process and equal protection clauses of United States Constitution.

Order accordingly.

1. CONSTITUTIONAL LAW—250, 268(2)

Refusal to allow court reporter to report closing argument of counsel during indigent's trial was a violation of due process and equal protection clauses of United States Constitution. U.S.C.A. Const. Amend. 14.

2. HABEAS CORPUS—45.3(7)

Florida rule allowing preparation of a paraphrased stipulation as to contents of record on appeal did not offer an equivalent report of events at trial, and availability of remedy afforded by rule did not prevent habeas corpus attacking trial court's refusal to allow court reporter to report closing argument of counsel during indigent's trial. 32 F.S.A. Florida Appellate Rules, rule 6.7, subd. f.

Lamar Bell, in pro. per.

Earl Faircloth, Atty. Gen. and James Robert Yon, Asst. Atty. Gen., State of Florida, Tallahassee, Fla., for respondent.

ORDER

Carswell, Chief Judge.

This case comes before the Court on petition filed by a state prisoner for writ of habeas corpus and under response to rule to show cause filed by the Attorney General of the State of Florida. The petition and the response set forth fully the facts upon which the petitioner bases his allegations and further hearing is not necessary.

[1] At issue is whether it was a denial of due process and equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution for the trial court to refuse to allow the court reporter to report the closing argument of counsel during an indigent's trial. This Court is of the view that petitioner's allegations are meritorious and that he is entitled to relief.

The issues raised by the petition and the response were presented to the First District Court of Appeal of Florida which affirmed the trial court's ruling. Bell v. State, 208 So.2d 474 (1st Dist.Ct.App. 1968). Petitioner then sought and was denied certiorari in the Supreme Court of the United States, Bell v. Florida 393 U.S. 928, 89 S.Ct. 263, 21 L.Ed.2d 264 (1968).

The petitioner, Lamar Bell, was arrested, tried and convicted in the Circuit Court of Leon County, Florida, for the offense of robbery. The petitioner was adjudged insolvent and the public defender was appointed to represent him. At the conclusion of the evidence, and in the absence of the jury, the public defender orally moved the court to instruct the court reporter to report the closing argument of counsel. In denying this motion the trial court stated: "* * * in the absence of any showing of necessity or good reason, the motion to report closing arguments is denied. If anything comes up during the closing arguments that counsel feels should be made a matter of record, the court will attend to it at that time."

Thereafter certain remarks of the prosecutor were objected to by the public defender. The objections were overruled but were not recorded,

Petitioner alleges that the trial court's refusal to grant his motion was a violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution as interpreted by the Supreme Court of the United States in Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891, 55 A.L.R.2d 1055 (1955), resulting in a denial of effective appellate review. The respondent urges this Court that petitioner has failed to show or allege that he was prejudiced by the trial court's ruling in that petitioner has failed to adequately preserve the record of his specific objections and the trial court's ruling. Respondent also urges that petitioner failed to avail himself of the remedy afforded by Rule 6.7(f), Florida Appellate Rules, 32 F.S.A.

In Griffin v. Illinois, supra, the Supreme Court held that an indigent convicted of a crime in a state which affords appellate review as a matter of right is entitled to be furnished at state expense a transcript of the trial proceedings and denial of such a transcript of the record is a deprivation of due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

The rule adopted by the Supreme Court in *Griffin* was subsequently followed by the decisions of Eskridge v. Washington State Board of Prison Terms and Paroles, 357 U.S. 214, 78 S. Ct. 1061, 2 L. Ed. 2d 1269 (1958), and Draper v. Washington, 372 U.S. 487, 83 S. Ct. 774, 9 L. Ed. 2d 899 (1963), which struck down a Washington State Statute which permitted a trial judge to deny an indigent defendant's motion for a free transcript of trial proceedings if the judge was of the opinion that the trial was fair and the appeal frivolous.

For the purposes of an appeal the right to have a full adequate record is an absolute in the case of an indigent defendant as it is in the case of a defendant who can afford to purchase the transcript.

The present case is readily distinguishable from the case of Mack v. Walker, 5 Cir., 372 F. 2d 170 (1966). In the *Mack* case the petitioners simply objected to the fact that they were not given a verbatim transcript of the trial proceedings, without showing that such a transcript was necessary for their appeal. In the present case the First District Court of Appeal of Florida concedes that:

"* * * the full impact of alleged remarks of counsel made in closing argument to a jury cannot be recaptured, nor can their full impact and prejudicial effect when considered in context with the total argument of counsel be accurately weighed, if the only record of such remarks consists of an effort by the trial judge to reconstruct or paraphrase the remarks for the record after objection is made." 208 So. 2d at 468.

To deny petitioner relief on the grounds that the record does not show prejudicial comments and objections, when it is necessary to have a full transcript of the arguments in order to determine prejudice in the first place and that transcript does not exist due to the order of the trial court is a complete non sequitur.

[2] Respondent's contention that petitioner has foregone a remedy afforded by Rule 6.7(f), Florida Appellate Rules, is equally without merit. Rule 6.7(f) allows the preparation of a paraphrased stipulation as to the *contents of the record* on appeal. In the first place, because of the trial court's ruling there is no record from which the parties could accurately stipulate. While it is true that alternative methods of reporting trial proceedings are permissible, such methods can be used only "if they place before the appellate court an *equivalent report* of the events at trial from which the appellant's contentions arise." (Emphasis added.) Draper v. Washington, supra, 372 U.S. at 495, 83 S.Ct. at 779; Mack v. Walker, supra, 372 F.2d at 172. In light of the District Court of Appeal's assessment of the character of the error presented in this case, an assessment to which this Court subscribes, it cannot be said that Rule 6.7(f) offers an "equivalent report" of the events at trial.

The respondent's position places an undue burden upon the petitioner and his counsel to attempt to reconstruct an argument in order to show what might otherwise be isolated remarks by the prosecution were prejudicial. This burden would not have been placed upon petitioner had he been able to purchase the reporter's time himself. Such a burden is in direct conflict with the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States as interpreted in Griffin v. Illinois, supra.

It is, therefore, upon consideration, hereby

Ordered:

1. Unless satisfactory evidence is filed by Respondent with the Clerk of this Court on or before June 2, 1969 that petitioner's judgment of conviction of May 26, 1967 has been set aside and the petitioner arraigned anew of the subject charges and a new trial thereon granted and scheduled within a reasonable time (if petitioner pleads not guilty on his re-arraignment), then, in that event, this Court upon application of petitioner here will at that time grant this petition for writ of habeas corpus. This Court does not attempt to determine whether bail should be allowed pending trial, or the amount thereof if allowed, but petitioner shall be afforded all rights of counsel and bail pending trial as any other person so charged, the matter of bail, its allowance and/or amount to be determined by the appropriate trial court by applicable standards of law.

2. Upon Respondent's filing on or before June 2, 1969 such satisfactory evidence as indicated in paragraph one above, this Court will dismiss this petition.

[U.S. Court, Second division, April 29, 1969]

J. M. EVANS & CO. *v.* UNITED STATES

(C.D. 3809; Protest Nos. 65/19874–2024 and 66/1475–2027)

Protest against decision of collector of customs at Port of Pittsburgh. The Customs Court, Donlon J., held that inferior used wool dryer felts in large rolls were dutiable at four percent ad valorem as waste or scrap, not specifically provided for, rather than at nine cents per pound as wool rags.

Protest sustained.

1. CUSTOMS DUTIES—34(3), 52

Under Tariff Schedules pertaining to classification of materials as rags which are "fit only" for described uses, it is not chief use which determines whether materials are to be classified as rags, since schedules employ term "fit only," and, therefore, a party protesting such a classification need not rebut each and every one of uses described in schedules in order to overcome presumption of correctness that attaches to classification. Tariff Schedules, Item No. 390.40, 19 U.S.C.A. § 1202.

2. CUSTOMS DUTIES—34(3)

Even if use by steel mills of used wool dryer felts as protective floor coverings was a fugitive use, such use proved that felts were not "fit only" for use as wiping rags within Tariff Schedule defining rags dutiable at nine cents per pound as worn out fabrics, furnishings and other textile articles fit only for use as wiping rags. Tariff Schedules, Item No. 390.40, 19 U.S.C.A. § 1202.

"See publication Words and Phrases for other judicial constructions and definitions."

3. CUSTOMS DUTIES—40

If merchandise is fairly described in one of enumerated tariff clauses, then one may not resort to classification under nonenumerated provisions.

4. CUSTOMS DUTIES—40

Inferior used wool dryer felts in large rolls were dutiable at four percent ad valorem as waste or scrap, not specifically provided for, rather than at nine cents per pound as wool rags. Tariff Schedules, Item Nos. 390.40, 793.00, 19 U.S.C.A. § 1202.

Reed, Smith, Shaw & McClay, Pittsburgh, Pa., (Jerold I. Horn, Pittsburgh, Pa., of counsel), for plaintiff.

William D. Ruckelshaus, Asst. Atty. Gen., (Brian S. Goldstein and Owen J. Rader, New York City, trial attorneys), for defendant.

Before Rao and Ford, Judges, and Donlon, Senior Judge.

Donlon, Judge:

These two protests, consolidated for purposes of trial, litigate once again the issue, previously litigated several times, as to whether used wool dryer felts are or are not dutiable as wool rags. The new factor here is that the issue arises now under the tariff schedules whereas earlier cases were decided under the Tariff Act of 1930. The new provision for wool rags in the tariff schedules is different. It also is more precisely worded.

Following earlier decisions under the 1930 Act, used wool dryer felts in large . . . .

[U.S. District Court, Northern District of Florida, Tallahassee Division, July 7, 1969]

FRED HALES, PETITIONER *v.* LOUIS L. WAINWRIGHT, DIRECTOR, DIVISION OF CORRECTIONS, STATE OF FLORIDA, RESPONDENT

(No. 1461)

Habeas corpus proceeding on petition of state prisoner. The District Court, Carswell, Circuit Judge, held that petitioner's account of events of his arrest and search of his house following killing of victim established that such search was lawful as one incident to and contemporaneous with lawful arrest.

Petition for writ of habeas corpus denied.

1. ARREST—71.1(8)

Petitioner's account of events of his arrest and search of his house following killing of victim established that such search was lawful as one incident to and contemporaneous with lawful arrest. F.S.A. § 901.15(2); U.S.C.A.Const. Amend. 4.

2. ARREST—63(4)

Florida law permits lawful arrest without warrant and upon probable cause in felony cases. F.S.A. § 901.15(2).

3. COURTS—100(1)

Federal Supreme Court decision requiring exclusion by state courts of evidence obtained in violation of Fourth Amendment standards is not retroactively applicable to search occurring before such decision. U.S.C.A.Const. Amend 4.

4. CRIMINAL LAW—412.2(3)

Warning of constitutional rights to counsel at time of arrest was not required for 1942 arrest.

5. ARREST—63(4)

Probable cause for arrest of defendant for murder in first degree was not lacking by virtue of fact that defendant was indicted for second-degree murder where defendant's own account of facts of killing established probable cause for his arrest on first-degree murder charge.

6. HABEAS CORPUS—54

Defendant's allegation that he was arrested without warrant failed to state grounds for issuance of writ of habeas corpus absent a showing or allegation that such arrest deprived him of a fair trial.

7. HABEAS CORPUS—85.5(14)

Alleged suppression by state of evidence of self-defense and alleged denial of right to prove defendant's story by bringing witnesses into court was not ground for habeas corpus relief where records showed that such witnesses were in court under subpoena at time of trial and available to testify for either state or defendant.

8. HABEAS CORPUS—54

Allegations respecting incompetency of defense counsel, retained by defendant's relatives, were no more than conclusions and failed to state grounds for habeas corpus relief.

9. HABEAS CORPUS—25.1(6)

Where a defendant has an attorney of his own choosing, any shortcoming of his counsel cannot be attributed to state, but must be imputed to defendant, and do not constitute denial of due process authorizing federal habeas corpus relief.

10. HABEAS CORPUS—35.5(2)

Evidence, in federal habeas corpus proceeding, failed to establish that there was a systematic exclusion of Negroes from grand jury which indicted defendant on theory that Negroes qualified by local authorities to serve on juries were not proportional to number of Negroes residing in circuit.

11. GRAND JURY—8

Use of voter registration lists in selecting grand jury, absent showing of systematic exclusion of Negroes, is not illegal per se.

12. HABEAS CORPUS—25.1(3)

Defendant's failure to raise issue of grand jury's composition at time of his trial precluded raising of such issue in federal habeas corpus proceeding.

13. HABEAS CORPUS—85.3(1)

Fact that prosecutor, defense counsel and trial judge were dead, together with fact that habeas corpus petitioner waited for more than twenty-five years to raise questions as to allegedly coerced confession, were facts relevant to merits of such questions.

14. HABEAS CORPUS—85.5(7)

Evidence, in federal habeas corpus proceeding, failed to establish existence of alleged coerced confession.

15. HABEAS CORPUS—92(1)

Claim that defendant's plea of self-defense was ignored by police, defense counsel, prosecutor, and court relates to efficiency of evidence and is not subject to review by way of writ of habeas corpus.

16. HABEAS CORPUS—85.1(2)

Federal district court will not presume for purposes of habeas corpus relief, that state court would prevent assertion of any competent defense.

17. HOMICIDE—112(2)

Even if trial court absolutely refused to hear defendant's self-defense plea, no error was committed where defendant and victim had argument during card game after which defendant went home, got his gun, then sought out victim and killed him during another argument, in view of rule that one may not provoke difficulty and, having done so, act under necessity thereby produced in killing an adversary and then justify such homicide under plea of self-defense.

Fred Hayes, in pro. per.

Earl Faircloth, Atty. Gen. of Fla., Raymond L. Marky, Asst. Atty. Gen., Tallahassee, Fla., for respondent.

ORDER DENYING WRIT OF HABEAS CORPUS

Carswell, Circuit Judge.*

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*Sitting by designation as United States District Judge for the Northern District of Florida.

This cause comes before the Court upon petition for writ of habeas corpus, supplemental response to rule to show cause filed by the Attorney General of the State of Florida and petitioner's rebuttal. Petitioner has complied with the Rules of this Court and is entitled to proceed in forma pauperis pursuant to this Court's order of December 18, 1968.

Petitioner raises several allegations relating to his sentence of November 30, 1942 for the crime of murder in the second degree.

Because no appeal was taken by petitioner from his judgment and sentence, no transcript of the trial proceeding was made. Furthermore, the official court reporter has since died and there is no way to obtain a transcript of said proceedings at this time. However, certified copies of the minute entries from the Circuit Court in and for Jackson County, Florida and the documents appearing in the case file of State of Florida v. Fred Hayes are on file in this court as exhibits.

[1–4] The first of petitioner's many allegations involve an alleged illegal search and seizure without a warrant. Petitioner's own account of the events of his arrest and the search of his house following the killing of Clarence Godwin shows that the search was incident to and contemporaneous with a lawful arrest. Florida law permits a lawful arrest without a warrant and upon probable cause in felony cases. § 901.15(2), Florida Statutes (1967), F.S.A. Assuming, arguendo, that the search of petitioner's house contravened Fourth Amendment standards, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1960) which requires exclusion by state courts of evidence obtained in violation to Fourth Amendment standards, is not retroactive. Leal v. Beto, 378 F.2d 8 (5th Cir. 1967).

Petitioner alleges that he was denied counsel at his arrest and subsequent interrogation. To the extent that he was not warned of his rights it need only be stated that at the time of his arrest, 1942, such warning was not required. Johnson v. New Jersey, 384 U.S. 719, 86 S.Ct. 1772, 16 L.Ed.2d 882 (1966).

[5, 6] Petitioner alleges that because he was indicted for second degree murder there was a lack of probable cause for his arrest for murder in the first degree. As pointed out above petitioner's own account of the facts of the killing establish probable cause for his arrest on first degree murder charges. An allegation by a State prisoner that he was arrested without a warrant fails to state grounds for the issuance of the writ of habeas corpus absent a showing or allegation that such arrest deprived him of a fair trial. United States ex rel. Fletcher v. Wainwright, 269 F. Supp. 276 (S.D.Fla. 1967).

[7] According to the petitioner, the "evidence" of self defense which he, the *petitioner*, related to the Sheriff and others was never disclosed during trial by the State and he was denied the right to prove his story by bringing witnesses into court. The records and exhibits on file disclose that the witnesses petitioner refers to were in court under subpena at the time of his trial. These people were available to testify either for the State or for petitioner. Furthermore, all information alleged was within petitioner's knowledge and thus available for his defense. The allegations and facts of petitioner's case simply do not present a "suppression of evidence" question as contemplated by Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d. 215 (1963).

[8, 9] Petitioner alleges that his defense counsel who was retained by petitioner's relatives was incompetent, tried to make him plead guilty and that counsel's capabilities in the criminal law "* * * turned out to be nil! * * *" (sic). These allegations amount to nothing more than conclusions which fail to state grounds for relief. Williams v.

Beto, 354 F.2d 698 (1966). Petitioner's defense counsel, Benjamin L. Solomon, of Marianna, Florida, died in 1963. In memorializing Mr. Solomon the Jackson County Bar Association noted that he "* * * was a thorough and skillful lawyer and always a vigorous advocate of the cause of the client he represented. He was one of the outstanding trial lawyers of the Marianna and Fourteenth Judicial Circuit bars * * *." In light of this tribute to Mr. Solomon by his peers little credence can be given to the petitioner's conclusionary allegations. In the second place as petitioner himself admits he had an attorney of his own choosing. In such a case any shortcomings of counsel cannot be attributed to the State. See Hudspeth v. McDonald, 120 F.2d 962 (10th Cir. 1941), cert. den. 314 U.S. 617, 62 S. Ct. 110, 86 L.Ed. 496 (1941), Howard v. Beto, 375 F.2d 441 (5th Cir. 1967). Failings of retained counsel must be imputed to the defendant and not to the State, and such failings do not constitute a denial of due process which would authorize federal habeas corpus relief.

[10, 11] Petitioner claims that Negroes were systematically excluded from serving on grand juries. Petitioner alleges no facts to support his allegation nor does he show that a challenge was made to the composition of the grand jury that indicted him. Petitioner recognizes that there were Negroes qualified by local authorities to serve on juries and his real complaint is that they were not proportional to the number of Negroes residing in the circuit. The minutes of the Circuit Court, on file in this court, reflect that the grand jury was called from the voter registration list "* * * in open court. * * *" Petitioner's allegations and the facts simply do not show that there was a systematic exclusion of Negroes. The use of voter registration lists, absent such showing of exclusion, is not illegal per se. See Chance v. United States, 322 F. 2d 201 (5th Cir. 1963).

[12] In any event, petitioner having failed to raise an attack upon the grand jury's composition at the time of his trial cannot now raise the issue. Perez v. United States, 303 F. 2d 441 (5th Cir. 1962); Jackson v. United States, 394 F.2d 114, 115 (5th Cir. 1968).

Petitioner alleges that a "confession" was extracted from him by coercion which was not used at his trial. An examination of the certified file of the case of State of Florida v. Fred Hayes in the Circuit Court of Jackson County, Florida failed to reveal the existence of a confession or any other statement taken from the petitioner. Furthermore, as pointed out by respondent, petitioner's own allegations are inconsistent. Petitioner alleges that the State never disclosed petitioner's story in court and yet in this point he claims that the Sheriff took his statement and introduced it into evidence.

[13, 14] In this case the prosecution, defense counsel and trial judge are dead. All available evidence of the trial, including petitioner's allegations, are before this Court. This, together with the fact that petitioner waited for more than twenty-five years to raise these questions, is relevant to their merits. See Tyler v. Beto, 391 F.2d 933 (5th Cir. 1968). After a thorough review of all available evidence, this Court having found no evidence of the existence of any confession can give no credit whatsoever to petitioner's allegations.

[15] Petitioner's final allegation is that he was refused the opportunity to present his claim of self defense. To the extent that petitioner alleges that his plea of self defense was simply ignored by the police, the defense counsel, the prosecutor and the court such allegations go solely to the sufficiency of the evidence which is not subject to review by way of writ of habeas corpus. Fulford v. Dutton, 380 F. 2d 16 (5th Cir. 1967).

[16] Insofar as the claim of denial of the right to present his self defense case goes, petitioner has failed to allege facts which would support the allegation. As pointed out above the only available records show that the witnesses upon whom petitioner would have relied were in court and available to testify. This Court cannot and will not presume, for the purpose of habeas corpus relief, that a State court would prevent the assertion of any competent defense.

[17] Florida follows the substantive rule "* * * that one may not provoke a difficulty and having done so act under the necessity produced by the difficulty, then kill his adversary and justify the homicide under the plea of self defense * * *" Mixon v. State, 59 So.2d 38 (Fla.1952). Under petitioner's own version of the facts he and the deceased had an argument at a card game, the petitioner went home and got his gun. Thereafter he sought out the deceased, another argument ensued and petitioner killed Godwin. Petitioner alleges that Godwin attacked him with a knife. Thus, even assuming that the Court absolutely refused to hear the self defense plea, no error was committed under the substantive law as announced in Mixon v. State, supra.

It is, therefore, upon consideration, hereby Ordered:

Petition for writ of habeas corpus is denied.

Mr. HRUSKA. Mr. President, I yield 5 minutes to the Senator from Florida.

Mr. HOLLAND. Mr. President, it is not impressive to see these crocodile tears being shed on this side of the aisle, because these Senators know they are going to lose this vote which we will have in a few minutes. This Senate has too much respect for its Judiciary Committee and it has too much respect for judges of the South, where 57 of the district judges have endorsed Judge Carswell and 11 of his associates on the circuit court of appeals have endorsed him.

In my State, every supreme court judge has endorsed him and 38 circuit court judges have endorsed him by wires to me. Other endorsements have been placed in the RECORD. All district court of appeals judges from the district in which Tallahassee lies support him, many other judges in Florida, and all of the Federal district judges in the Miami district, six of them, endorse him, and so on.

Has the time come when the Senate pays no attention to men such as the president of our State bar association, and three immediate past presidents, who referred the matter to the governors of that association and 40 of 41 of them stated in the RECORD, "We want you to endorse this man"? The only one who did not endorse said, "I just do not happen to know him and, therefore, I would prefer not to endorse him." Has the time come when the Senate pays no attention to men of that character and judges of that caliber?

I am sorry so many of my associates on this side of the aisle have taken this position of no confidence in the Committee on the Judiciary and no confidence in the judiciary of the State of Florida and the South. I am sorry to see them take a position which seems so highly prejudiced.

Mr. President, in closing, on the question of civil rights, I want to place in the RECORD a letter I received from the Honorable Earl Faircloth, attorney general of the State of Florida, strongly endorsing Judge Carswell. I read from the letter only this:

As to the charge of his racial prejudice, I believe the attacks upon him are undeserved. When I became Attorney General in 1965, Judge Carswell voluntarily wrote to me a strong recommendation for the employment of Mr. Charles Wilson, a black attorney from Pensacola, who had practiced law before him. Largely on the strength of Judge Carswell's recommendation as to Wilson's professional ability, he was hired and served with distinction on my staff for several years. In talking with Judge Carswell about this and related matters, I gained the impression that he was genuinely interested in the reconciliation of the races in Florida and that he felt it was a step forward; at least it had his hearty approval and encouragement.

I ask unanimous consent to have the entire letter printed in the RECORD at this point.

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

STATE OF FLORIDA,
Tallahassee, Fla., March 31, 1970.

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

DEAR SENATOR HOLLAND: Please accept my sincere congratulations upon the valiant fight you, Senator Gurney and numerous others have waged on behalf of the confirmation of Judge Carswell. It is my hope, as I know it is yours, that the Judge will be confirmed. I would like to relate several of my experiences with him over the years, which might be helpful.

First, as President of the Young Democrats of Leon County in 1952, I participated in a heated debate with the Judge during the Presidential election. He, of course, was supporting General Eisenhower and I was supporting Governor Stevenson. He was a gentleman in the debate and in all respects fair. We later became very good friends. Subsequently, I tried criminal cases in the Federal Court when he was the United States District Attorney. I tried cases before him after he became a United States District Judge. On all occasions he was a worthy and fair opponent and always a fair-minded Judge.

As to the charge of his racial prejudice, I believe the attacks upon him are undeserved. When I became Attorney General in 1965, Judge Carswell voluntarily wrote to me a strong recommendation for the employment of Mr. Charles Wilson, a black attorney from Pensacola, who had practiced law before him. Largely on the strength of Judge Carswell's recommendation as to Wilson's professional ability, he was hired and served with distinction on my staff for several years. In talking with Judge Carswell about this and related matters, I gained the impression that he was genuinely interested in the reconciliation of the races in Florida and that he felt it was a step forward; at least it had his hearty approval and encouragement.

On three grounds, therefore, I could endorse Judge Carswell without reservation: first, as a competent and fair Judge; second, as a man without prejudice as established in his relationship with me as indicated above; and, third, because he is my friend, in whose honor and integrity I have the greatest confidence.

Very truly yours,

EARL FAIRCLOTH,
Attorney General.

Mr. HOLLAND. Mr. President, then I want to quote from a letter to the Senator from Indiana (Mr. BAYH) from the present president of our bar association—just two brief paragraphs:

As I indicated to you earlier, it is certainly ironic that Judge Carswell is charged with being a racist. My experience with him and

his reputation in the Northern District of Florida are just to the contrary.

Then this further from the president of our bar association, Mark Hulsey, Jr., who seems to be a good friend of the Senator from Indiana (Mr. BAYH):

Professor Van Alstyne said he did not know Judge Carswell. Perhaps if he had known him in Tallahassee, had heard him cursed, had listened to the harassing telephone calls and practiced law in his Court, he would not have been so quick to condemn him.

Mr. President, I just wanted to say I appreciate the admission or concession made by the distinguished Senator from Maryland (Mr. TYDINGS) yesterday in his appearance on TV when he admitted that some of the case made by the opponents of Judge Carswell was "nit-picking." He gave only two examples. I could enlarge the number of those examples, but the time does not permit now.

I just want the record to show that for the Senate to show no confidence in its own committee, no confidence in practically the entire judiciary of the State of Florida and, for that matter, of the six States that include the fifth circuit, to show no realization of the fact that the voting rights bill did not even apply to the State of Florida, because we have been letting our colored citizens vote and encouraging them to vote for years, is a sort of tragedy. I hope the Senate will defeat the effort to send this nomination back to committee.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I yield 5 minutes to the Senator from Michigan (Mr. HART).

Mr. HART. Mr. President, one's definition of "nit-picking" depend on what dictionary he uses. What may be nit-picking to the Senator from Michigan may be a matter of very serious concern to the Senator from Florida. What may be nit-picking to the Senator from Florida may appear to the Senator from Michigan as so overriding as to take the flat position that the Senate dishonors itself if it concurs in the appointment to the Supreme Court of a man who would go to the Court with the appearance of a conflict of interest far graver in my mind than confirmation of Judge Haynsworth would have carried with it.

The record of the Senate in the Haynsworth case, as I read it, is this: We assume that Judge Haynsworth was not nor would have been influenced one iota by his investment portfolio.

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

Mr. HART. I yield.

Mr. BAYH. I would like to ask unanimous consent that we have a live quorum, the time for the quorum call not to be charged to either side, so that Members of the Senate will have an opportunity, during the remaining 25 minutes, to hear the issue being discussed and the arguments of both sides. I have been listening carefully to the Senator from Michigan and the Senator from Florida, but they have been speaking with only a handful of Senators listening.

I ask unanimous consent that there may be a live quorum call under the conditions I have stated.

Mr. DOLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Michigan will proceed.

Mr. HART. The Senate said, with respect to Judge Haynsworth:

Look, we do not believe you would be influenced by these investments, but the appearance is such that litigants and the people of America ought not be submitted to the possibility that there might have been an influence which would not be reflected in the record.

That would be unfair to the litigants and to the Court and the country. If Judge Carswell is confirmed we would concur in putting on the Court one who pledged:

I believe in the principle of white supremacy and I shall always be so governed.

The appearance of conflict is not with something in his portfolio; it is in the pledge he made.

The Senate should not permit one with such a conflict to go on that Supreme Court bench. Now, again, to some this may be nit-picking. To me, and I respect the sincerity of such a view. This bears on the problem which is more basic to our society than any other of the many problems we have.

It was not nit-picking for candidate Richard Nixon to pledge in his speech to his party's convention at Miami, when he was nominated, that—

Let those who have the responsibility for enforcing our laws and our judges who have the responsibility to interpret them be dedicated to the great principles of civil rights.

I think that was a very thoughtful observation, and the fact that the President has apparently forgotten that as a rule of thumb with respect to a nomination ought not dull our sense of responsibility—at least those of us who think this is not nit-picking. How can we ask our 20 million black Americans who believe as I am prepared to believe——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HART. May I have 1 more minute?

Mr. KENNEDY. I yield 1 minute to the Senator from Michigan.

Mr. HART. How can we ask them to believe with us that the nominee has changed his mind; that if he ever meant it, he is sorry, or should not have meant it and he will be objective? We said no to Judge Haynsworth on the same theory. I suggest we are obliged to say "no" to Judge Carswell for the same reason.

That symbol on the Supreme Court of the United States in the 1970's is something that none of us ought to stand still for. To name at this time to the Nation's highest court one whose views on racial equality are open to question—on his own words—would be a grave error. It could bring tragic consequences. Forget the business of mediocre or not mediocre. Forget the business of how many law schools say "yes" and how many say "no." Forget the record of reversals by his own circuit court.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY. I yield 1 minute to the Senator.

Mr. HART. Just think of this one symbol. If we have not learned by now that this is the wrong thing to do in a nation which seeks desperately to bridge a gulf that increasingly grows, we have not learned very much. This nomination ought not to be consented to.

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

Mr. HART. I yield.

Mr. CASE. Mr. President, I associate myself completely with what the Senator from Michigan has said. How can we hit the black community, and particularly its moderate leadership, with this blow between the eyes without being rightly charged with irresponsibility in these times?

Mr. HART. I agree.

The PRESIDING OFFICER. The time of the Senator from Michigan has expired. Who yields time?

Mr. HRUSKA. Mr. President, I yield 5 minutes to the Senator from Illinois.

Mr. SMITH of Illinois. Mr. President, I intend to vote against the motion to recommit the nomination of Judge Carswell to the Judiciary Committee. It seems to me there is only one thing to be gained by recommitting Judge Carswell's nomination and that is to provide sanctuary for those who would rather hide behind delay of the issue than to vote it up or down on the merits.

As the newest Member of the Senate I consider my duty more demanding than that. The people of Illinois are entitled to know that I support the nomination of Judge Carswell and they are entitled to see my vote—on the record—and not hidden behind debate and a roll-call on some collateral parliamentary issue.

We have heard much during the past weeks about the individual responsibilities of Senators in a matter on which the Senate must advise and consent. And yet, the very Senators who urge upon us the highest kind of personal responsibility and personal scrutiny of the candidate's qualifications, character, philosophy, ability, and capacity for growth, would return the nomination to the Judiciary Committee, thus allowing themselves to skirt the very responsibilities they urge upon the rest of us.

This motion to recommit is obviously nothing but a parliamentary gambit, aimed not only at letting Senators off the hook on a final vote, but also at depriving Senators who would vote for Judge Carswell the opportunity of doing so. Well, I for one, am not about to give up my vote so easily. I could imagine no greater infidelity to duty than to let my voice in the Senate be stilled now by parliamentary maneuvering.

Mr. President, last Thursday I did a bit of on-the-record reflecting about the whole manner in which the Senate has considered this nomination. At that time I said I had some serious doubts about the handling of this confirmation process. Following so closely upon the Haynsworth nomination, the Carswell matter cannot fail to leave a bad taste in the mouth of anyone researching the history of Senate "advise and consent" proceedings. It cannot fail to have an inhibiting effect upon men of stature whom the President and the Nation might call to public office in the future. I have heard one of my colleagues say that, "there is not a man alive who does

not have a skeleton in his closet." That may be true. But it seems to me that even a man who did not have such a skeleton might shrink from a process such as that we have seen on and off the Senate floor in recent months. Apparently, the rule in advise-and-consent proceedings has become "anything goes." If that in fact has become the rule, we must renounce it. If it has not, then it is up to each and every Senator to demonstrate to his constituents that he has not embraced it—by voting against recommital.

Through 15 years in public service, it has been my firm conviction that every man who aspires to an office of responsibility and public confidence ought to be able to stand the test of public scrutiny of his character, qualifications, and personal conduct. But that does not mean that a nominee for public office should have to run the gauntlet of personal vilification. Yes, we have a right to examine carefully the professional qualifications of nominees—to discover whether a man is respected by his professional colleagues, whether he has a reputation for integrity among those who know him and work with him, to review the manner in which he has exercised any public trust or confidence that he may have won in the past.

In the Carswell matter, the Senate has in fact accomplished each of these legitimate inquiries. In letters addressed to the chairman of the Judiciary Committee, and to individual Senators, and to the Senate at large, Judge Carswell's professional colleagues, Federal judges of the district and circuit benches in the Seventh Circuit, have written, literally by the score, to endorse Judge Carswell's nomination. They know him; they have worked with him. They say he is fit to be a Justice of the Supreme Court of the United States. And what of his reputation for integrity? Again, the record is filled with testimony, oral and written, of attorneys who have practiced before him, of leaders of the bar, of litigants and counsels before his court. The record clearly reflects that the vast majority of litigants and counsel before Judge Carswell's court—those who came to the court seeking justice and willing to accept its arbitration—have taken it as a matter of faith that Judge Carswell was a man of integrity.

Finally, what of the manner in which he has exercised the public trust and confidence that he has held for close to 20 years, as U.S. attorney, as U.S. district judge, and as judge of the U.S. Court of Appeals for the Fifth Circuit? We know that Judge Carswell's record on the bench and at the bar were the subject of careful scrutiny by the Committee on the Federal Courts of the American Bar Association. And we have the unanimous endorsement of that committee of distinguished attorneys that Judge Carswell is "qualified for appointment as an Associate Justice of the Supreme Court of the United States." These are good enough for me. And I hope Senators will join with me in disposing of this motion so that we may attend to the many other important problems facing our Nation.

I think that we have lost sight of our true objective in this whole matter. That objective should be a positive one: Building a Supreme Court of high-quality jurists worthy of the trust and confidence of the entire American people. With that objective in mind, it is hard to see how a nominee's personal philosophy of the law should be the sticking point of his confirmation—unless that philosophy is abhorrent to the Constitution of the United States. Judge Carswell's views are not inconsistent with the Constitution; in fact, what seems to be at the very heart of the opposition to him is that his views conform rather completely with those written in the Constitution. He is what is called a strict constructionist—and, in my mind, that philosophy of law is what is behind all of the detractions, untruths, and smears being leveled at him.

Fairminded observers will, I believe, recognize that Judge Carswell's strict constructionism would be an appropriate component to the general philosophies of the Justices presently sitting on the Supreme Court. It would also be a philosophy responsive to the will of the majority of the American people. I have said it before: Judge Carswell is not my selection. But he is the selection of the President of the United States, who has the constitutional duty to make the selection. The President was recently elected by the American people, elected after a campaign in which he promised to restore stability and dignity in the law of our land. His constitutional power to appoint is broad and clear. Ours to advise and consent is less so. If our duties were as broad as some Senators have suggested, we might never advise and consent to a nomination. On the question of our duty, I join with those Senators who believe that it is rather narrow. We should vote to advise and consent to the President's nominee unless some good and sufficient reason arises to move us otherwise. No such reason has arisen in this case, in my judgment, despite the petty and unfair efforts of some to conjure it up.

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

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

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

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

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

As to the other matters alleged to constitute racism on Judge Carswell's part, they are all either unfounded or trivial. When hearsay and speculation and no direct evidence are weighed in the balance against the word of a public officer who has candidly submitted to cross-examination on a question, he must indeed be given full credibility. The opposition has clearly failed to sustain its burden on this issue.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. Mr. President, I yield 3 minutes to the Senator from Kansas.

Mr. DOLE. Mr. President, earlier I indicated that a motion to table the motion to recommit might be offered. Since my initial statement, and on reflection, I believe most Americans understand that the motion to recommit is primarily an effort to dodge the issue. It also occurs to me that a motion to lay on the table the motion to recommit might also be construed as a devious tactic.

I happen to believe, as stated before, that we have certain responsibilities, one of which is to stand up and be counted.

I, therefore, announce at this time, Mr. President, that I shall not offer a motion to table. That does not, of course, preclude some Senator from offering a motion to table the motion to recommit.

Let me add, in response to the senior Senator from Michigan, that if there has been any feeling of depression in the black community of America, it may not be because of G. Harrold Carswell, but because of statements made by those who oppose the nomination and efforts to turn the black community against G. Harrold Carswell and President Nixon.

There has been nitpicking with reference to this nomination day after day here on the Senate floor. There are those who say there is no redemption for a man's past conduct if he is nominated for the Supreme Court. The inference is that

we should judge each other by one standard, and nominees to the Supreme Court by another. Perhaps. But I do not believe so. I prefer the position of those who suggest that we should adopt the Biblical adage of letting those who are without sin cast the first stone.

As the Senator from Delaware (Mr. WILLIAMS) suggested last week, we could probably find a better judge than Judge Carswell, but the question now is whether the Senate should advise and consent, or, more immediately, whether we should recommit the nomination to the Committee on the Judiciary.

As pointed out last Friday, a majority of the members of the Judiciary Committee stated in writing that they felt there was no reason to recommit; that there had been adequate hearings.

I suggest they have chosen the wise course. We know the facts. We have heard the same exaggerated charges day after day. They amount to nothing. Judge Carswell is qualified, he is experienced, and is recommended by those who know him best. Those who know him least, those in the liberal establishment, those who are against Richard Nixon, and those who are against a balanced court, are naturally against him. They were against Judge Haynsworth, and may be against the next Nixon nominee.

I urge my fellow Senators to adopt the same spirit and the same attitude with reference to Judge Carswell as has been demonstrated with reference to Supreme Court nominees in the past.

The PRESIDING OFFICER. Who yields time?

Mr. HRUSKA. Mr. President, may I inquire how much time remains on either side?

The PRESIDING OFFICER (Mr. YOUNG of Ohio). The Senator from Nebraska has 6 minutes remaining, and the Senator from Indiana has 6 minutes remaining.

Mr. HRUSKA. I yield the remainder of my time to the Senator from Florida (Mr. GURNEY).

Mr. GURNEY. Mr. President, it is a great honor to me to have the privilege of concluding this debate on Judge Carswell, I suppose I am more responsible for the fact that his name is before the Senate than any other Member of this body. I suggested his name to the President for appointment to the Fifth Circuit Court of Appeals last year, and his nomination was confirmed unanimously by the Senate, as was the case when he was appointed a district judge, and when he was appointed a U.S. attorney—three times before this occasion today.

Mr. President, this man spent 5 years as a U.S. attorney. When he was appointed to that position, he was the youngest U.S. attorney in the entire United States. He spent 11 years as a Federal district judge, and when he was appointed he was the youngest Federal district judge in the United States.

He served with distinction as a U.S. attorney. He served with distinction as U.S. district judge for the northern district of Florida. He has been examined and unanimously recommended to the Senate by the American Bar Association Committee on the Federal Judiciary, not once but twice, because those in opposition to the nomination question whether their judgment the first time was correct.

The Florida Bar Association Board of Governors, 41 in number, who represent the sixth largest integrated bar association in the United States, have recommended him unanimously to the U.S. Senate. These are men who have known him, who have worked with him, who know him as a judge, as a man, as a lawyer, and as a person.

I have received an outpouring of support for him, as has my senior colleague from Florida (Mr. HOLLAND), from people all over Florida—judges, lawyers, and ordinary citizens.

Fifty Federal judges in his circuit have unanimously seconded his nomination. Eleven circuit judges have backed his nomination. So far as law school professors are concerned, the dean of the University of Florida Law School has done so. The dean of the Florida State University Law School has done so. So has the past dean, and so have other professors.

The case against Judge Carswell is twofold. One is that he is a racist. Most of those charges have already been knocked down as straw houses that will not stand up. As a matter of fact, in my debate yesterday with the distinguished Senator from Maryland (Mr. TYDINGS), he admitted that two of the charges were not worth the paper they were written on.

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

Mr. GURNEY. No; I will not yield. I am winding up this argument.

Mr. TYDINGS. The Senator mentioned my name.

Mr. GURNEY. I do not yield.

The other argument against the nomination is that the judge was hostile. This argument is based upon a few civil rights lawyers who appeared in Florida from the North, and the chief one who has been trotted up and down the Senate floor as saying he was hostile was one Professor Clark of New York University, who today is one of the lawyers representing the Black Panthers in the trial in New York, which had to be called off because they vilified the court in such a fashion. They were there on charges of murder and arson and carrying weapons. During the course of the trial there were tossed three gasoline bombs—one at the front door of the judge, one underneath his car, and one on a window ledge. And Professor Clark, who claims that Judge Carswell was hostile, not only was there during the trial, when these Black Panthers vilified the court, but also, he later argued the habeas corpus proceedings to get them out of the jail they are now in because they would not maintain order in the court.

That is the kind of lawyer charging the hostility that we have heard about here.

Yet, none of the lawyers in the State of Florida who practiced in his court, scores and scores in number, and in civil rights cases, who know him personally, have come up here and made these charges.

Then there is the charge of mediocrity. It is hardly worth examining here, because not a shred of evidence has been advanced that the man has been mediocre. There have been self-serving statements by Senators, yes, and by the Washington Post and the New York Times and the rest of the liberal media—self-serving, but no shred of evidence at all.

The judges, his colleagues, who served with him and the lawyers who practice in his court said he was a lawyer with an excellent mind, a fine judge, an outstanding lawyer as a U.S. attorney, an outstanding Federal judge, an outstanding appellate judge. These are from men who know him, not from the people who are scattered throughout the country who have never seen Judge Carswell, have never appeared in his court, and know nothing about him.

In summation, I hope the Senate does not retreat in this century to the methods that it used in the last century, when judges were discarded and were turned back on the issue of politics. We avoided that for 75 years, until we came to Judge Haynsworth, and now Judge Carswell, and perhaps Judge Parker. I would hope that the United States is not going back to the business of politics in deciding whether a judge should be confirmed if he be a liberal or whether he should be rejected if he is a conservative, because that is what went on with respect to Judge Haynsworth, and I fear that is what is going on with respect to Judge Carswell.

President Nixon has offered us an excellent nominee. We should vote for him.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAYH. I yield 3 minutes to the distinguished Senator from Massachusetts.

Mr. BROOKE. Mr. President, we are not here to consider Mr. Clark or the Black Panthers. We are not here to consider conservatism or liberalism. We are not here to consider the President of the United States. We are here to consider the qualifications of G. Harrold Carswell, and that alone.

Much has been made about the issue of the loyalty to the President. The President is not a nominee for the Supreme Court of the United States. Those of us who are Republicans and are opposed to the nomination of G. Harrold Carswell are not disloyal because we vote against G. Harrold Carswell. We are voting according to the dictates of our hearts and our minds and our consciences, and we are basing our opinion solely on the qualifications of Mr. Carswell. To do otherwise would be to shirk our responsibility.

The man we send to the Supreme Court of the United States will be there for many years. If Mr. Carswell's nomination is confirmed, he could serve as many as 30 or more years on the Supreme Court—long after Mr. Nixon has been the President, and let me add I hope he serves for 2 terms. Long after most of my colleagues have left the Senate, this man will still sit on the Supreme Court of the United States.

We have to ask ourselves the question, "Is G. Harrold Carswell qualified to sit on the Supreme Court of the United States?" Nothing else. Whether he comes from the North, whether he comes from the South, whether he comes from the East, or whether he comes from the West, whether he is a Republican or whether he is a Democrat, whether he is a liberal or whether he is a conservative, is unimportant. It is irrelevant. The only relevant issue goes to the qualifications of this man to serve as a Supreme Court Justice. There is very little in the record which would indicate that this man has the requisite legal qualifications, even though he has served as a district court judge and has served on a circuit court of appeals.

All the people who testified did so not on the basis of political philosophy or ideology. They testified on the basis of the qualifications of this man and this man alone.

I do not say that this man is a racist. All I say is that if he meant what he said in 1948, I, for one, could not vote for him to sit on the Supreme Court of the United States. I have searched and searched the record to find any evidence of any change in this man, either in act or in deed, and I have searched in vain. I have found no change. To the contrary, I have found evidence which would indicate that he has not made a change and did not make a change until he came before the Committee on the Judiciary.

At the time of his appearance before the committee, the question of his credibility was raised. Do we want a man to sit on the court whose credibility is put in question? I think this issue has not been resolved.

If we want respect for law, if we want to have respect for the Supreme Court of the United States—and we all do—we certainly cannot, in good conscience, vote for a man to sit on the Supreme Court who came before the Senate Judiciary Committee and did not tell the truth. He said he made a mistake. All right, we all make mistakes. But he did not voluntarily change that mistake.

Mr. PASTORE. Mr. President, why cannot we have order? Why cannot the Senators take their seats and be silent?

The PRESIDING OFFICER. Senators will please take their seats.

Mr. BROOKE. He did not change the record at all until questioned by my distinguished colleague from Massachusetts (Mr. KENNEDY), when the latter showed him the papers of incorporation. And then Judge Carswell made a change. He realized he had made a mistake, after the night before. He knew, and certainly knew well, that he was an incorporator of this club. If he is so naive that he did not understand what it was all about, he is too naive for the Court.

The Boston Globe has run a series of well argued and closely reasoned editorials on the Carswell nomination.

On April 1, the newspaper presented a powerful argument summing up their reasons for opposing this nomination. I know that all the Members of the Senate and particularly those Senators who have not made up their mind as to how they will vote on the nomination will read this editorial with much profit.

I ask unanimous consent that it be printed in the RECORD together with my remarks.

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

NEW ENGLAND CAN SAVE THE COURT

With the defection of St. 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 affirming 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 advise and consent provisions 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-Ark.), 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 has 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.

Mr. WILLIAMS of New Jersey. Mr. President, an editorial in the Bergen Sunday Record of April 5, very cogently sets forth the right and responsibility of the Senate to exercise its independent judgment regarding the qualifications of G. Harrold Carswell for appointment to the Supreme Court. As the editorial makes clear, the President is wholly mistaken in asserting that the Senate has a duty to acquiesce to his wishes in this regard. On the contrary, the Senate has the power and obligation, under the Constitution, to make its own review and decision regarding the qualifications of this nominee. And, as the editorial further makes clear, the record in this instance leaves no doubt that our choice should be put to not approve the nomination.

Mr. President, I ask unanimous consent that this excellent editorial be printed at this point in the RECORD.

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

[From the Bergen (N.J.) Sunday Record, Apr. 5, 1970]

NO PLACE FOR MEDIOCRITY

And [the President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court . . .

President Nixon in a letter made public last week advanced the preposterous proposition that unless the United States Senate approves his nomination of Judge G. Harrold Carswell to be a justice of the Supreme Court it will have substituted its judgment for his. It is the duty of the President to appoint. It is the duty of the Senate to advise and consent. It can vote any way it pleases as long as it votes yes. This is his thesis. It should be firmly rejected.

The Senate can reject it by voting tomorrow to recommit Judge Carswell's nomination to the Judiciary Committee for decent interment. It should do so.

More than a constitutional question is involved in the Carswell nomination, but the constitutional question is important. Since the Senate first rejected a nomination, that of Roger B. Taney in 1834 to be Secretary of the Treasury, the language has been understood to mean that only, only with the advice and consent of the Senate shall the President do the things enumerated in Article II. Mr. Nixon's construction of the language is precisely what was dreaded in the Constitutional Convention itself. "It was argued that this authority to appoint would invest [the President] with power leading toward monarchy," says Thomas James Norton in "The Constitution of the United States." "Benjamin Franklin was of this belief. However, in practice the plan has worked very well."

It has worked very well because the Senate has exercised its power to review the qualifications of nominees and to decide in its collective conscience whether they meet its, not any President's, standards of excellence.

The standards Judge Carswell meets have been defined with charming candor by one of his hoarsest supporters, Sen. Hruska of Nebraska. He is a mediocre fellow, Mr. Hruska acknowledges, but we need mediocre people in high places. He has some bizarre theory about proportional representation.

Judge Carswell may be the kind of mediocrity Mr. Nixon, his Attorney-General, and the Southern strategy need. He has entered in the law reviews no evidence whatever that he has thought about law or anything else; his opinions are a gray desert of print in which contorversial issues are settled on narrowly technical grounds; he has been reversed frequently. Setting aside his campaign speech of 1948 in favor of white supremacy as a youthful indiscretion, yet his accounting of the part he played in incorporating a Tallahassee municipal golf course in danger of desegregation has been various and disingenuous enough to raise a grave question respecting either his intelligence or his integrity.

The Supreme Court is not a representative body. It is not a legislature in which persons who have no use for equal justice under law are entitled to representative parity with persons who believe in it.

It is the final arbiter. What it decrees is the law of land. It is no proper place for mediocrity. Mediocrity and the Southern strategy can be paid off in less guileful, corrosive ways.

The Senate has been asked, not bidden, to give its consent to the Carswell nomination. On the merits it should refuse.

Mr. DODD. Mr. President, as a rule I do not announce how I will vote, particularly on Executive nominations, before the vote is taken on the floor of the U.S. Senate.

But because of the parliamentary situation concerning the nomination of Judge G. Harrold Carswell, I believe that, in the interest of a clear understanding by the public, I should announce my decision before the vote is taken.

As a member of the Senate Judiciary Committee, I voted to send the nomination of Judge Carswell to the floor because I believe the full Senate must pass on an issue of this kind.

The matter has been debated pro and con for many weeks and I believe the Senate should vote promptly on the merits of the nomination.

Because I believe that recommittal is an evasion of responsibility and a *back door* excuse for some who do not wish to face up to the situation, I shall vote against recommittal.

If the motion to recommit fails, and I trust it will, I shall vote against confirmation of Judge Carswell.

Most black people and many working people do not feel that they will get a fair shake if Judge Carswell is on the Supreme Court. This goes to the very heart of the matter. It is a question of faith in our system. If the people of this country are to have faith in our system, we must put men on the Court in whom they can have confidence.

I shall vote, therefore, against confirmation.

Mr. MATHIAS. Mr. President, it ill behooves any member of the Judiciary Committee to oppose recommittal of the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court. The events of the last 30 days indicate that the record that the committee has made to date has raised more questions than it has answered and has caused more confusion than it has cured. I, for one, as a member of the committee, feel a sense of responsibility for improving the record and expanding the information available to the Senate and to the country.

With this in mind, I requested the Justice Department on March 10 to provide me with some additional information and an opportunity to talk with Judge Carswell. The first of these requests was promptly granted, but to date the second has not been acknowledged. I regret that the opportunity to meet with Judge Carswell either on or off the record has not been considered to be in the interest of the Senate, the Court, the country, or even Judge Carswell himself. I made the request in an attempt to conscientiously discharge my duties in this connection. I had previously joined in an effort to recall Judge Carswell to the committee, but this attempt was defeated by majority of the committee.

The best service that could be rendered to President Nixon in connection with the Carswell nomination is to resolve some of the troubling questions that remain unanswered. It does not help to say that the President should have been better served by those upon whom he has depended. It does not help to say that the White House staff, the Attorney General, or the Federal Bureau of Investigation should have found out all the facts before the President sent Judge Carswell's name to the Senate. This experience should be of some value when the next vacancy occurs on the Supreme Court, but it does little to help the President, Judge Carswell, or the Senate today. The only thing that will truly be of value is the further exposition of the facts on the record, including those that should have been known before the nomination was made. The only way to place the accumulating body of fact on the record and to distinguish it from rumor and innuendo is by recommittal to the Judiciary Committee with the understanding that the committee will do a responsible job.

Mr. HOLLINGS. Mr. President, the U.S. Senate has been characterized as the most deliberative body in the world. This distinction was demeaned by the Senate's unstudied consideration of the appointment of Judge Clement F. Haynsworth to be an Associate Justice of the Supreme Court. Before the debate commenced on the Senate floor, over two-thirds of the Members had publicly declared their decision. As the leader for Judge Haynsworth, I expressed concern and chastised my colleagues for making up their minds before the debate, for failure to go behind the headlines and discover the truth. I sincerely believe that this is the reason Judge Haynsworth is not a member of the High Court at this moment.

When the debate commenced on the nomination of Judge G. Harrold Carswell, I reminded the news media of this position I had taken during the Haynsworth debate. I told them I was undecided and that I would listen and study the record. This position immediately opened a Pandora's box of editorial nonsense in many of the South Carolina newspapers.

While it is the President's duty to propose, it is the Senate's duty to dispose. I believe the Senate's duty of disposition goes beyond the mere appraisal of integrity, judicial temperament, and professional competence. I believe it goes to the whole man. Specifically, I believe that a Senator has a duty to consider the nominee's philosophy and can and should question a nominee's decisions so long as they are not matters pending. I realize the honored precedent of the Senate that a nominee's philosophy and certainly his decisions should never be questioned. However, this precedent time and again has been debauched by an oblique attack on honor and propriety. Disagreeing with Judge Haynsworth's philosophy, the opposition in a transparent attempt to adhere to the time-honored precedent turned to attack his integrity. Realizing this was unassailable, each opposing Senator would say in no uncertain terms that he believed Judge Haynsworth was honest but it was the apperance of impropriety that was disturbing; and as a result of the appearance, they could not support his confirmation. This is a charade and does injustice to the nominee. We should candidly investigate the whole man. In doing so, we should not fall into the trap of only supporting those philosophically atuned to our thinking, but determine whether the nominee's philosophy is so extreme as to forbid objectivity.

The nature of the office of a Supreme Court Justice is one of awesome power in our society. Since the Justices hold office for life, a most thorough and objective review should and must be made by the Senate in the exercise of its confirmation powers. To the point—President Nixon is mistaken when he challenges the Senate's exercise of this power. Were it not for the deliberate review given President Johnson's appointee, there would be no vacancy for President Nixon to act on at this time.

Judge Carswell has been subjected to the serious charge of being a racist and the superficial charge of mediocrity. I have studied his record and decisions and feel certain that he is not a racist. To the superficial charge, I find that anonymity cannot be equated with mediocrity. The very role of a district or circuit judge is that of anonymity. From the standpoint of experience, Judge Carswell has far more prior judicial experience than any of the present Supreme Court Justices, save one. Judge Carswell has the judicial and professional competence to serve as an Associate Justice of the Supreme Court, and I intend to vote for his confirmation and oppose any attempt to recommit the nomination to the Judiciary Committee.

Mr. GURNEY. Mr. President, there has been a vast outpouring of support for Judge Carswell from the Florida bar, lawyers who have practiced in his court, who know well his qualities as a judge.

I offer for the RECORD various telegrams in support of Judge Carswell.

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

ST. AUGUSTINE, FLA., *April 3, 1970.*
Honorable ED GURNEY,
New Senate Office Building,
Washington, D.C.:
St. Johns County Bar Association overwhelmingly endorses Carswell nomination confirmation.

JOHN J. UPCHURCH,
Secretary-Treasurer.

PALM BEACH, FLA., *April 4, 1970.*
Senator EDWARD J. GURNEY,
Washington, D.C.:
Urge you use your great influence insure confirmation of Judge Carswell to the Supreme Court.

CLIFFORD F. HOOD.

WEST PALM BEACH, FLA., *April 5, 1970.*
EDWARD J. GURNEY,
U.S. Senator,
Washington, D.C.:
Mr. GURNEY: Agree with your views on Carswell. How can I help?

GEORGE KANE.

TARPON SPRINGS, FLA., *April 4, 1970.*
Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:
Appreciate your support of Carswell. Caliber of opposition leadership should justify his appointment.

JOHN A. TOMLINSON.

WINTER PARK, FLA.,
April 4, 1970.
Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:
Approve your stand on Carswell. Continue the good fight.

JAMES R. and GENEVA PAGE.

MIAMI, FLA.,
April 4, 1970.
Senator EDWARD J. GURNEY,
Washington, D.C.
SIR: In behalf of Judge Carswell blackball recommittal his appointment. Vote yes.
Thank you.
Respectfully,

GLADYS E. WINNE,

JACKSONVILLE, FLA.,
Apil 4, 1970.
Senator GURNEY,
Washington, D.C.:
As Floridians we are counting on your vote for Judge Carswell and your influence on other dissident Senators.

Mr. and Mrs. WILLIAM L. REED.

CASSELBERRY, FLA.,
April 4, 1970.
Hon. ED GURNEY,
Senate Office Building,
Washington, D.C.:
I have known the Carswell family forty years. They are dedicated Americans. I resent the lobbying of NAACP and labor against the appointment of a dedicated intelligent Southern gentleman to the Supreme Court. It is appauling they would tolerate Douglas and Black, and vote against Carswell.

Mrs. JAMES MATTHEWS.

ORLANDO, FLA.,
April 4, 1970.
Senator ED GURNEY,
Washington, D.C.:
As concerned citizens we wholeheartedly support the nomination of Judge Carswell to the supreme court.

Mr. and Mrs. HUNTER C. KELLEY.

VERO BEACH, FLA.,
April 4, 1970.
Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:
I urge you to use all effort possible to execute final confirmation Judge Harold Carswell. Our supreme Court needs this man of integrity and ability.

ALMA LEE LOY.

ORLANDO, FLA.,
April 4, 1970.
Senator ED GURNEY: We heartily approve your continued support of Carswell nomination.

DOROTHY and BILL APPELBERG.

PENSACOLA, FLA.,
April 4, 1970.
Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:
We completely support Carswell nomination.

HOLLIDAY and MARY VEAL.

PENSACOLA, FLA.
April 6, 1970.
Senator EDWARD GURNEY,
Washington, D.C.:
We urge your full support for Carswell. Also we oppose guaranteed income as contrary to free enterprise system.

CARL and GRACE SEVERIN.

CLEARWATER, FLA.
April 4, 1970.
Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:
Please continue your hard work and support for Judge Carswell for the Supreme Court.
Respectfully,

Mr. and Mrs. FRANK P. FLICK.

JACKSONVILLE, FLA.
April 4, 1970.
Senator ED GURNEY,
Senate Office Building,
Washington, D.C.:
We want and need Judge Carswell.

Mr. and Mrs. W. J. ATWOOD.

FORT LAUDERDALE, FLA.,
April 4, 1970.
Senator EDWARD GURNEY,
Senate Office Building, Washington, D.C.:
Prevent a hyprocritical Senate from accepting a Douglas and denying a Carswell.

I. J. STRUMPF.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:
Support confirmation of Carswell nomination for Supreme Court Justice.

Mr. and Mrs. ADOLPH K. MILLER.

Senator ED GURNEY,
Washington, D.C.:
We need Carswell.

THOMAS SUDDATH.

Mr. BAYH. Mr. President, I feel that little remains to be said at this late hour relative to the merits and qualifications of the man whose name has been submitted. I think all of us know in our own minds that the final test is not going to come on the motion of the Senator from Indiana but, rather, will come on an up or down vote as to whether or not this man's nomination to the Supreme Court should be confirmed.

Perhaps, in about a minute and a half, it might be a little hopeful to look at a broader purpose rather than just the qualifications of the nominee. We are dealing with the nomination of a Supreme Court Justice who, as the distinguished Senator from Massachusetts just pointed out, is going to be on that Court long after most of us no longer have the honor to serve in this body.

With all due respect to our friend from Florida, the name of the man before us is not Clark; it is Carswell.

I have been deeply concerned about the erosion of faith that many people in this country have so far as the institutions of our democracy are concerned. It seems to me that the one bastion that stands today head and shoulders above all others in the minds of those who have the greatest concern about the ability of the institutions of this country to maintain their solidarity is the Supreme Court of the United States.

It seems to me, Mr. President, that the only question we should ask ourselves, when we cast this vote and the succeeding vote, is: Are we doing what must be done to shore up the institutions of our democracy, to shore up the Supreme Court of the United States, by placing Judge G. Harrold Carswell on that Court?

I think, in addition, that we also have to meet the test of whether the Senate, indeed, considers that this is the place to advise and consent.

The VICE PRESIDENT. All time has expired.

SEVERAL SENATORS. Regular order, Mr. President.

Mr. GRIFFIN. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Michigan will state it.

Mr. GRIFFIN. Have the yeas and nays been ordered on the pending motion?

The VICE PRESIDENT. The yeas and nays have not been ordered.

Mr. GRIFFIN. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESDIENT. All time has now expired.

The question is on agreeing to the motion of the Senator from Indiana (Mr. BAYH) to recommit the nomination of Judge G. Harrold Carswell, of Florida, to be an Associate Justice of the Supreme Court of the United States.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. AIKEN (when his name was called). Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from Vermont will state it.

Mr. AIKEN. May I ask, what is this vote on?

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Indiana (Mr. BAYH) to recommit the nomination of Judge G. Harrold Carswell, of Florida, to be an Associate Justice of the Supreme Court of the United States.

Mr. GRIFFIN. Mr. President, a further parliamentary inquiry.

The VICE PRESIDENT. The Senator from Michigan will state it.

Mr. GRIFFIN. If a Senator wishes to have the nomination recommitted to the Judiciary Committee, he will vote "yea"; if he wants not to have it recommitted, he will vote "nay"; is that correct?

The VICE PRESIDENT. That is correct.

Mr. AIKEN. Mr. President, I vote "no."

The assistant legislative clerk resumed and concluded the call of the roll.

Mr. KENNEDY. I announce that the Senator from New Mexico (Mr. ANDERSON) is necessarily absent.

I further announce that the Senator from Rhode Island (Mr. PELL), is absent on official business.

On this vote, the Senator from Rhode Island (Mr. PELL) is paired with the Senator from Utah (Mr. BENNETT). If present and voting, the Senator from Rhode Island would vote "yea" and the Senator from Utah would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business as observer at the meeting of the Asian Development Bank in Korea.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness, and, if present and voting, would vote "nay."

On this vote the Senator from Utah (Mr. BENNETT) is paired with the Senator from Rhode Island (Mr. PELL). If present and voting, the Senator from Utah would vote "nay" and the Senator from Rhode Island would vote "yea."

The result was announced—yeas 44, nays 52, as follows:

[No. 115 Ex.]

YEAS—44

Bayh	Hughes	Moss
Brooke	Inouye	Muskie
Cannon	Jackson	Nelson
Case	Javits	Pastore
Church	Kennedy	Prouty
Cranston	Magnuson	Proxmire
Eagleton	Mansfield	Ribicoff
Fulbright	Mathias	Schweiker
Goodell	McCarthy	Spong
Gore	McGee	Symington
Gravel	McGovern	Tydings
Harris	McIntyre	Williams, N.J.
Hart	Metcalf	Yarborough
Hartke	Mondale	Young, Ohio
Hatfield	Montoya	

NAYS—52

Aiken	Ellender	Pearson
Allen	Ervin	Percy
Allott	Fannin	Randolph
Baker	Fong	Russell
Bellmon	Goldwater	Saxbe
Bible	Griffin	Scott
Boggs	Gurney	Smith, Maine
Burdick	Hansen	Smith, Ill.
Byrd, Va.	Holland	Sparkman
Byrd, W. Va.	Hollings	Stennis
Cook	Hruska	Stevens
Cooper	Jordan, N.C.	Talmadge
Cotton	Jordan, Idaho	Thurmond
Curtis	Long	Tower
Dodd	McClellan	Williams, Del.
Dole	Miller	Young, N. Dak.
Dominick	Murphy	
Eastland	Packwood	

NOT VOTING—4

Anderson	Mundt	Pell
Bennett		

So Mr. BAYH's motion to recommit the nomination was rejected.

Mr. DOLE. Mr. President, I move that the Senate reconsider the vote by which the motion to recommit was rejected.

Mr. GRIFFIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, the vote to recommit the nomination has been defeated by a rather substantial margin. I personally would like to see this matter brought to a head rather than to wait until Wednesday to decide. I would hope that Senators would give some consideration to the request I am about to make, because I think it will speed up the business of the Senate and allow us to get on with other work. It will not change the final result in any way, to my knowledge.

I ask unanimous consent that at the hour of 3 o'clock this afternoon, the final vote on the nomination of Judge Carswell takes place.

Mr. HRUSKA. Mr. President, reserving the right to object—and I shall object—this is the first time there has been brought to the attention of the Senate in its official capacity any indication that there would be an effort to change the order of business that was arrived at on March 25, when the present unanimous-consent agreement was fashioned and when it was fully approved.

It would seem to me that a hurried consideration of a change of an order of this kind would not be in order. And, in fact, it would be indicated that it would be unwise to do so.

Mr. President, I object.

Mr. BAYH. Mr. President, reserving the right to object——

Mr. MANSFIELD. Mr. President, may I say that I did discuss this possibility an hour and a half ago with the distinguished minority leader.

I did so only to keep the other side informed of something which I thought of alone, and it was my thought that with all the Members possible present, it might be well to face up to this issue and get it disposed of once and for all, rather than to prolong it for the next day or so.

Mr. President, I realized that an agreement had been made to vote at 1 o'clock on Wednesday on the confirmation of Judge Carswell.

I thought that this might be one way of speeding up the procedure without unarming anyone and with the possibility that the Senate could get on to other business and thereby keep up to its schedule so that it might be possible, all things considered, to adjourn by Labor Day. However, objection has been entered, and that is about the size of the situation.

Mr. SCOTT. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. Yes, indeed.

Mr. SCOTT. Mr. President, I would simply like to make it clear that the distinguished majority leader did make such a suggestion to me a short time ago. I interposed no personal objection to it. But I did advise him that objection would be heard and perhaps more than one. And I believe that that correctly states our conversation.

Mr. MANSFIELD. Mr. President, the Senator is correct. I made the unanimous-consent request in spite of the advice given by the distinguished minority leader. I did it on my own personal initiative and with the idea of speeding up the business of the Senate as a whole.

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

Mr. MANSFIELD. I yield.

Mr. HRUSKA. Mr. President, this is the first time, I repeat, that the matter has been brought before the Senate on an official basis. I am aware that there has been a conference between the respective leaders of the two parties here.

I just wonder, however, if it would not serve some purpose, now that objection has been made, for the leader to consider perhaps renewing the request later this afternoon, say in the middle of the afternoon, and thereby give us a little chance for discussion and consideration and deliberation.

Mr. MANSFIELD. Mr. President, that is a reasonable request.

Mr. HRUSKA. And if it is agreeable with the leader, at any time say at 3 or 3:30, or something of that kind, the request may be renewed.

Mr. MANSFIELD. Mr. President, I will be delighted to renew the request at that time.

I appreciate the advice of the distinguished Senator.

Mr. BAYH. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I yield.

Mr. BAYH. I do not want anyone who heard me rise a moment ago and reserve the right to object to think that, as far as I am concerned, I was going to object to this procedure.

We have heard from the distinguished Senator from Nebraska, the distinguished Senator from Kansas, and the distinguished Senator from Florida.

I watched with great interest as the distinguished minority whip made a very excellent presentation on the Today Show this morning about the importance of bringing this matter before the Senate and how ridiculous it was for some of us to feel that we ought to study the matter more and answer some of the questions that have been raised.

I would like to salute the majority leader for trying to bring this matter to a vote at this time.

I am hopeful that the Senator from Nebraska will reconsider later this afternoon and that we can get down to the business of determining whether Judge Carswell will be confirmed for the Supreme Court.

Mr. HRUSKA. Mr. President, the memory of the Senator from Nebraska goes back to the afternoon of Wednesday, March 25, when it was the thinking of the leadership and others on this side of the aisle, as well as many Senators on the other side of the aisle, that the vote just taken this afternoon be followed by a vote on the nomination proper.

There was objection at that time, and the leading objector was the Senator from Indiana.

He must have had some reason for objecting. There was some discussion of the matter and the Senator from Indiana insisted that the vote not come on until Wednesday next following the vote to be had on today.

Now, having an impromptu and immediate proposal to dislocate what we have

agreed upon is a little different situation than appeared before, which was the basis of the decision last March 25.

The VICE PRESIDENT. The Senate will be in order.

Mr. MANSFIELD. I have discussed this matter with no one except the distinguished minority leader, so the record will be straight.

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

Mr. MANSFIELD. I yield.

Mr. DOLE. Would it be well for us to stay around this afternoon?

Mr. MANSFIELD. Yes. At the hour of 3 o'clock it is my intention to renew the request again.

Mr. YOUNG of Ohio. Mr. President, reserving the right to object, I report to the leadership, and I report to you, Mr. President, that Loyola University of Chicago is honoring me and bestowing an honor upon me this evening at a banquet. I am leaving for the airport within a very few minutes. Therefore, I report that if a vote on this important matter is taken today, I cannot be present to vote.

Mr. MANSFIELD. Mr. President, I yield the floor.

Mr. HRUSKA. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. MANSFIELD. I yield.

Mr. HRUSKA. Some suggestion has been made that perhaps a motion to lay on the table would be applied to the pending nomination. It is my recollection that this matter was brought up before, and that a motion to lay on the table would be eligible at any time to be laid before the Senate but the vote on that motion could not occur before the conclusion of debate, or prior to 1 o'clock on Wednesday, pursuant to the unanimous-consent agreement.

Is my recollection correct?

The VICE PRESIDENT. The Chair construes the intent of the unanimous-consent agreement to be that a vote on a motion to table the nomination would not be in order until 1 o'clock on April 8, 1970.

Mr. HRUSKA. And that no vote would occur on it until the conclusion of the debate and immediately prior to the vote on the motion to confirm.

The VICE PRESIDENT. Unless the Chair hears some disagreement, that would be the construction of the Chair.

Mr. HRUSKA. Unless modified by a new unanimous-consent request.

The VICE PRESIDENT. Yes.

Mr. MANSFIELD. Mr. President, I think I should say publicly that if a motion is made to table, after the vote which has just been conducted in the Senate, I would feel encumbent to vote against such a motion because I think the Senate had a reasonable chance to stand up to the question of recommital and the next role should be on an up-and-down basis as to whether Judge Carswell should or should not be confirmed.

Mr. HRUSKA. Mr. President, the majority leader speaks good sense.

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

Mr. MANSFIELD. I yield.

Mr. HOLLAND. Mr. President, I want the RECORD to show I have no objection to the speeding up of this vote. However, I would not want to preclude my distinguished friend from Ohio from voting. I wonder if he will be back by tomorrow.

Mr. YOUNG of Ohio. Yes, indeed.

Mr. HOLLAND. I suggest that possibility to the distinguished majority leader.

Mr. MANSFIELD. The vote would not come tomorrow because there will be other Members who have commitments. If there is an objection I hope it will be made now so I will not go through the charade at 3 o'clock to make a motion with no meaning.

Does the Senator object to a vote later this afternoon?

Mr. YOUNG of Ohio. Mr. President, I wish to inform the distinguished majority leader that I hope to take a plane at 2:40 p.m. If I were present this afternoon I would be compelled to object because I desire my vote to be counted.

Mr. MANSFIELD. That is enough for me. There will be no further request made today.

ORDER OF BUSINESS—LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, if no one intends to speak further on the nomination of Judge Carswell at this time, I ask unanimous consent that it be laid aside temporarily and that the Senate return to legislative session for the purpose of resuming work on the unfinished business, Senate Resolution 211.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

SUSPENSION OF FURTHER DEPLOYMENT OF OFFENSIVE AND DEFENSIVE NUCLEAR STRATEGIC WEAPONS SYSTEMS

The VICE PRESIDENT. The Chair lays before the Senate the unfinished business, which will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A resolution (S. Res. 211) seeking agreement with the Union of Soviet Socialist Republics on limiting offensive and defensive strategic weapons and the suspension of test flights of reentry vehicles.

NASA DISPLAY OF NEW PRODUCTS FROM THE SPACE PROGRAM

Mr. CANNON. Mr. President, this morning the Committee on Aeronautical and Space Sciences held a hearing on the benefits that the Nation has received as a result of the space program. In the absence of the esteemed chairman of the committee, Senator CLINTON P. ANDERSON, it was my privilege to preside over that meeting.

It was a remarkable hearing and even those of us who have followed the space program for many years were somewhat surprised, I think, at the scope of these benefits and the broad effort that NASA is undertaking to make these benefits available to the public. I shall not bother you here with the details as the committee is printing this hearing as a separate document, which I hope all Senators will read. This document will be available in 2 or 3 weeks, well before the consideration of this year's NASA authorization bill.

Among the benefits are a multitude of new products which have come directly from the space program or have been stimulated by materials and techniques developed by the space program.

A number of these products were shown to the committee as a part of Dr. Paine's testimony. It is such a fascinating display that we have persuaded NASA to leave it in the committee hearing room, room 235 in the old building, today until 3 p.m. Tomorrow, April 7, the display will be open from 10 a.m. to 3 p.m. NASA experts will be available to describe the products and to provide help to Senators and staffs on how constituents, particularly manufacturers, businessmen, and educators, can be assisted in getting information which would be useful to them.

A RAY OF LIGHT ON UNITED STATES-JAPAN TEXTILE AGREEMENT

Mr. JAVITS. Mr. President, late last week, some rays of light penetrated the increasingly dark clouds settling over United States-Japanese relations and the world's international trading pattern because of the textile situation. First, the spokesman of the State Department denied an earlier statement by an administration official that the United States was on the point of abandoning ongoing talks between the United States and Japan regarding the textile situation and deciding to seek quota legislation from Congress. In response to a press question Mr. McCloskey stated:

> Only that the Administration is on record wanting to solve some of the problems through international agreement. We've had discussions with the major exporters, principally Japan, looking towards agreements on this subject. So far it has not been possible to reach negotiated solutions, *but contact has not been broken off.*

A spokesman of the Japanese Embassy, later in the afternoon, according to press reports, gave a qualified endorsement to the Kendall proposal, whose elements reportedly include a temporary 1-year freeze on textile imports thus allowing time for a Presidential Commission to review the whole textile import question and to make findings as to "injury." In making this reported qualified endorsement the Japanese Government apparently was overriding the Japanese textile industry which rejected the Kendall proposal. I placed the press reports of this Japanese industry rejection in the CONGRESSIONAL RECORD on April 2. I believe that the Japanese Government has now

adopted a better position in moving to this "compromise position." I also find the Japanese Embassy's spokesman's statement made at the press conference statesmanlike.

Reportedly the spokesman stated:

So long as both sides are emotionally involved, it is not expected that a reasonable solution can be reached.

With this very constructive move of the Japanese Government, I must now conclude that the next move on the chess board, if a mutually acceptable agreement is to be reached and if quota legislation is to be avoided, no longer solely rests with the Japanese; but also with the highest authority of the United States.

My colleagues will recall that on March 25 I characterized the initial Japanese response to the negotiating offer put forward by the United States in early January as "unfortunate" and concluded that:

The tone of the reported note leads me to the conclusion that the next move on this complicated chess board now rests with Japan.

I am also pleased that the political leaders in Japan now have actively involved themselves in the decisionmaking process and that these leaders did differentiate between the national interests of their country as distinct from regional and special interests.

I ask unanimous consent that the report on the new position of the Japanese Government as reported in the Washington Post on Saturday, April 4 be printed in the RECORD—this report logically follows the insertions made on April 2, March 25, and February 10—together with an article entitled "New Talks Urged in Textile Battle," written by Brendan Jones.

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

[From the Washington Post, Apr. 4, 1970]

U.S. DENIES DECISION MADE—JAPANESE OFFER TEMPORARY FREEZE ON TEXTILE IMPORTS

(By Robert J. Samuelson)

In an effort to avoid mandatory quotas, the Japanese government yesterday offered to freeze temporarily the level of its textile imports into the United States.

The proposal followed threats by some American officials to abandon talks between the two countries and seek legislation from Congress.

Earlier this week, one U.S. official, speaking on a not-for-attribution basis, told reporters that the U.S. had virtually given up hope that the negotiations would produce an agreement.

DECISION DENIED

Though he said the Nixon Administration would propose legislation, other government officials denied that the President had come to that decision.

Yesterday, Japanese Embassy officials held their own briefing and gave a qualified endorsement to a compromise plan proposed by Donald Kendall, chairman of Pepsi Co., Inc., and head of the Emergency Committee on American Trade.

That plan envisions a temporary freeze on the level of Japanese textile shipments while an independent presidential commission studies the impact of the imports on various segments of the American industry.

When the examination is completed, the freeze would be lifted and restrictions would apply only to specific items that had caused a significant amount of damage to U.S. firms.

The key question apparently is the level at which the imports would be maintained during the temporary freeze. Here the Japanese declined to commit themselves.

This issue would be a "matter of negotiation," said Bunroku Yoshino, minister at the country's Washington embassy.

The aim of the temporary freeze, he repeatedly emphasized, is "to take the heat" off the issue.

"So long as both sides are emotionally involved," he declared, "it is not expected that a reasonable solution can be reached."

The Kendall plan has already been denounced by the American industry (which wants legislation and thinks the proposal is too lenient) and the Japanese industry (which wants no restrictions and thinks the plan is too harsh).

JAPANESE DIFFICULTIES

At the briefing, Yoshino indicated that his government faces a difficult time in convincing Japanese firms to accept some sort of compromise. The situation, he said, is "most difficult—it's perhaps harder than persuading the U.S. side."

Japan's textile exports to the U.S. have risen sharply in the last five years, with America's net deficit (the excess of imports over exports) increasing 60 per cent to $800 million in 1968. American officials, involved in negotiations with Japan since early 1969, could not be contacted for comment last night.

Yoshino, however, hinted that Japan won't accept any kind of "rollback" in imports. With all textile imports totaling only 6 per cent of U.S. production, he said his government remains skeptical that any permanent restrictions are required.

"At the moment, the material we have from the U.S. is not persuasive enough . . . regarding the threat of injury," he said.

NEW TALKS URGED IN TEXTILE BATTLE—JAPANESE SUGGEST MEETING OF LEADING BUSINESSMEN FROM BOTH COUNTRIES

(By Brendan Jones)

Hopes that there still might be time and willingness to break the bitter deadlock that has developed between Washington and Tokyo over textile imports was expressed by Japanese sources here last week.

While chances for conciliatory moves appear slim, it was suggested that a meeting by private business leaders from both sides might set the stage for a renewal of discussions at a less emotional level than has prevailed in official negotiations.

The Japanese here had no definite thoughts on what form a compromise might take. They stressed, however, that the Tokyo Government still strongly desired to find a solution that would stave off the imposition of mandatory import by Congress.

QUOTA MOVES EXPECTED

Moves for mandatory quotas now seem almost certain to start with the opening of hearings on the Administration's trade-agreements bill by the House Ways and Means Committee, probably in mid-May.

There remains, therefore, a few weeks in which to maneuver for a resumption of official negotiations. The problem, though, is to get Washington and Tokyo back on speaking terms.

That this will not be easy was demonstrated earlier last week with an unusual venting of angry criticism of the Japanese by Administration officials.

In a "background briefing" for the press, officials who had been trying for more than a year to get the Japanese to agree to voluntary textile quotas indicated they were ready to quit.

They charged the Japanese with being "arrogant" toward the proposal that they voluntarily restrain exports of wool and man-made textiles to this country.

The officials, who declined to be named, complained also of "rudeness" and what were considered unreasonable counterproposals in negotiations with Hong Kong, South Korea and Formosa.

For their part, Japanese officials have repeatedly offered to consider selective quotas if presented with evidence of import injury to American producers.

By all indications, Washington officials have been unable or unwilling, to offer such evidence, and this is the essence of the impasse.

The Japanese sources, which also asked not to be identified, conceded that there was no certainty that the proceed meeting of business leaders would bring a solution.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business this afternoon it stand in adjournment until 10 o'clock tomorrow morning.

The VICE PRESIDENT. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR THURMOND TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that tomorrow at the conclusion of the prayer the distinguished Senator from South Carolina (Mr. THURMOND) be recognized for not to exceed 1 hour.

The VICE PRESIDENT. Without objection, it is so ordered.

AUTHORIZATION FOR COMMITTEE ON LABOR AND PUBLIC WELFARE TO FILE REPORT ON JOINT RESOLUTION TO PROVIDE FOR THE SETTLEMENT OF LABOR DISPUTE BETWEEN CERTAIN CARRIERS BY RAILROAD AND CERTAIN OF THEIR EMPLOYEES (S. REPT. NO. 91–758)

Mr. JAVITS. Mr. President, by direction of the Committee on Labor and Public Welfare, I report to the Senate an original joint resolution to provide for the settlement of a labor dispute between certain carriers by railroad and certain of their employees.

I ask unanimous consent that the report to accompany the resolution may be filed by midnight tonight.

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

Mr. JAVITS. I yield.

Mr. MANSFIELD. Does the Senator have any idea as to when this resolution may be called up as far as he is concerned?

Mr. JAVITS. As far as I am concerned—and I believe this goes for the committee—we would like it to be called up as soon as possible, but I think we can afford to have it go over 1 day, although it is a situation of great emergency. Because of my own commitment tomorrow, I would hope the leadership would allow us to call it up on Wednesday at the earliest time.

Mr. MANSFIELD. Perhaps sometime after the vote on the Carswell nomination is disposed of?

Mr. JAVITS. Yes.

The VICE PRESIDENT. Is there objection to the unanimous-consent request?

Mr. JAVITS. Mr. President, the unanimous-consent request was that the committee have until midnight tonight to file its report.

The VICE PRESIDENT. Is there objection to that request? Without objection, it is so ordered.

The joint resolution (S.J. Res. 190) to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees, reported by Mr. JAVITS, was read the first time, and by unanimous consent, the second time, and ordered to be placed on the calendar.

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

Mr. JAVITS. I yield.

Mr. MANSFIELD. Then, as I understand it, tentatively the Senate is on notice that this matter will be taken up on Wednesday, and certainly no later than Thursday, and therefore Senators will act accordingly?

Mr. JAVITS. Yes. I might state that we must take it up, certainly, on Thursday. I would hope we could do it on Wednesday, even if it is late.

Mr. MANSFIELD. We are against a deadline, which is midnight Friday.

Mr. JAVITS. Exactly. The House of Representatives has to act, and we may have to go to conference; so Wednesday would really be the latest optimum time.

I thank the majority leader. I am sorry I cannot report the technical details, but that will be done later this afternoon.

Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The VICE PRESIDENT. Without objection, it is so ordered.

The Senate will receive a message from the House of Representatives.

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Bartlett, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (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, and it was signed by the Vice President.

LOWERING THE VOTING AGE

Mr. ALLOTT. Mr. President, the New York Times of yesterday—Sunday, April 5—contained a very interesting and highly significant letter to the editor expressing strong opposition to the proposal to lower the voting age in National and State elections by statute.

The letter was from six distinguished members of the faculty at the Yale Law School. Professors Bickel, Black, Bork, Ely, Pollak, and Rostow do not address themselves to the question of whether or not the voting age should be lowered to 18. Indeed, they say that they are not of one mind on that subject.

But these six constitutional lawyers are in complete agreement on two points.

First, they are convinced that a statute lowering the voting age in National and State elections—a statute such as the proposal that is pending in the House of Representatives—would be unconstitutional.

Second, they think that it is not a matter of mere technicality, but a matter of fundamental constitutional importance, that this approach to lowering the voting age be abandoned.

The six writers suggest this:

If, in 1970, the nation is ready to welcome into the political process Americans who have reached the age of 18, Congress should, in fidelity to our constitutional traditions, submit to the states for ratification a new constitutional amendment embodying that new consensus.

This is the position taken by the Justice Department. As the men from Yale acknowledge, they are not given to habitual applause for each and every position taken by the Justice Department. Thus, their strong agreement with the Justice Department on this issue is all the more noteworthy.

I urge all Senators and all concerned Americans to give careful consideration to the arguments advanced by the men from Yale.

I emphasize that their arguments are not linked in any way with any position on the question of whether of not the voting age should be lowered. Their arguments only concern the way in which we should go about answering that question.

I ask unanimous consent that the letter, as published in the New York Times, be printed in the RECORD.

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

AMENDMENT FAVORED FOR LOWERING VOTING AGE

To the EDITOR:

As The Times has reported, the Justice Department opposes, as unconstitutional, the pending proposal to lower the voting age in national and state elections to 18 by statute.

As constitutional lawyers—some of whom favor and some of whom oppose lowering the voting age, and none of whom counts himself a knee-jerk partisan of all Justice Department positions—we believe the Department is right on this very important constitutional issue. Our reasons are these:

1. Within broad limits, the Constitution leaves states free to set qualifications for participation in national and state elections. The limits are these: Those qualified to vote for the most numerous branch of the state legislature must be permitted to vote for Representatives and Senators.

No would-be voter can be excluded from any election on grounds of race (the 15th Amendment) or sex (the 19th Amendment). And no state can impose a poll tax in any national election (the 24th Amendment) or, in any election, prescribe a voting qualification so invidious or irrational as to be a denial of the equal protection of the laws (Section 1 of the 14th Amendment).

2. Those who believe Congress can lower the voting age by statute argue in substance that Congress can declare that the 46 states with a minimum voting age of 21 are denying younger would-be voters the equal protection of the laws.

Reliance is placed on Katzenbach v. Morgan, where the Supreme Court sustained a Federal statute barring states from denying the vote to Americans of Puerto Rican origin literate in Spanish but not in English. Katzenbach v. Morgan makes sense as part of the main stream of 14th Amendment litigation, policing state restrictions on ethnic minorities. But it has little apparent application to a restriction affecting all young Americans in 46 states.

3. There is a further, and to us conclusive, reason why Katzenbach v. Morgan is unavailing: The long-ignored Section 2 of the 14th Amendment explicitly recognizes the age of 21 as a presumptive bench mark for entry into the franchise. It surpasses belief that the Constitution authorizes Congress to define the 14th Amendment's equal-protection clause so as to outlaw what the Amendment's next section approves.

A statute lowering the voting age would raise the expectations of ten million young Americans—expectations likely to be dashed by a judicial determination that the statute is unconstitutional. This lends point to the fact that when heretofore the nation decided upon a fundamental change in the composition of the electorate, the consensus was embodied, in permanent and unchallengeable form, in a constitutional amendment: One hundred years ago in the 15th Amendment, enfranchising blacks, was added to the Constitution.

Fifty years ago the 19th Amendment, enfranchising women, was added to the Constitution. If, in 1970, the nation is ready to welcome into the political process Americans who have reached the age of 18, Congress should, in fidelity to our constitutional traditions, submit to the states for ratification a new constitutional amendment embodying that new consensus.

ALEXANDER M. BICKEL.
CHARLES L. BLACK JR.
ROBERT H. BORK.
JOHN HART ELY.
LOUIS H. POLLAK.
EUGENE V. ROSTOW.

NEW HAVEN, *April 1, 1970.*

Mr. ALLOTT. Mr. President, I call this matter to the attention of the Senate because the position enunciated by these six professors of constitutional law is substantially the same position—in fact, it is the identical position which I took in voting against that section of the bill.

Without respect to whether or not one believes that a person of the age of 18 or down to 18 should be permitted to vote, it is a fact, as many of us feel very strongly, that it is an unconstitutional way to proceed in this matter. I think that Senators who felt as strongly as I and others felt about this matter have an obligation to express that in their vote, no matter how they may feel upon the particular subject matter which it attends.

HEARINGS OF SENATE SUBCOMMITTEE ON THE GENOCIDE CONVENTION: AN IMPORTANT STEP TOWARD FULFILLMENT OF THE IDEALS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, I am extremely pleased by Senator CHURCH'S

announcement that his special subcommitte of the Senate Foreign Relations Committee will hold hearings on the Genocide Convention.

Senate ratification of the Genocide Convention is of the greatest importance if international protection of human rights is to be realized. I am confident that these hearings will clearly establish that Senate action on this treaty is essential. I applaud the decision of Senator CHURCH to hold these hearings, and sincerely hope that the Genocide Convention receives the Senate's immediate attention.

With the prospects for Senate ratification of the Genocide Convention now appearing brighter, I would especially like to point to the significance of the universal declaration of human rights as a basis for much of the progress that has taken place in this area. Former Chief Justice Earl Warren cogently summarized the importance of the declaration in an address to the Conference on Continuing Action for Human Rights, held in December 1968. Mr. Warren hailed the declaration as a "foundation of a law for human rights for all mankind."

I ask unanimous consent that excerpts of the remarks of Mr. Warren to this conference, be printed in the RECORD.

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

The foundations of a law of human rights for all mankind are the U.N. Charter obligation to promote and protect human rights and the standards proclaimed in the Universal Declaration of Human Rights. This Declaration has already had a real impact on countries around the world. In speaking of the Universal Declaration Secretary General U Thant said recently: "It may safely be said . . . the Declaration has guided and inspired many statesmen and legislators. It has undoubtedly also helped the men, women and children for whom it had been proclaimed. Those who suffered from inequities, from prejudices, from humiliations, from fear and insecurity found in it a justification for their complaints and protests and additional grounds for their claims for redress."

Similarly Roy Wilkins said at the International Conference on Human Rights held at Teheran this year that "The vision of the Universal Declaration and our association in the United Nations' system have been helpful in expanding our sights." I believe that it is true that the Universal Declaration has enlarged our vision, but I believe even more firmly that it has only barely begun to play its role in the development of a universal society. It has a major role to play both here among us and abroad in the many countries which are contending with similar and even the same problems which we have faced over the last hundred years.

The Universal Declaration was also the starting point for a very significant attempt to develop a law of human rights to which countries could pledge themselves. The purpose of this was to withdraw the citizen to some extent—in the most fundamental aspects of his relationship to his government—from the potentially arbitrary actions of his government. As a result it was thought mankind would be benefited and governments would be deterred from despotic tendencies. The ultimate hope was that the individual countries would develop stable, democratic governments which would be mutually respecting and inclined to deal with international problems in a manner reflecting their internal lawful nature. . . .

And so in this 20th year of the Universal Declaration of Human Rights, we who have aligned ourselves with the movement for human rights have much to be thankful for. The movement toward that end is substantial; it is worldwide; and it is to be felt on every continent of the earth. So today we reassert our belief that human rights must be a matter of our continuing concern and we pledge our efforts toward the fulfillment of the promise of the Universal Declaration of Human Rights, the principles of which are basic to justice and peace.

Mr. PROXMIRE. I am happy to say that because President Nixon, Attorney General Mitchell, and Secretary of State Rogers are all committed to support of the Genocide Treaty, I think its chances are now better than they have ever been.

OIL AND VINEGAR

Mr. PROXMIRE. Mr. President, Erwin Knoll detailed the activities of the oil lobby in an article entitled "The Oil Lobby Is Not Depleted" in the March 8, 1970, issue of the New York Times Magazine.

Because the one thing the oil lobby cannot stand is exposure to public view, there was an immediate hue and cry about Mr. Knoll's "bias." Rather than attack Mr. Knoll's facts, Frank Ikard, president of the powerful American Petroleum Institute, wrote an emotional letter to the New York Times in rebuttal which, if my memory serves me correctly, appeared in the CONGRESSIONAL RECORD three times before it appeared in yesterday's New York Times.

I can think of no more fitting an answer than that supplied by Mr. Knoll to Mr. Ikard's emotional attack on his piece. I ask unanimous consent that Mr. Ikard's letter and Mr. Knoll's reply as they appeared in yesterday's New York Times be printed in the RECORD at this point.

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

OIL AND VINEGAR

To the EDITOR:

Your March 8 issue carried an article by Erwin Knoll attacking the so-called "oil lobby" ("The Oil Lobby Is Not Depleted"). It would take a reply fully as long as the original to do justice to the superficialities, misrepresentations and artful omissions in the article. However, I would like to cite a few examples:

1. A great deal is made of the alleged $5-billion "cost" of the oil import program to the public, but nowhere is it indicated that this is a matter very much in dispute. The United States Deaprtment of the Interior, for example, estimates that the real cost of the program—after taking all factors into account—is only about one-fifth the figure cited by Mr. Knoll, and points out that such a cost represents very inexpensive insurance for the military and economic security provided by the program.

2. Along the same lines, the article quotes at length from hostile testimony at last year's hearings on the import program. No mention whatever is made of the telling points made by many prominent witnesses at the same hearings in support of the program. As far as the reader could tell, there was no "other side" to the case.

3. Ironically, some of the Senators and Congressmen who are most vocal in condemning controls over oil imports are outspoken advocates of import restrictions on other commodities that are manufactured in their states. Thus, some argue forcefully, for example, for controls over dairy imports, while others favor tight import restrictions on shoes and textiles. Apparently, however, Mr. Knoll sees nothing inconsistent in this.

4. The article gives a distorted impression of a telegram sent to the chairman of the House Ways and Means Committee to the staff of the Cabinet Task Force on Oil Import Control. The key part of the telegram, as reported in the press, was: "If, at the same time Congress is reducing depletion allowances, it develops that imports of oil are increased, the combination of the two could be injurious to the development of further reserves in the U.S." Moreover, Mr. Knoll suggests that this telegram was an example of "pressure" on the task force; in fact, it was sent in response to an inquiry from the task force staff.

5. Mr. Knoll quotes liberally the arguments and statistics cited by opponents of import controls. But he ignores the fact that submissions to the Task Force by several of the Government departments and agencies most directly concerned contained impressive statistical support for the program. So did a letter sent to the President by 81 members of the House of Representatives, including the majority leader and the chairmen of eight committees, who opposed weakening the program on the ground that such action would jeopardize national security.

6. The author quotes figures from the First National City Bank of New York to try to build a case that oil profits are excessive, as compared with those of other industries. Ironically, the very same bank tabulation shows that the petroleum industry's rate of return on net worth—the true measure of profits—was 12.9 percent in 1968, compared with an all-manufacturing average of 13.1 percent. In fact, as far back as these statistics have been maintained by the bank, the petroleum industry's return on its investment has run slightly below the average for all manufacturing. (Incidentally, a reproduction of an oil industry advertisement accompanying the article was conveniently cropped one line above the place where this comparison of profits would have been shown.)

7. The article quotes a Congressional source to the effect that the American Petroleum Institute "has been a pace-and-precedent-setter . . . vigorously seeking to adapt its positions and attitudes to the wave of the future." We like to think this is true and is reflected in such actions as the allocation of more than $3,000,000 annually in institute funds to air- and water-pollution research. A.P.I.'s research program includes dozens of scientific projects at universities and research laboratories, with Government agencies participating in many of them. This being the case, we deeply resent the innuendo that there is something spurious about the program, especially since the author made no effort whatever to get the facts, which are readily available.

FRANK N. IKARD,
President, American Petroleum Institute.
NEW YORK.

Mr. Knoll replies: "Mr. Ikard's principal complaint about my article seems to be that it did not do what Mr. Ikard does so well—advance the oil industry's special pleading in behalf of its egregious privileges. In view of the American Petroleum Institute's prodigious efforts, I think Mr. Ikard is being unduly modest when he refers to 'the so-called "oil lobby."' Would he have readers believe that the lobby is a figment of my imagination?

"As for the specific points raised in Mr. Ikard's letter:

"The recently released report of President Nixon's task force on oil-import controls declared: 'In 1969, consumers paid about $5-billion more for oil products than they would have paid in the absence of restrictions. By 1980, the annual cost to consumers would approximate $8.4-billion.' The Office of Emergency Preparedness, which has been

given primary responsibility for coordinating the President's new Oil Policy Committee, estimated the 1969 cost of the quota system at $5.25-billion.

"It was the unanimous finding of the President's task force that 'the present import-control programs is not adequately responsive to present and future security considerations.' In testimony before a House subcommittee on March 9, Assistant Secretary of Defense Barry J. Shillito said: 'We firmly believe that oil-import controls can be gradually relaxed to permit increased oil imports, within the limits planned, without adversely affecting national security.'

"The 'hostile testimony' I quoted represented the expert judgment of independent economists. One of the industry's conceits is that only those persons who are on the payroll of an oil company or trade association are qualified to talk about oil issues. The 'many prominent witnesses' Mr. Ikard cites in support of the import program were, with very few exceptions, industry spokesmen.

"Mr. Ikard slides over the significant—and costly—difference between oil quotas and import tariffs. He is quite right about the inconsistent position of some legislators who oppose oil import controls but support other trade restrictions. This is a fine debating point for the oil lobbyists, but I fail to see how it strengthens the case for oil quotas.

"As I reported, the chairman of the most powerful legislative committee in the House warned the task-force staff against 'tinkering with the matter of oil imports.' Mr. Ikard is entitled to his judgment that this did not constitute pressure.

"My article made clear that the oil industry has devoted supporters within the executive and legislative branches of the Federal Government. The submissions to which Mr. Ikard refers were analyzed—and rejected—by staff experts and a majority of the members of the President's task force. The 81 Congressmen who expressed their support for the quota system were, without exception, representatives of oil-producing areas.

"The profit figures I cited were based on net sales. The 'true measure' preferred by Mr. Ikard—return on net worth—is peculiarly misleading when applied to the oil industry, since it obscures the important factor of cash flow, which includes not only net income but depletion and depreciation reserves. Thus, in 1968 the cash flow of oil companies totaled $9.6-billion, consisting of $5.8-billion in net income after taxes and $3.8-billion in depletion and depreciation reserves. This is equal to the assets of more than 60 per cent of all manufacturing corporations.

"It is gratifying to learn that the industry is allocating a few million dollars for research to counteract its many billions of dollars' worth of pollution and environmental damage. I wish Mr. Ikard were as forthcoming on other, unpublicized aspects of the American Petroleum Institute's budget.

"Mr. Ikard chooses not to address himself to the central theme of my articles—the pervasive and pernicious influence of oil in politics. He seems content to let my conclusions on this point stand, and so am I."

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON REAPPORTIONMENT OF AN APPROPRIATION

A letter from the Acting Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriations for certain departments and agencies, had been reapportioned on a basis which indicates the necessity for a supplemental estimate of appropriations, to the Committee on Appropriations.

PROPOSED LEGISLATION PROVIDING FOR THE REMOVAL OF SNOW AND ICE FROM THE PAVED SIDEWALKS OF THE DISTRICT OF COLUMBIA

A letter from the Assistant to the Commissioner, Government of the District of Columbia, transmitting a draft of proposed legislation to provide for the removal of snow and ice from the paved sidewalks of the District of Columbia (with an accompanying paper); to the Committee on the District of Columbia.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

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

A concurrent resolution of the Legislature of the State of South Carolina; to the Committee on Commerce:

"RESOLUTION

"A concurrent resolution to memorialize Congress to enact suitable legislation to ensure that the United States Coast Guard Reserve shall continue in operation

"Whereas, there is at this time every indication that the United States Coast Guard Reserve shall in the near future be discontinued; and

"Whereas, the Coast Guard Reserve has contributed greatly to the military preparedness and the protection of the coastal areas of this country; and

"Whereas, in the event of an emergency or national disaster it would still add greatly to the protection of our coastal areas. Now, therefore,

"Be it resolved by the House of Representatives, the Senate concurring:

"That Congress be memorialized to enact without delay suitable legislation which shall ensure the continued operation of the United States Coast Guard Reserve.

"Be it further resolved that copies of this resolution be forwarded to the President of the United States, to each United States Senator from South Carolina, each member of the House of Representatives of Congress from South Carolina, the Senate of the United States and the House of Representatives of the United States.

"State of South Carolina, In the House of Representatives, Columbia, South Carolina, March 31st, 1970.

"I hereby certify that the foregoing is a true and correct copy of a Resolution passed in the House of Representatives and concurred in by the Senate.

"INEZ WATSON,
"Clerk of the House."

A resolution, signed by the Governor and certain other officials of the State of Louisiana, praying for the enactment of legislation to effectuate the transition to a racially nondiscriminatory school system, while at the same time clearly taking into account and protecting the inalienable right of every American child to attend the school of his choice and forcing no child to attend any school for the purpose of achieving integration of the races in the schools; to the Committee on Labor and Public Welfare.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

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

S. 2846. A bill to assist the States in developing a plan for the provision of comprehensive services to persons affected by mental retardation and other developmental disabilities originating in childhood, to assist the States in the provision of such services in accordance with such plan, to assist in the construction of facilities to provide the services needed to carry out such plan, and for other purposes (Rept. No. 91-757).

EXECUTIVE REPORT OF A COMMITTEE

The following favorable report of a nomination was submitted:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs:

Fred J. Russell, of California, to be Under Secretary of the Interior.

BILLS AND JOINT RESOLUTIONS INTRODUCED OR REPORTED

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

By Mr. SCOTT:

S. 3675. A bill for the relief of Ming Chang; and

S. 3676. A bill for the relief of Ursula Sophia Luczyk; to the Committee on the Judiciary.

By Mr. MUSKIE (for himself, Mr. BAYH, Mr. BOGGS, Mr. EAGLETON, Mr. MONTOYA, Mr. RANDOLPH, and Mr. SPONG):

S. 3677. A bill to establish an independent agency to coordinate the management of programs established to protect and enhance the quality of the environment through the control and abatement of air and water pollution, solid waste contamination, and through other related activities; to the Committee on Government Operations.

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

By Mr. PROXMIRE (for himself, Mr. BROOKE, and Mr. WILLIAMS of New Jersey):

S. 3678. A bill to amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in U.S. currency be reported to the Department of the Treasury, and for other purposes; to the Committee on Banking and Currency.

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

By Mr. MOSS:

S. 3679. A bill for the relief of Edwardo Valle, Theresa Valle, and Emma Valle; to the Committee on the Judiciary.

By Mr. TYDINGS (by request):

S. 3680. A bill relating to the rental of space for the accommodation of District of Columbia agencies and activities, and for other purposes; and

S. 3681. A bill to authorize the Commissioner of the District of Columbia to lease airspace above and below freeway rights-of-way within the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

By Mr. JACKSON (for himself and Mr. ALLOTT) (by request):

S.J. Res. 189. A joint resolution to authorize an ex gratia contribution to certain inhabitants of the Trust Territory of the Pacific Islands who suffered damages during the Second World War, and to establish a Micronesian Claims Commission; to the Committee on Interior and Insular Affairs.

(The remarks of Mr. JACKSON when he introduced the joint resolution appear later in the RECORD under the appropriate heading.)

By Mr. JAVITS:

S.J. Res. 190. A joint resolution to provide for the settlement of the labor dispute be-

tween certain carriers by railroad and certain of their employees; placed on the calendar.

(The remarks of Mr. JAVITS when he reported the joint resolution appear earlier in the RECORD under the appropriate heading.)

S. 3677—INTRODUCTION OF ENVIRONMENTAL QUALITY ADMINISTRATION ACT OF 1970

Mr. MUSKIE. Mr. President, on behalf of myself and Senators BAYH, BOGGS, EAGLETON, MONTOYA, RANDOLPH, and SPONG, I introduce the Environmental Quality Administration Act of 1970.

Few Federal programs and executive agencies have undergone the constant change in a relatively short period of time which has marked the Federal effort to control air, water, and land pollution. And few Federal "wars" are being fought with as much room for improvement in effectiveness and efficiency.

Without a thorough reorganization of the executive branch, the pursuit of environmental quality will never achieve a preeminent position in the Federal Government. And if policies for the protection and enhancement of the environment do not dominate in the future, we will never be able to correct the mistakes of the past.

I am not the first to note the way in which pollution control and abatement protection programs are scattered through several departments and agencies.

The Federal Water Pollution Control Administration is housed in the Department of the Interior. The Air Pollution Control Administration is part of the consumer protection and environmental health services program in the Department of Health, Education, and Welfare, along with the Environmental Control Administration.

The Congress has assigned responsibilities for pesticides control to the Department of Agriculture, which also promotes the use of pesticides for increased agricultural production. The Atomic Energy Commission supervises radiological protection from the uses of nuclear energy, which the Commission promotes. The Corps of Engineers is responsible for control of most polluted industrial discharges into the navigable waters, which the corps dredges and into which it authorizes the dumping of spoil. Some responsibilities for solid waste programs are lodged in the Department of the Interior's Bureau of Mines, which has as its primary mission the promotion of mineral resource development and use.

We have also given authority to the Department of Housing and Urban Development and the Farmers Home Administration in the Department of Agriculture to make grants and loans for the construction of sewage systems.

Such proliferation of activities and overlap of responsibilities are not unique to environmental protection programs in the Federal Government. But, increasingly, such proliferation and overlap are intolerable because of their adverse effects on our efforts to improve the environment.

The time has come for us to create an independent, watchdog agency to exercise the regulatory functions associated with environmental protection. Bureaus, divisions, and administrations housed in separate departments cannot marshal the resources required to combat the interlocking assaults on our air, water, and land resources. They have neither the status nor the manpower to deal with one of the fundamental and insidious threats to our society.

There are those who favor the creation of a Department of Natural Resources or a Department of Conservation to handle such functions. Whatever the merits of such a department to serve other purposes, such a move for these purposes would be a mistake for several important reasons.

First, it would ignore the fact that our environmental protection problem involves competition in the use of resources—a competition which exists today in the Department of the Interior and would exist in any department which must develop resources for public use.

The Department of Transportation is not the agency to determine air pollution control requirements for the transportation industry. The Atomic Energy Commission is not the agency to establish water pollution control requirements for nuclear powerplants. The agency which sets environmental quality standards must have only one goal: protection of this and future generations against changes in the natural environment which adversely affect the quality of life.

The problem of environmental pollution will not be solved by picking up the rhetoric of antipollution concerns and then assigning the control of pollution to those responsible for the support or promotion of pollution activities.

Second, we must recognize that environmental protection is not the same as conservation, although sound conservation practices should enhance the environment. For example, some conservation projects developed and promoted by the Soil Conservation Service, the Bureau of Reclamation, or the Corps of Engineers are not consistent with broader societal needs and the quality of life. Our conservation projects in south-central Florida, for instance, have seriously threatened the ecology of the Everglades.

Finally, the traditional concerns of conservation activities have been too closely identified with the protection of natural resources separated from the population centers. Our primary concern must be man where he lives and the interrelationship between the natural environment and his manmade environments.

An independent agency, charged with responsibility for developing and implementing Federal environmental quality standards, supporting basic research on problems of environmental quality, stimulating and supporting research on control techniques, and providing technical assistance to State, interstate, and local agencies, would reflect the national commitment we need if we are to avoid ecological disaster.

The establishment of such an agency must be backed up by a commitment of resources to eliminate the discharge of municipal and industrial wastes into our public waterways, to drastic reduction in air pollution emissions from stationary sources and moving vehicles, to prevent the distribution of materials and products which threaten man and other species, and to insure the reconstruction and development of our metropolitan areas as places worth living in.

The commitment of resources means money and manpower, and hard decisions on where to allocate those resources and where not to allocate them. It means making environmental protection and improvement more than a conventional political issue. And it means placing authority for these programs in the right place.

The Environmental Quality Administration would mark an important change in our commitment to environmental quality. It would translate our concern into effective action, our financial commitments into results, and our determination into strong enforcement.

I ask unanimous consent that the text of the bill and a summary of its provisions be printed in the RECORD at this point.

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

The bill (S. 3677) to establish an independent agency to coordinate the management of programs established to protect and enhance the quality of the environment through the control and abatement of air and water pollution, solid waste contamination, and through other related activities, introduced by Mr. MUSKIE (for himself and other Senators), was received, read twice by its title, referred to the Committee on Government Operations, and ordered to be printed in the RECORD, as follows:

S. 3677

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that—

(a) the deterioration of the environment threatens the health and welfare of man and degrades the quality of life;

(b) air, water and land pollution disrupts production, jeopardizes the economy and impedes the growth of the Nation;

(c) our technology has made it possible to increase agricultural and industrial production, meet consumer demands, and explore outer space, but we have not used our technology adequately to protect the resources of our environment;

(d) the protection and enhancement of the environment requires effective coordination and management of existing and future programs providing for the control and prevention of air and water pollution, the disposal of solid wastes and the conservation of natural resources; and,

(e) it is therefore the purpose of this Act to protect present and future generations of Americans against the adverse effects of environmental changes through the establishment of an independent agency—

(1) to develop and promote policies for the protection and enhancement of the environment;

(2) to develop criteria which identify the effects of pollutants and other environmental changes on the public health and welfare;

(3) to develop and enforce standards to protect the public health and welfare from

the short- and long-term adverse effects of environmental changes; and,

(4) to develop the technical capacity to implement such policies and standards.

responsible for the development, administration, and enforcement of comprehensive national policies, programs, and activities authorized by Act of Congress to improve the quality of the American environment and to maintain that improved quality.

SEC. 2. (a) The Administration shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. In addition to the Administrator there shall be five deputy administrators, appointed by the President, by and with the advice and consent of the Senate, and designated at the time of appointment as follows: the Deputy Administrator for Research and Development; the Deputy Administrator for Enforcement; the Deputy Administrator for Standards Development and Intergovernmental Coordination Program Planning; the Deputy Administrator for Operations and Grants; and the Deputy Administrator for Public Information. Each deputy administrator (according to such order as the Administrator shall prescribe) shall act for, and exercise the powers of, the Administrator during his absence or disability. The Administrator shall prescribe the functions and duties of each deputy administrator consistent with his designation and such additional functions as the Administrator may from time to time prescribe. The Administrator and the deputy administrators may delegate any of their functions to, or otherwise authorize their performance by, an officer or employee of, or assigned or detailed to, the Administration.

(b) The Administrator is authorized to appoint and fix the compensation of such officers and employees, and prescribe their functions and duties, as may be necessary to carry out the provisions of this Act.

(c) The Administrator may obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code.

(d) Subchapter II of chapter 53 of title 5, United States Code (relating to Executive Schedule pay rates), is amended as follows:

(1) Section 5313 is amended by adding at the end thereof the following:

"(20) Administrator, Environmental Quality Administration."

(2) Section 5314 is amended by adding at the end thereof the following:

"(55) Deputy Administrators, Environment Control Administration (5)."

SEC. 3. (a) There are hereby transferred to the Administrator all functions of the Secretary of Health, Education, and Welfare with respect to, and being administered by him through—

(1) the National Air Pollution Control Administration;

(2) the Bureau of Radiological Health;

(3) the Bureau of Solid Waste Management; and

(4) the Bureau of Water Hygiene.

(b) There are hereby transferred to the Administrator all the functions of the Secretary of Commerce with respect to, and being administered by him through, the Environmental Science Services Administration.

(c) There are hereby transferred to the Administrator all functions of the Secretary of the Interior with respect to, and being administered by him through—

(1) the Federal Water Pollution Control Administration; and

(2) the Water Resources Division of the Geological Survey.

(d) There are hereby transferred to the Administrator all functions of the Secretary of Agriculture with respect to, and being administered by him through—

(1) the Pesticide Control Board pursuant to the Federal Insecticide Fungicide, and Rodenticide Act, (7 U.S.C. 135);

(2) the Farmers Home Administration, insofar as such functions relate to the water and sewer facilities assistance program.

(e) There are hereby transferred to the Administrator all functions from the Department of Housing and Urban Development (with respect to, and being administered by him through) the Community Resource Development Administration, insofar as such functions relate to the water and sewer grant program authorized by section 701 of the Housing Act of 1954.

(f) There are hereby transferred to the Administrator all functions of the Department of Transportation with respect to, and being administered by him through the Office of Noise Abatement;

(g) Within 180 days after the effective date of this Act, the President may transfer to the Administrator any function of any other agency or office, or part of any agency or office, in the executive branch of the United States Government if the President determines that such function relates primarily to functions transferred to the Administrator by subsection (a) through (f) of this section.

SEC. 4. (a) All personnel, assets, liabilities, contracts, property, and records, as are determined by the Director of the Bureau of the Budget to be employed, held, or used primarily in connection with any function transferred under the provisions of section 4 of this Act, are hereby transferred to the Administrator. Except as provided in subsection (b) of this section, personnel engaged in functions transferred under this title shall be transferred in accordance with applicable laws and regulations relating to transfer of functions and personnel.

(b) Personnel not under section 5337 of title 5, United States Code, shall be transferred without reduction in classification or compensation for 1 year after such transfer.

(c) In any case where all of the functions of any agency or office are transferred pursuant to this Act, such agency or office shall lapse.

SEC. 5. (a) The Administrator is authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such advisory committees as may be appropriate for the purpose of consultation with, and advice to, the administration in the performance of its functions. Members of such committees, other than those regularly employed by the United States Government, while attending meetings of such committees or otherwise serving at the request of the Administrator, may be paid compensation at rates not exceeding those authorized to be paid experts and consultants under section 3109 of such title, and while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title, for persons in the Government service employed intermittently.

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

(1) to adopt, alter, and use a seal;

(2) to adopt, amend, and repeal rules and regulations governing the manner of its operations, organization, and personnel, and the performance of the powers and duties granted to or imposed upon it by law;

(3) to acquire by purchase, lease, condemnation, or in any other lawful manner, any real or personal property, tangible or intangible, or any interest therein; to hold, maintain, use, and operate the same; to provide services in connection therewith, and to charge therefor; and to sell, lease, or otherwise dispose of the same at such time, in such manner, and to the extent deemed necessary or appropriate;

(4) to construct, operate, lease, and maintain buildings, facilities, and other improvements as may be necessary;

(5) to accept gifts or donations of services, money, or property, real, personal, or mixed, tangible or intangible;

(6) to enter into contracts or other arrangements or modifications thereof, with any government, any agency or department of the United States, or with any person, firm, association, or corporation, and such contracts or other arrangements, or modifications thereof, may be entered into without legal consideration, without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended, (41 U.S.C. 5);

(7) to make advance, progress, and other payments which the Administrator deems necessary under this Act without regard to the provisions of section 3648 of the Revised Statutes, as amended (31 U.S.C. 529); and

(8) to take such action as may be necessary to carry out the provisions of this Act.

SEC. 6. The Administrator shall, as soon as practicable after the end of each fiscal year, make a report in writing to the President and the Congress on the activities of the Administration during the preceding fiscal year.

SEC. 7. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this Act, by (A) any agency or office, or part thereof, any functions of which are transferred by this Act, or (B) any court of competent jurisdiction; and

(2) which are in effect at the time this Act takes effect; shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Administrator, by any court of competent jurisdiction, or by operation of law.

(b) The provisions of this Act shall not affect any proceedings pending at the time this section takes effect before any agency or office, or part thereof, functions of which are transferred by this Act, except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Administration. Such proceedings, to the extent they do not relate to functions so transferred, shall be continued before the agency or office, or part thereof, before which they were pending at the time of such transfer. In either case orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Administrator, by a court of competent jurisdiction, or by operation of law.

(c)(1) Except as provided in paragraph (2)—

(A) the provisions of this Act shall not affect suits commenced prior to the date this section takes effect; and

(B) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted.

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any agency or office, or part thereof, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any agency or office, or part thereof, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act. Causes of actions, suits, or other proceedings may be asserted by or against the United States or such official of the Administration as may be appropriate and, in any litigation pending when this section takes effect, the court may at any time, on its own motion

or that of any party, enter an order which will give effect to the provisions of this subsection.

(2) If before the date on which this Act takes effect, any agency or office, or officer thereof in his official capacity, is a party to a suit and under this Act—

(A) such agency or office, or any part thereof, is transferred to the Administrator; or

(B) any function of such agency, office, or part thereof, or officer is transferred to the Administrator;

then such suit shall be continued by the Administrator (except in the case of a suit not involving functions transferred to the Administrator, in which case the suit shall be continued by the agency, office, or part thereof, or officer which was a party to the suit prior to the effective date of this Act).

(d) With respect to any function transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to the agency, office, or part thereof, or officer so transferred or functions of which are so transferred shall be deemed to mean the Administration or Administrator, as appropriate, in which such function is vested pursuant to this Act and such other Federal law shall hereafter be administered by such Administration or Administrator to the same extent as such law was administered by such former agency, office, or part thereof, or officer.

(e) This Act shall not have the effect of releasing or extinguishing any criminal prosecution penalty, forfeiture, or liability incurred as a result of any function transferred under this Act.

(f) Orders and actions of the Administrator in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the agency or office, or part thereof, or officer exercising such functions immediately preceding their transfer. Any statutory requirements relating to notice hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Administration.

(g) In the exercise of the functions transferred under this Act, the Administrator shall have the same authority as that vested in the agency or office, or part thereof, exercising such functions immediately preceding their transfer, and his actions in exercising such functions shall have the same force and effect as when exercised by such agency or office, or part thereof.

SEC. 8. (a) This Act, other than this section, shall take effect 90 days after the enactment of this Act, or on such prior date after enactment of this Act as the President shall prescribe and publish in the Federal Register.

(b) Notwithstanding subsection (a), any of the officers provided for in subsection (a) or (b) of section 3 of this Act may be appointed in the manner provided for in this Act, at any time after the date of enactment of this Act. Such officers shall be compensated from the date they first take office, at the rates provided for in this Act. Such compensation and related expenses of their offices shall be paid from funds available for the functions to be transferred to the Administrator pursuant to this Act.

The summary, presented by Mr. MUSKIE, is as follows:

ENVIRONMENTAL QUALITY ADMINISTRATION ACT

Section 1—Short title, the Environmental Quality Administration Act of 1970.

Section 2—Findings and declaration of purposes.

Section 3—Appointment of Administrator by the President, with the advice and consent of the Senate; appointment of Deputy Administrators by the President with the advice and consent of the Senate, for Research and Development, for Enforcement, for Standards Development and Intergovernmental Coordination Program Planning, for Operations and Grants, and for Public Information.

Section 4—The functions of the following agencies and programs are transferred to the Administration: the National Air Pollution Control Administration, the Bureau of Radiological Health, the Bureau of Solid Waste Management, the Bureau of Water Hygiene, the Environmental Science Services Administration, the Federal Water Pollution Control Administration, the Water Resources Division of the Geological Survey, the water and sewers facilities assistance program of the Farmers Home Administration, the Pesticide Control Board, the water and sewer grant program of the Community Resource Development Administration, the Office of Noise Abatement in the Department of Transportation, and any others determined by the President.

Section 5—Transfer of personnel, assets, liabilities, contracts, property and records.

Section 6—Appointment of advisory committees by the Administrator; powers of the Administration.

Section 7—Report by the Administrator to the President and the Congress each fiscal year.

Section 8—Continued effect of actions of agencies transferred to the Administration.

Section 9—Effective date of act.

S. 3678—INTRODUCTION OF A BILL TO BRING SECRET FOREIGN BANK ACCOUNTS UNDER GREATER PUBLIC SCRUTINY

Mr. PROXMIRE. Mr. President, I introduce, for appropriate reference, a bill to bring secret foreign bank accounts under greater public scrutiny. There are a number of very legitimate reasons for U.S. citizens to maintain foreign bank accounts and I do not question this right. At the same time our law-enforcement authorities have been hamstrung by the veil of secrecy surrounding foreign bank accounts. Efforts to track down violations of our various tax and securities laws have been stymied whenever the trail leads to a foreign secret bank account. Our law-enforcement authorities need additional tools to trace the international flow of funds into and out of the United States without impairing the international mobility of capital or infringing upon the sovereign rights of foreign countries. I believe the legislation I have introduced is consistent with these goals.

There is widespread agreement on the need for legislation to control secret foreign bank accounts. The House Committee on Banking and Currency has held lengthy hearings on the subject in which a number of abuses were identified. The former U.S. attorney for the southern district of New York, Robert Morganthau, argued strongly for corrective legislation. The Department of Justice and Treasury are also agreed on the need for greater statutory authority. Likewise, the New York banking community recognizes the serious problems involved and supports efforts to prevent the use of foreign banking facilities for illegal purposes. While there has been some disagreement over methods, the end objectives seem beyond dispute. Given this agreement, I am confident a suitable statute can be enacted this year.

WHAT THE BILL DOES

My bill is similar to a recent measure approved by the House Banking and Currency Committee, but it goes beyond the House bill in two major respects:

First, it prevents U.S. broker-dealers from effecting transactions in U.S. securities on behalf of a foreign bank or broker unless the foreign bank or broker discloses the person for whom it is acting or certifies that it is not acting for a U.S. citizen or resident. This provision should remove the veil of secrecy surrounding foreign stock transactions.

Second, my bill requires U.S. citizens who place stock orders through foreign banks or brokers to give the foreign bank or broker permission to disclose the person's identity to the U.S. broker-dealer with whom the transaction is ultimately effected. This provision will enable foreign banks or brokers to disclose a U.S. citizen's identity without violating their country's secrecy laws.

In addition, my bill contains provisions similar to those agreed to by the House Banking and Currency Committee. These include the following:

First, domestic financial institutions are required to maintain records of checks and other financial transactions under Treasury Department regulations;

Second, unusual or sizable deposits or withdrawals of U.S. currency would have to be reported by the financial institution and the individual making the deposit or withdrawal;

Third, movements of U.S. currency into or out of the country would have to be reported when they exceed $5,000 on any one occasion or $10,000 in any 1 year;

Fourth, individuals who have transactions with foreign financial agencies would have to report on those transactions; and

Fifth, the penalties for violating the margin requirements on securities loans would be extended to the borrower in order to prevent circumvention by a foreign lender.

NEED FOR LEGISLATION

These measures plus the two securities provisions I have recommended will go a long way toward correcting the serious abuses associated with the use of foreign bank accounts. These abuses include the following: Avoidance of income taxes on capital gains resulting from securities transactions; illegal manipulation of securities markets; violation of insider trading regulations; diversion of illegal money to foreign havens; circumvention of the Federal Reserve Board's margin requirements; and illegal takeover of U.S. industries by persons unknown to U.S. authorities.

Action on secret foreign bank accounts is essential in view of the fact that the volume of U.S. stock transactions initiated by foreigners is growing much faster than the volume of domestic transactions. For example, in 1964, foreign stock transactions totaled $6 billion or about 5 percent of the total volume on the New York Stock Exchange. By

1968, foreign stock transactions jumped to nearly $24 billion, or about 8 percent of the total volume on the New York Stock Exchange.

A surprisingly high percentage of foreign stock transactions originates in Switzerland whose banks are able to place securities orders in the United States without revealing the parties for whom they are acting. In 1964, over 32 percent of all foreign stock transactions in the United States originated in Switzerland; by 1968, the percentage had climbed to 37 percent. Nearly $9 billion in stock purchases or sales in 1968 were placed by Swiss banks or brokers—a truly amazing figure when one considers the size of Switzerland.

No one knows, of course, how much of the $9 billion in stock transactions was on behalf of U.S. citizens or whether any of those transactions involve violations of U.S. law. Full disclosure should provide the answer and I am hopeful that this goal can be achieved with the legislation I have introduced.

IMPACT ON FOREIGN BANKS

I suspect that there may be some objection to this legislation and particularly to the foreign bank disclosure requirement as an unwarranted attempt by the United States to extend its laws beyond our territorial boundaries. Some might go so far as to argue that foreign investments in the United States would be curtailed and that our balance of payments would be adversely affected. All of these criticisms are unfounded for the following reasons:

First, the legislation does not infringe upon foreign sovereignty; it is directed toward the U.S. broker-dealer who accepts a stock order from a foreign bank. It merely requires the broker-dealer know for whom it is really acting when it accepts an order from a foreign bank or other financial agency. The "know your customer" rule is a long-established precedent in the securities industry and can even be found in the rules of the New York Stock Exchange.

The legislation does not directly tell a foreign bank it must reveal its customer. It does, however, prohibit U.S. brokers from effecting orders on behalf of foreign banks unless the bank discloses its customer or certifies that it is not acting for a U.S. citizen. Surely the United States has a right to regulate the conduct of its own broker-dealers and its own securities markets and to condition access to those markets by foreign banks. If a foreign bank wants to have the benefit of participating in our securities markets, why should it not play by the same rules applicable to domestic securities dealers when it is acting for a U.S. citizen?

Second, the legislation would not affect investment by foreigners in U.S. securities. A foreign bank need not disclose the identity of its foreign customer if it certifies that it is not acting on behalf of a U.S. citizen. If a foreigner wishes to purchase U.S. securities through a foreign bank or broker without disclosing his identity he could continue to do so. Thus, there is no need for foreign investment to be curtailed.

Third, the balance of payments would not be adversely affected. As I have just indicated, there is no reason for foreigners to stop purchasing U.S. securities. Disclosure might, of course, curtail certain illegitimate stock transactions by U.S. citizens using a secret foreign bank account. But these are the very transactions we want to stop. Since the money originates in the United States to begin with, there is no net effect on the balance of payments.

Fourth, confidence in U.S. financial markets would not be undermined. Just the opposite result is likely to occur. Greater disclosure of foreign stock transactions should make it more difficult for people to manipulate our securities markets. Public confidence at home and abroad in the integrity of these markets should be enhanced and not diminished.

Fifth, the legislation does not put pressure on a foreign bank to violate its own secrecy laws. If it is acting for a U.S. citizen, that citizen would be required by the legislation to waive his secrecy rights. The foreign bank would thus have no legal obstacle which would prevent it from disclosing the U.S. citizen's identity to the U.S. broker who places the order in the U.S. securities market.

BANK RECORDKEEPING

Title I of the bill primarily affects domestic banks by requiring the maintenance of certain records of financial transactions and the filing of reports. There is certainly no intention on my part to bury commercial banks under an avalanche of additional paperwork. For that reason, the Secretary of the Treasury is given broad and flexible authority to issue rules and regulations and to exempt any class of transactions from the requirements of the bill.

There has been considerable discussion on whether banks need to maintain photocopys of all checks drawn on them. I understand that most banks make copies of checks anyway as a matter of routine business procedure although some of the larger New York banks have discontinued the practice. Records of checks are highly important to law-enforcement agencies in tracing the flow of transactions and it is certainly desirable that the banks maintain as complete a set of records as possible. Nonetheless, the expense involved might outweigh the potential benefit and for this reason, the Secretary of the Treasury is given full authority to exempt certain classes of checks from the photocopy requirement.

CURRENCY MOVEMENTS

Chapters 2 and 3 of title II require reports to be filed on certain movements of U.S. currency. The Secretary of the Treasury is given broad authority to require reports on unusual deposits or withdrawals of U.S. currency and of movements of currency into and out of the country. The main purpose of these provisions is to record the movements of U.S. currency from illegal enterprises into secret foreign bank accounts. Any international movement of currency of over $5,000 which has not been reported is subject to forfeiture if uncovered by U.S. authorities.

The records of law-enforcement agencies show a clear pattern of currency shipments by organized crime to overseas bank accounts. Regular couriers are frequently employed to transfer ill-gotten cash to numbered accounts in foreign banks. No amount of legislation can completely stop all of this illegal traffic. Nevertheless, the possibility of forfeiture if discovered should serve as a powerful deterrent.

The Secretary of the Treasury is given adequate authority to exempt legitimate classes of transactions from these requirements so as not to unduly burden international commerce.

REPORTS BY INDIVIDUALS

Chapter 4 of title II requires the filing of certain reports by individuals who have transactions or maintain relationships with foreign financial agencies. The language is broad enough to enable the Secretary of the Treasury to include a question on income tax returns asking whether the person has an account in a foreign bank. In addition, it is expected that those who have accounts in overseas banks will be required to file periodic reports on the status of those accounts.

It may be argued that such a provision will not be observed by a U.S. citizen whose main purpose in maintaining a foreign bank account is already associated with an illegal act—for example, the nonpayment of income taxes. According to this view, one more law violation is not likely to constitute a significant deterrent.

This argument fails to recognize that it is much easier for law-enforcement authorities to prove a failure to report a foreign bank account than it is to prove any substantive violations of law associated with the use of that account. Thus, the reporting requirement under chapter 4 constitutes another valuable weapon in the arsenal of law-enforcement agencies.

MARGIN ACCOUNTS

Title III of the bill extends the penalties for violating the Federal Reserve Board's margin requirements to the U.S. borrower. As of now, the penalties only apply to domestic lenders. Hence a U.S. citizen can easily circumvent the margin requirements by borrowing from a foreign lender. He is then free to speculate in the securities market with considerably more borrowed funds than would be possible if he borrowed at home.

The ready availability of foreign bank accounts, the ability to borrow on margin and effect stock transactions through these accounts, and the growing sophistication of U.S. investors all combine to render the Federal Reserve Board's margin requirements increasingly meaningless. The same type of excessive stock speculation on borrowed funds which led to the 1929 stock market collapse is becoming more and more possible through the use of secret foreign bank accounts. Prompt action is needed to preserve the safety of our financial markets.

Mr. President, I am hopeful that legislation on foreign bank accounts can be enacted into law this year. Millions of hardworking Americans who pay the bulk of our country's taxes are being swindled and cheated when the slick operator can avoid or reduce his taxes

by concealing his income through secret foreign bank accounts. Simple justice and equity demand prompt action.

The VICE PRESIDENT. The bill will be received and appropriately referred.

The bill (S. 3678) to amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in U.S. currency be reported to the Department of the Treasury, and for other purposes, introduced by Mr. PROXMIRE (for himself, Mr. BROOKE, and Mr. WILLIAMS of New Jersey), was received, read twice by its title, and referred to the Committee on Banking and Currency.

REGULATION OF TRANSACTIONS WITH FOREIGN BANKS

Mr. BROOKE. Mr. President, I rise today to cosponsor a bill which my distinguished colleague from Wisconsin, Senator PROXMIRE, has introduced concerning the use of foreign bank accounts to circumvent domestic laws. More specifically, these accounts have been used to avoid the payment of income taxes on capital gains resulting from securities transactions; to engage in illegal manipulation of the securities markets; to violate insider trading regulations involving the purchase and sale of securities; and to circumvent established margin requirements.

This legislation is vitally needed if we are to insure that domestic laws are not circumvented. The evidentiary problems which presently exist with respect to prosecuting offenders has prevented law-enforcement officials from curtailing illegal activities. The Proxmire bill requires full disclosure of the principals in any securities transaction executed through a broker-dealer by a foreign bank or broker on behalf of U.S. citizens. In addition, the bill requires financial institutions to maintain records of checks and other financial transactions where such records may have a high degree of usefulness in criminal, tax, or regulatory investigations. It should be noted, however, that the Secretary of the Treasury is vested with authority to prescribe the types of records which shall be required and therefore excessive recordkeeping requirements will be avoided.

The bill further requires financial institutions or the individuals involved to report unusual or sizable deposits or withdrawals of U.S. currency and to report transactions with foreign financial agencies.

I am confident that legislation similar to that introduced today will be enacted this session of the Congress. Inasmuch as the House of Representatives has already passed a similar bill—except with respect to disclosure requirements—Senate action on this legislation is vital.

SENATE JOINT RESOLUTION 189—INTRODUCTION OF A JOINT RESOLUTION TO AUTHORIZE AN EX GRATIA CONTRIBUTION TO CERTAIN INHABITANTS OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS

Mr. JACKSON. Mr. President, for myself and the senior Senator from Colorado (Mr. ALLOTT), by request, I introduce, for appropriate reference, a joint resolution, to authorize an ex gratia contribution to certain inhabitants of the Trust Territory of the Pacific Islands who suffered damages during the Second World War, and to establish a Micronesian Claims Commission.

This proposed legislation has as its principal purpose the authorization of a $5 million appropriation to be used to satisfy claims of Micronesians stemming from World War II activities in what is now the Trust Territory of the Pacific Islands.

I ask unanimous consent that the text of the letter from the Secretary of the Interior asking that this legislation be introduced be printed following my remarks, together with the text of the joint resolution.

The VICE PRESIDENT. The joint resolution will be received and appropriately referred; and, without objection, the joint resolution and letter will be printed in the RECORD.

The Joint resolution (S.J. Res. 189) to authorize an ex gratia contribution to certain inhabitants of the Trust Territory of the Pacific Islands who suffered damages during the Second World War, and to establish a Micronesian Claims Commission, introduced by Mr. JACKSON (for himself and Mr. ALLOTT), by request, was received, read twice by its title, referred to the Committee on Interior and Insular Affairs, and ordered to be printed in the RECORD, as follows:

S.J. RES. 189

Whereas certain Micronesian inhabitants of the Trust Territory of the Pacific Islands, formerly under League of Nations Mandate to Japan, suffered from the hostilities of the Second World War;

Whereas the United States, while not liable for wartime suffering of the Micronesians, has responsibility for the welfare of the Micronesian people as the Administering Authority for the Trust Territory of the Pacific Islands;

Whereas the Governments of Japan and the United States entered into an agreement on April 18, 1969, to contribute ex gratia the equivalent of $10,000,000 to certain Micronesian inhabitants of the Trust Territory of the Pacific Islands in view of the suffering caused by the hostilities of the Second World War, each Government contributing the equivalent of $5,000,000, Japan's contribution to take the form of products and services;

Whereas payment of these ex gratia contributions to certain Micronesian inhabitants of the Trust Territory of the Pacific Islands will meet a long-standing Micronesian grievance and will promote the welfare of the Micronesian people: Therefore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) the United States should make an ex gratia contribution of $5,000,000 matching an equivalent contribution of the Government of Japan, to Micronesian inhabitants of the Trust Territory of the Pacific Islands who are determined by the Micronesian Claims Commission to be meritorious claimants, in particular amounts to be awarded by the Micronesian Claims Commission, and that the High Commissioner of the Trust Territory of the Pacific Islands, hereinafter referred to as the High Commissioner, or his designee, shall pay to said Micronesian claimants as soon as possible following his receipt of the final report of the Micronesian Claims Commission on the claims allowed, such amounts as are finally certified pursuant to section 4 hereof.

(b) A "Micronesian inhabitant of the Trust Territory of the Pacific Islands" is defined for the purposes of this joint resolution as a person who:

(1) became a citizen of the Trust Territory of the Pacific Islands on July 18, 1947, and who remains a citizen as of the date of filing a claim; or

(2) if then living, would have been eligible for citizenship on July 18, 1947; or

(3) is the successor, heir or assign of a person eligible under subsections (1) or (2) and who is a citizen of the Trust Territory of the Pacific Islands as of the date of filing a claim.

SEC. 2. (a) There is hereby authorized to be appropriated to the Trust Territory of the Pacific Islands $5,000,000, in addition to the normal budgetary expenditures for the Trust Territory of the Pacific Islands and in addition to the appropriations authorized by section 2 of the Act of June 30, 1954, as amended, to be paid into a "Micronesian Claims Fund". The High Commissioner is hereby authorized to create and manage said Micronesian Claims Fund.

(b) Funds approximating $5,000,000 appropriated to the Trust Territory of the Pacific Islands for supplies or capital improvements, in accordance with the Act of June 30, 1954, as amended, shall be paid into a Micronesian Claims Fund as the products of Japan and the services of the Japanese people in the amount of one billion eight hundred million yen (currently computed at $5,000,000) are provided by Japan pursuant to Article I of the "Agreement between the United States of America and Japan", signed April 18, 1969. These funds together with the sum authorized to be appropriated by subsection (a) of this section shall constitute the whole of the Micronesian Claims Fund.

SEC. 3. (a) There is hereby established a Micronesian Claims Commission, hereinafter referred to as the Commission, such Commission to be under the control and direction of the Chairman of the Foreign Claims Settlement Commission. The Commission shall be composed of five members, who shall be appointed, in consultation with the Secretary of the Interior, by the Chairman of the Foreign Claims Settlement Commission, one of whom he shall designate as Chairman. Two members shall be selected from a list of Micronesian citizens nominated by the Congress of Micronesia. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of the original appointment. The members of the Commission shall serve at the pleasure of the Chairman of the Foreign Claims Settlement Commission. No commissioner shall hold other public office or engage in any other employment during the period of his service on the Commission, except as an employee of the Foreign Claims Settlement Commission.

(b) The members of the Commission shall receive compensation and allowances as determined by the Chairman of the Foreign Claims Settlement Commission by application of the rules and regulations which apply to officers and employees of the Trust Territory of the Pacific Islands, but in no event shall traveling and other expenses incurred in connection with their duties as members, or a per diem allowance in lieu thereof, exceed that prescribed in accordance with the provisions of subchapter 1 of chapter 57 of title 5, United States Code. The term of office of the members of the Commission shall expire at the time fixed in subsection (e) for winding up the affairs of the Commission.

(c) The Commission may, subject to the approval of the Chairman of the Foreign Claims Settlement Commission, appoint and fix the compensation and allowances of such officers, attorneys, and employees of the Commission as may be reasonably necessary for its proper functioning, which employees

shall be in addition to those who may be assigned by the Chairman of the Foreign Claims Settlement Commission to assist the Commission in carrying out its functions. The compensation and allowances of employees appointed pursuant to this section shall be within the rules and regulations which apply to officers and employees of the Trust Territory of the Pacific Islands but in no event to exceed the amount of allowances prescribed in subchapter 1 of chapter 57 of title 5, United States Code. In addition, the Commission, with the approval of the Chairman of the Foreign Claims Settlement Commission, may make such expenditures as may be reasonably necessary to carry out its proper functioning. Officers and employees of any other department or agency of the Government of the United States or the Government of the Trust Territory of the Pacific Islands may, with the consent of the head of such department or agency, with or without reimbursement, be assigned to assist the Commission in carrying out its functions. The Commission may, with the consent of the head of any other department or agency of the Government of the United States or the Government of the Trust Territory of the Pacific Islands, utilize with or without reimbursement, the facilities and services of such department or agency in carrying out the functions of the Commission.

(d) The Commission shall, subject to the approval of the Chairman of the Foreign Claims Settlement Commission, prescribe such rules and regulations as are necessary for carrying out its functions. As expeditiously as possible and, in any event, within three months of its appointment, the Commission shall give public notice in the Trust Territory of the Pacific Islands of the time when, and the limit of time within which, claims may be filed, which notice shall be given in such manner as the Commission shall prescribe: *Provided*, that the final date for the filing of claims shall not be more than one year after the appointment of the full membership of the Commission. A majority of the membership of the Commission shall be necessary to transact business; *Provided, however*, that an affirmative vote of at least three members shall be required for the promulgation of rules and regulations, and for the final adjudication of any claim.

(e) The Commission shall wind up its affairs as expeditiously as possible and in any event not later than two years after the expiration of the time for filing claims under this Act.

SEC. 4. (a) The Commission shall have authority to receive, examine, adjudicate, and render final decisions, in accordance with the laws of the Trust Territory of the Pacific Islands and international law, with respect to claims of the Micronesian inhabitants of the Trust Territory of the Pacific Islands for the compensation of those Micronesian inhabitants of the Trust Territory of the Pacific Islands who suffered loss of life, physical injury, and property damage directly resulting from the hostilities between the Governments of Japan and the United States between December 7, 1941, and the dates of the securing of the various islands of Micronesia by United States Armed Forces. When all claims have been adjudicated, the Commission shall certify them to the High Commissioner for payment from the Micronesian Claims Fund, except that as to claims based on death, up to $1,000 shall be paid immediately upon adjudication.

(b) Not later than six months after its organization, and annually thereafter, the Commission shall make a report, through the Chairman of the Foreign Claims Settlement Commission, to the Congress of the United States concerning its operations under this Act. The Commission shall, upon winding up its work, certify to the Chairman of the Foreign Claims Settlement Commission, the Secretary of the Interior, and to the Congress of the United States the following:

(1) a list of all claims allowed, in whole or in part, together with the amount of each claim and the amount awarded thereon;

(2) a list of all claims disallowed;

(3) a copy of the decision rendered in each case.

(c) In the event that funds remain in the Micronesian Claims Fund after all allowable and adjudicated claims are paid, such remaining funds shall be transferred from the Micronesian Claims Fund to the Treasury of the Trust Territory of the Pacific Islands for appropriation by the Congress of Micronesia for the welfare of the people of the Trust Territory of the Pacific Islands. In the event that allowable and adjudicated claims exceed a total of $10 million, the High Commissioner shall make prorata payments.

(d) No payment shall be made on an award of the Commission unless the claimant shall first execute a full release to the United States and Japan in respect to any alleged liability of the United States or Japan, or both, arising before the dates of the securing of the various islands of Micronesia by the United States Armed Forces.

SEC. 5. There is authorized to be appropriated such sums as may be necessary for the operation and administrative expenses of the Foreign Claims Settlement Commission, to the extent needed to cover activity connected with this Act, and of the Commission in order to carry out the purposes of this Act.

SEC. 6. The Agreement for the payment of the Micronesian claims having been reached by negotiators of the Governments of the United States and Japan, and personnel to be appointed by the High Commissioner or the Commission being available to assist the people of the Trust Territory of the Pacific Islands insofar as may be necessary in filing claims, no remuneration on account of services rendered on behalf of any claimant, or any association of claimants, in connection with any claim or claims shall exceed, in total, one per centum of the amount paid on such claim or claims, pursuant to the provisions of this Act. Fees already paid for such services shall be deducted from the amounts authorized by this Act. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5 thousand or imprisoned not more than 12 months, or both.

The letter and enclosure, presented by Mr. JACKSON, is as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., March 11, 1970.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed herewith is a proposed joint resolution "To authorize an *ex gratia* contribution to certain inhabitants of the Trust Territory of the Pacific Islands who suffered damages during the Second World War, and to establish a Micronesian Claims Commission."

We recommend that this joint resolution be referred to the appropriate committee for its consideration and strongly urge its prompt enactment.

Enactment of this joint resolution is necessary to implement an Executive Agreement of April 18, 1969, between the Governments of Japan and the United States entered into pursuant to the Treaty of Peace with Japan, which provides for the compensation of inhabitants of the Trust Territory of the Pacific Islands who suffered damages during the Second World War. A copy of the Agreement is enclosed. The Agreement essentially provides that the two Governments will make equal, *ex gratia* contributions for the welfare of the inhabitants of Micronesia, such contributions to have a total value equivalent to $10 million.

The contribution by Japan will take the form of products and services having a value of $1.8 billion yen which, at present conversion rates, is computed at $5 million. The contribution of the United States, subject to the appropriation of funds by the Congress, is to take the form of $5 million in cash.

The Agreement between the Governments of Japan and the United States is responsive to the fact that, after 25 years, an innocent people whose islands were fought over by two Great Powers remain uncompensated for wartime suffering, while they have seen their kin in Guam and their neighbors in Asia benefit from grants of the United States and reparations of Japan. The Treaty of Peace with Japan provides that claims of the inhabitants of Micronesia against Japan, and claims of Japan and its nationals against the Administering Authority of Micronesia, shall be the subject of special arrangements. In negotiating those arrangements, the United States has pressed the claims of the Micronesians, while Japan has pressed the claims of its nationals—some 100,000 Japanese—for property left by them when they were evacuated to Japan after the War. The Agreement treats all Japanese claims against the Administering Authority as fully and finally settled, and makes no payment on them. It commits both Governments, subject to the appropriation of funds, to a joint, *ex gratia* grant to the Micronesians which, without any suggestion of liability on the part of either Government, should meet a Micronesian grievance which has gone unmet too long. Thus, when implemented, the Agreement will dispose of a long-standing irritant in relations between Japan and the United States, and do justice to the Micronesians.

That Agreement represents the successful conclusion of protracted and difficult negotiations pursuant to Article 4(a) of the Treaty of Peace with Japan concerning the disposition of property of Japan and of its nationals in the Trust Territory, and their claims, including debts, against the Administering Authority of the Trust Territory and the residents thereof, and the disposition in Japan of the property of the Administering Authority and residents of the Trust Territory, and of their claims, including debts, against Japan and its nationals.

This joint resolution, if enacted, will establish a five-member Micronesian Claims Commission which shall receive, examine, adjudicate, and render final decisions with respect to claims of Micronesian inhabitants of the Trust Territory resulting from the hostilities of the Governments of the United States and Japan during World War II. It will establish also a Micronesian Claims Fund, the whole of which Fund will be $10 million, and authorize the appropriation of $5 million to be paid into this Fund by the United States as its share of the Fund.

More specifically, Section 1 of the joint resolution, following the introductory paragraphs summarizing the foregoing, expresses agreement that the United States shall make an *ex gratia* contribution of $5 million, matching the equivalent contribution of Japan, and that the High Commissioner of the Trust Territory shall pay such meritorious claims as are adjudicated by the Micronesian Claims Commission. Section 1 also defines the term "Micronesian inhabitant of the Trust Territory of the Pacific Islands" as a person who:

(1) became a citizen of the Trust Territory on July 18, 1947, and who remains a citizen as of the date of filing a claim; or

(2) if then living would have been eligible for citizenship on July 18, 1947; or

(3) is the successor, heir, or assign of a person eligible under (1) or (2) above, and who is a citizen of the Trust Territory as of the date of filing a claim.

This definition, while requiring citizenship, does not require residency in the Trust Territory as a prerequisite to filing a claim.

Section 2 authorizes the appropriation to the Trust Territory of $5 million to be paid into a "Micronesian Claims Fund." That sum is to be in addition to the appropriations authorized by section 2 of the Act of June 30, 1954, as amended, for the civil administration of the Trust Territory and, as such, shall not be included in the computation of funds appropriated and subject to the limitation on appropriations contained in section 2 of the Act of June 30, 1954, as amended. The High Commissioner of the Trust Territory of the Pacific Islands is authorized to create and manage the Micronesian Claims Fund.

Section 2 provides further that as the products of Japan and the services of the Japanese people, having an aggregate value of 1.8 billion yen, are made available to the Government of the Trust Territory, the cash equivalent of such products and services to the extent of approximately $5 million shall be transferred by the High Commissioner from the funds regularly appropriated to the Trust Territory for supplies or capital improvements to the Micronesian Claims Fund. These funds so transferred, together with the funds authorized to be appropriated, shall constitute the whole of the Micronesian Claims Fund.

Section 3 establishes a Micronesian Claims Commission to be composed of five members; such Commission to be under the control and direction of the Chairman of the Foreign Claims Settlement Commission. The five members shall be appointed, in consultation with the Secretary of the Interior, by the Chairman of the Foreign Claims Settlement Commission, who shall designate one member as chairman. Two of the members shall be selected from a list of Micronesian citizens nominated by the Congress of Micronesia. The other three members will be selected from the staff of the Foreign Claims Settlement Commission.

Subsections (b) and (c) of section 3 provide for the fixing of compensation and allowances of the members and for the appointment, compensation, and allowances of such staff personnel as the Commission may reasonably require for its proper functioning. We visualize the pay of the Commissioners as not exceeding the equivalent of a G.S. 15 in the General Salary Schedule.

Subsection (d) of section 3 authorizes the promulgation by the Commission with the approval of the Chairman of the Foreign Claims Settlement Commission, of necessary rules and regulations and provides that the final date of filing claims shall not be more than one year after the appointment of the Commission.

Subsection (e) requires that the Commission shall proceed as expeditiously as possible and shall wind up its affairs no later than two years after the expiration of the time for filing claims.

Section 4 provides that the Commission shall have authority to receive and adjudicate, in accordance with the laws of the Trust Territory and international law, claims of the Micronesian inhabitants of the Trust Territory who suffered loss of life, physical injury, and loss of or damage to personal property directly resulting from the hostilities between the Governments of Japan and the United States between December 7, 1941, and the dates of the securing of the various islands of Micronesia by the Armed Forces of the United States.

Subsection (b) of Section 4 requires that six months after its organization, and annually thereafter, the Commission shall report through the Chairman of the Foreign Claims Settlement Commission to the Congress concerning its operations, and that upon completion of its work it shall certify to the Chairman of the Foreign Claims Settlement Commission, the Secretary of the Interior, and the Congress a list of all claims allowed, in whole or in part, together with the amount of each claim and the amount awarded thereon; a list of all claims disallowed; and a copy of the decision rendered in each case.

Subsection (c) of Section 4 provides that in the event funds remain in the claim fund after all adjudicated claims are paid, such balance shall be paid into the treasury of the Trust Territory of the Pacific Islands for appropriation by the Congress of Micronesia for the welfare of the people of the Trust Territory. In the event that amounts payable on adjudicated claims exceed the total of $10 million, the High Commissioner shall determine the necessary proration and make payments in accordance therewith.

Subsection (d) of Section 4 requires that a full release to the United States and Japan in respect to the liability of either or both shall be a prerequisite to the making of a payment to a claimant.

Section 5 authorizes the appropriation of such sums as may be necessary for the operation and administrative expenditures of the Foreign Claims Settlement Commission and the Micronesian Claims Commission.

Section 6 provides free assistance in the filing of claims authorized by this resolution and imposes a limitation upon attorney's fees in connection with payments made under the terms of the resolution.

As we have indicated, the enactment of this joint resolution, the subsequent appropriation of the funds authorized thereby, and the performance by the Micronesian Claims Commission of the functions vested in it by this resolution, will result in the final resolution of a difficult matter which has been of substantial concern to the people of Micronesia, the United States, Japan, and the United Nations for almost 25 years. We believe that this joint resolution provides a fair and wholly justified settlement. The sum of $10 million to be provided as an *ex gratia* contribution in compensation for the losses experienced by the Micronesians is, in our view, sufficient to satisfy the claims which we anticipate will be considered by the Commission. It is likely that the settlement in connection with the death claims will draw most heavily upon the Fund. Since, even though it represents a most difficult task, the claims will need to be adjudicated in terms of the values of the early 1940's, we have noted the record of claim settlements made in Guam for occurrences paralleling those which give rise to the claims to be adjudicated in the Trust Territory. While such earlier settlements are not seen as binding precedents, the record indicates that the amount typically claimed for a death was $5,000, or less, with the amounts awarded ranging between $1,000 and $4,000, the former being the more frequent award and the latter being untypically high. Based upon our consideration of this matter and having regard to the lapse of time and the effects of inflation, we do not foresee individual death claim settlements in connection with the Trust Territory claims as exceeding $5,000. It is expected that approximately 1,500 claims arising out of the death of individuals will be the subject of claims presented to the Commission.

The Bureau of the Budget has advised that there is no objection to the submission of this proposed joint resolution and its enactment would be consistent with the Administration's objectives.

Sincerely yours,

WALTER J. HICKEL,
Secretary of the Interior.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND JAPAN CONCERNING THE TRUST TERRITORY OF THE PACIFIC ISLANDS

The United States of America and Japan,

Desirous of expressing their common sympathy for the suffering caused by the hostilities of the Second World War to the inhabitants of the Pacific Islands formerly under League of Nations Mandate to Japan and now administered by the United States of America under the United Nations Trusteeship System as the Trust Territory of the Pacific Islands,

Desirous of making an ex gratia contribution to the welfare of the inhabitants of the Trust Territory,

Desirous of concluding a special arrangement, as envisaged in Article 4(a) of the Treaty of Peace with Japan, concerning the disposition of property of Japan and of its nationals in the Trust Territory and their claims, including debts, against the Administering Authority of the Trust Territory and the residents thereof, and the disposition in Japan of property of the Administering Authority and residents of the Trust Territory, and of their claims, including debts, against Japan and its nationals,

Have agreed as follows:

"ARTICLE I

"1. Japan will make available in grants to the United States of America, in its capacity as Administering Authority of the Trust Territory, one billion and eight hundred million yen (Y1,800,000,000), currently computed at five million United States dollars ($5,000,000), for the purchase in Japan by the Administering Authority of the products of Japan and the services of the Japanese people, to be used for the welfare of the inhabitants of the Trust Territory.

"2. The provision of these products and services shall, unless otherwise agreed upon by the Government of the United States of America and the Government of Japan, be made over a period of three years from the date on which the Japanese budget for the fiscal year 1970 is approved by the Diet, or the date of the appropriation of funds by the Congress of the United States of America under Article II of this Agreement, whichever date is later. The provision of products and services by Japan shall, subject to detailed arrangements to be concluded pursuant to paragraph 3 of this Article, be made in a reasonably even manner during the period.

"3. The Government of the United States of America, as Administering Authority, and the Government of Japan shall conclude detailed arrangements for the implementation of this Article.

"ARTICLE II

"The Government of the United States of America shall, subject to the appropriations of funds by the Congress of the United States, establish a fund in the amount of five million United States dollars ($5,000,000), aside from its normal budgetary expenditures for the Trust Territory, to be used for the welfare of the inhabitants of the Trust Territory.

"ARTICLE III

"The United States of America, as Administering Authority, and Japan agree that all questions encompassed by Article 4(a) of the Treaty of Peace with Japan concerning the disposition of property of Japan and its nationals in the Trust Territory, and their claims, including debts, against the Administering Authority and the residents of the Trust Territory, and the disposition in Japan of the property of the Administering Authority and the residents of the Trust Territory, and their claims, including debts, against Japan and its nationals, are fully and finally settled.

"ARTICLE IV

"This Agreement shall enter into force on the date of receipt of the Government of the United States of America of a note from the Government of Japan stating that Japan has approved the Agreement in accordance with its legal procedures.

"In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

"Done at Tokyo, this eighteenth day of April, 1969, in duplicate in the English and Japanese languages, both being equally authentic.

For the United States of America:

_____ _____.

For Japan:

_____ _____.

ADDITIONAL STATEMENTS OF SENATORS

A SALUTE TO GEORGE BURGER

Mr. DODD. Mr. President, the small businessman has no greater champion than George J. Burger of the National Federation of Independent Business.

Schooled as a retailer himself, he is well aware of the problems besetting the person operating an independent enterprise in a world of increasing concentration of economic power and growing corporate giants.

To those of us in Congress who feel that small business plays an important role and should be supported, Mr. Burger, with persuasiveness and humor, has encouraged us to do what we should to help this cause. His efforts are largely responsible for the establishment of a permanent Select Small Business Committee in the Senate and he was instrumental in organizing the Small Business Administration.

Members of the Senate and others have honored Mr. Burger recently for his many years of effort in behalf of small business enterprises. I should like to add my appreciation to these other well-deserved tributes and to wish George further successes in his important work in behalf of small business.

ABBE HOFFMAN

Mr. GOLDWATER. Mr. President, a number of days ago, on his regular evening CBS television show, Mr. Merv Griffin had as one of his guests a man named Abbe Hoffman, who is widely known as one of the seven defendants in the Chicago trial. I had not seen this show, but my wife had, and she was so incensed over it that I thought I should make a special effort to view it. Through the courtesy of CBS officials in Washington, I was able to view a tape of this show, and I want to present my reactions to the Senate at this time.

The tape opens with a statement from Robert D. Wood, who is president of the TV branch of CBS, explaining that CBS had to erase electronically a part of the show because Mr. Hoffman wore an American flag as a shirt, and the network was afraid that it might be in violation of the law if they allowed this to be shown. I think Mr. Wood and his company did a very commendable thing in not allowing American people to see this desecration of our flag, but they did allow the words to stay in, and the words are what damn Mr. Hoffman and his associates, in my opinion.

Mr. President, it was an amazing show and is one that I think every American should see, and I hope that CBS will replay it for that purpose. In fact, after seeing the tape and having seen one of the other seven on another show, I feel that the networks would be doing the American people a great favor if they invited all seven of these idiots to appear before their cameras. If the American people could see that these are not young men as we think of young people, but are people in their thirties and forties who should know better; if they could see that these are not people from the slums or the ghettoes, but are generally from families who should have raised better children; if they could see the utter disregard for American principles and ideals that these people espouse, I think Americans generally would better understand them and be better able to take them at their face value, which to me is a zero.

Mr. Hoffman's antics were almost precisely the same as the others. His words mimicked the words of those who had appeared on other shows. Also, his words formed the same kind of diatribe that we read and heard during the Chicago trial. At no time, at repeated questioning by Mr. Griffin, and later by Mr. Tony Dolan of Yale, did Mr. Hoffman say what he wanted America to be. I have found in my contacts with these people of the wild-eyed radical left that they share this common failure—their inability to relate what they want the United States to be or their absolute lack of knowledge of what their plans encompass. They speak of being revolutionists, and all they are revolting against is the capitalistic system, which they absolutely do not understand and mistake for everything that bothers them.

When a man is a revolutionary, he should have some idea of what he is revolting against; and then, the next step, what he is revolting for. But these middle-aged, addlepated people have not bothered to think through what they did in 1968, or what they did in 1969 and 1970. And I am sure they are not thinking in the least about what they might do in 1971 and in the years ahead, except to bomb people's property, burn people's property, destroy people's property, and violate the rights of other Americans.

Now I stand as strongly as anyone in this country for the protection of our God-given rights. I want to do my thing, but I do not want to destroy other people's rights or property in the doing of that thing. This is where these older dropouts and I part company.

There were several refreshing reactions on this tape: First, of course, was the perfect way in which Mr. Griffin handled Mr. Hoffman by not allowing Mr. Hoffman to get him mad. In fact, Mr. Griffin's remarks made Mr. Hoffman look extremely foolish and ill-prepared. He was followed by another guest, Mr. Tony Dolan, of Yale University, who writes occasionally for the National Review, and who is a conservative. He literally tore Mr. Hoffman and Mr. Hoffman's friends in the audience to shreds. Again and again, he challenged these people to tell the audience what it is they want, what it is that is wrong with the greatest country in the world; and all that these people could do was to try to drown Mr. Dolan and Mr. Griffin out. As Mr. Dolan so accurately pointed out, this has happened before in the history of the world, and it has happened in the memory of many of us. As Mr. Dolan so correctly said, when Hitler was ascending into power in Germany, he was assisted by shouting youths who would not listen to reason, who would not argue, but who used their fists and their clubs to get their points across. As a result, Germany became a fascist nation, 10 million people were killed, and World War II came close to destroying the civilized world.

Mr. Dolan was followed by the attractive Mrs. Virginia Graham, a syndicated columnist and TV personality, who repeatedly, in her charming way, with her temper controlled, made telling points against the dangerous stupidity of Hoffman.

I think that CBS should be commended for having the Hoffmans of our society on their shows, and I would encourage them to bring out the entire dirty seven that tried to make a shambles out of the judiciary processes in Chicago, so that the American people can see just who it is that is causing the so-called "youth problem." They will begin to see the truth of what I have been saying: Let us stop blaming the young, because the young are not the trouble. These people in their thirties and forties, who are old enough to know better, are the troublemakers in our colleges and out of our colleges, and the people should know about them. The American people should be allowed to see that not one of these people can stand up and, in an intelligent way, explain what it is that they are driving for in their eagerness to change the United States, its system of government, its system of economy, and its system of laws. We cannot laugh off these middle-aged people, nor can we ignore them. Because, as I related before, this has happened before, and it could happen again in a troubled United States where people are prone to pay no attention to the malcontents and the discontents, but only write them off as something that is happening today and will not happen tomorrow. The very fact that the audience reacted favorably to Mr. Hoffman is frightening. While I do not know to what extent the audience was packed with Hoffman people, having been on a great many of these shows, I know that packing an audience is difficult. But if it was the average audience, and they cheered Mr. Hoffman as they did out of conviction, then I think we may have gone a bit further down this dangerous road than we think we have.

I salute Mr. Griffin and CBS and especially Mr. Tony Dolan for the excellent job that they did in showing the true, selfish, ignorant, and dangerous nature of the people I have been talking about.

POPULATION AND POLLUTION

Mr. MUSKIE. Mr. President, Gershon Fishbein, publisher of the Environmental Health Letter, is a longtime observer of the environmental crisis. His opinions are held in high regard by environmentalists, and all Senators should listen to what he has to say.

In the recent issue of his newsletter, Mr. Fishbein commented on the growing concern regarding overpopulation. Without questioning the importance and seriousness of the population problem, he did call attention to the danger that concern with overpopulation will overshadow the continuing need to deal with the environmental strain caused by the growth in per capita consumption and income. This is an important perspective.

I ask that Mr. Fishbein's comments be printed in the RECORD.

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

POPULATION ISSUE SHOULD NOT REPLACE ENVIRONMENTAL ACTION

Unless environmentalists are vigilant, they may soon find that their ambitious but expensive cause will be pre-empted by the population control issue.

A dangerous trend is already evident to use the population issue as a substitute for, not in connection with, environmental control action. It is undeniably true that unlimited population growth does compound environmental control problems, but that does not suggest that it be used as a reason to do nothing about pollution.

We hear reports that some segments of industry plan an advertising campaign keyed to the theme: "Industries don't pollute; people do!" If the reports are true, and we hope they're not, the cause of pollution control will be obscured.

Gross national product, per capita income and consumption all continue to rise; while those who advocate a limitation on the size of families and a national economic slowdown as the key to pollution control must shoulder the burden of proving their thesis. Is a slowdown of growth the only answer to environmental control? Politically, we don't believe the American people will buy it. There must be a better way to permit the nation to advance economically while controlling its wastes.

Psychologists might contend that the preoccupation with population control in lieu of environmental control demonstrates a conditoned reflex built into humans to come up with less demanding alternatives to burdensome and costly inconveniences. It is one thing to say that unlimited population growth makes environmental control more difficult; it is quite another to contend that any action taken to control the environment will be futile unless population is strictly controlled at the same time. In the wrong hands, the latter contention can be used as an excuse for doing nothing.

THE FUTURE USE OF ATOMIC ENERGY

Mr. NELSON. Mr. President, during the recent College Editors' Conference here in Washington, D.C., the distinguished Senator from Alaska (Mr. GRAVEL) was requested to provide a message to the 1,000 conferees. The theme of this year's conference was "What's the Difference If We Don't Wake Up?"

Senator GRAVEL in his letter to the conferees has raised some penetrating questions directed at the current and future use of atomic energy. His message is most timely and thought provoking. The aurora of atomic technology can cast a dark shadow extinguishing the light of man if we do not heed the invisible power of atomic pollution.

Senator GRAVEL clearly points out the dissent and great debate now taking place concerning our present radiation protection standards. Quoting from the Senator's letter, he stated:

The very pillars of all radiation protection standards now stand exposed as being a set, truly, of rotten pilings.

Senator GRAVEL convincingly develops his views and strikes upon the urgent need for an independent commission to study the benefits and risks of atomic energy.

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

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

FEBRUARY 28, 1970.

DEAR EDITORS: I hope to call your attention to nine matters in as few pages as possible.

1. "JUST ANOTHER POLLUTION PROBLEM?"

By far the most frightful kind of pollution is being overlooked in much of the current alarm about the environment. I mean contamination from nuclear radiation, which is a unique and irremediable pollutant.

If we contaminate this earth radioactively, no amount of money and effort can clean it up later. Once we turn radioactivity on, we can't turn it off. We can't neutralize it. We can only wait until it decays at its own immutable rate. Many of the most common radioactive substances take hundreds and even thousands of years to decay.

2. WHO'S IN CHARGE?

Believe it or not, no one is in charge of preventing the radioactive pollution of our planet. The invisible contamination of the environment is already underway—and it is going to accelerate at a dizzying pace if nuclear power reactors spring up all over the world, if commercial nuclear explosions become routine, and if nuclear bomb tests are continued.

The Atomic Energy Commission (AEC) is responsible here for both the promotion and the regulation of nuclear energy, including the storage or dilution of its contaminants.

The Federal Radiation Council (FRC) is responsible for recommending permissible doses of radiation to the public, including doses from environmental contamination.

But *no one* is responsible yet for controlling the total quantity of contaminants which are released. Although people can tell you how many tons of soot and sulphur we toss into the air every year, no one is even estimating how much radioactivity we release every year into the environment.

"Further contamination of sea-water is inadmissible", says Dr. G. G. Polykarpov on the basis of evidence already at hand about anomalies in fish embryos; Dr. Polykarpov is author of the 1966 book, "Radioecology of Aquatic Organisms". Is anybody listening?

3. COMPARATIVE POISONS

Ounce for ounce, and gram for gram, radioactive substances are a million to a billion times more harmful to life than non-radioactive pollutants.

Take arsenic, for instance, which is present in some industrial wastes. The maximum permissible concentration of non-radioactive arsenic waste in the air is half a milligram per cubic meter; but if the arsenic is radioactive (arsenic-74), the maximum permissible concentration is reduced to three-billionths of a milligram per cubic meter.

What do I mean by "harmful to life?" Known consequences of sufficient exposure to nuclear radiation include genetic mutations, miscarriage, still-birth, birth deformities, mental retardation, cancer, leukemia, and premature aging. The only perfectly safe dose is a zero-dose, according to the FRC.

4. CONTROVERSY WITHOUT PRESS COVERAGE

While no one disputes the dangerousness of nuclear radiation, there is emphatic and heated and honest disagreement about the level at which danger begins, about the immediacy of the threat, and about the right of the public to full information.

Speaking of information for the public, do you—editors who are unusually well-informed—know about two particularly hot controversies which are raging right now in virtual silence?

5. CONTROVERSY NO. 1: A BLAST

Qualified scientists expressed alarm during our November hearings (before the Public Works Subcommittee on Air and Water Pollution) about the environmental contamination created by nuclear excavation explosions.

Other qualified scientists in the AEC scoff at such alarm.

Of course, if anyone had suggested in 1910 that the internal combustion engine would one day foul our vast atmosphere, others would have scoffed then too.

An important decision about nuclear explosions will very soon be made by the Under-Secretaries of the National Security Council. They must grant or deny approval for the largest nuclear excavation explosion ever detonated—an experiment named Sturtevant which the AEC wants to perform this spring in Nevada.

This is not a deeply buried, "fully contained" underground bomb. This Plowshare test, related to the use of nuclear explosions to build canals and harbors, will send millions of curies of radioactive gas and debris up in a cloud. A single curie—and often much less—of many radionuclides is potentially lethal.

Of course, *no one* will absorb a whole curie from the test, and no one will suddenly die, because the radioactivity will be diluted in the air.

But is dilution a satisfactory comfort when delayed effects and the cumulative contamination of the planet are our concerns?

If the bomb goes off, how big a dose of radiation will the population in western cities receive immediately? And later? The last excavation test, which was about five times smaller than the one proposed, released more radioactivity than expected, and levels of air contamination temporarily soared in a dozen cities from Phoenix to Spokane—peaking at 300 times their normal level in Boise, Idaho.

Were the citizens of Boise consulted about this experiment on them?

Benefits for whom? Risks for whom? It was not clear for that test, and it is not clear today, and there is no independent commission to assess the conflicting testimony of experts.

6. CONTROVERSY NO. 2: ARE SAFE LEVELS SAFE?

Also at our November hearings, we heard this:

"We have presented your Committee with much evidence indicating that current radiation exposure guidelines are indeed dangerous—much too high. We intend to continue to provide critical appraisal of questions of atomic energy safety in such a manner that the evidence can be examined by the scientific and public community at large. We do not subscribe to the concern

that the public might, thereby, become unduly or prematurely alarmed. If a real controversy concerning the evidence exists, the public very well ought to be alarmed . . ."

The testimony came from two eminent scientists working under AEC contract: Dr. John Gofman and Dr. Arthur Tamplin of the Lawrence Radiation Lab in Livermore, California. They urge an immediate ten-fold reduction in the permissible dose.

The Subcommittee immediately asked the Federal Radiation Council to review the Gofman-Tamplin documents. The FRC, which officially recommends the permissible dose, assigned the review to the AEC, to the HEW's Bureau of Radiological Health, and to its own staff.

Also immediately, the AEC announced that "the opinions and scientifically questionable derivation of Gofman and Tamplin do not make a case for revision of radiation protection standards." According to the AEC, the whole structure of their hypothesis is wrong, their choice of data is highly selective, and they should not be taken seriously.

But Gofman and Tamplin do not intend to be ignored. They have taken on every objection and produced papers to refute each one so far.

"The very pillars of *all* radiation protection standards now stand exposed as being a set, truly, of rotten pilings," they say. They have challenged the AEC and any other dissenting group to an open debate, but there are no takers yet.

Meanwhile, HEW Secretary Finch (who is on Gofman's mailing list) has also requested the FRC to review itself.

And herein lies the problem again. There is no independent commission to assess this truly crucial matter objectively and openly.

The stakes are very high. A ten-fold reduction in the permissible exposure would not only compel the prompt design of cleaner power reactors—causing delay and blackouts and ultimately more expensive electricity—but it would also cast new doubt on the permissible doses from American weapons testing, doses which are set 20 times higher than those from peaceful applications.

Is the Gofman-Tamplin thesis right or wrong?

The decisions to be made are more than scientific. They are also value-judgments of the highest order, since *setting a permissible dose means balancing the potential risks to public health against the potential benefits from nuclear energy.*

Although the dose-question touches every person intimately—for we are *all* exposed when the environment is contaminated at any level—the decisions will again be made in closed sessions by anonymous experts.

"A decision is responsible when the man or group that makes it has to answer for it to those who are directly or indirectly affected by it" (Charles Frankel).

7. A RECOMMENDATION

I believe we urgently need an independent commission—independent from the AEC and the DOD, who are both members of the Federal Radiation Council—where these disagreements can be scrutinized, and where both the benefits and the risks from nuclear energy can at last be calculated publicly and reviewed continuously—with a genuine effort to make this subject comprehensible.

My bills S. 3042 (before the Senate Public Works Subcommittee on Air and Water Pollution), and S.J. Res. 108 (before the Joint Committee on Atomic Energy), and S.J. Res. 155 (before the Foreign Relations Committee), would create such a commission.

I am not necessarily an enemy of nuclear energy. Nor am I an expert on it. I share the wish that this planet might eventually derive great benefits from the mysterious instability of radioactive atoms.

But I *am* against hasty or undemocratic imposition of this new technology on us. I share the determination of worried citizens who insist on regaining a voice in decisions which determine what happens to them, and what is done to their environment in the name of technology and cost-cutting.

8. AEC OPPOSITION; NAS SUPPORT

The AEC opposes an independent commission as "redundant".

However, I am heartened by the support of Philip Handler, President of the National Academy of Sciences, who wrote me on January 7, 1970:

"The questions you have raised are indeed serious questions . . . including as they do essentially all releases of radioactivity to the environment. We would favor the comprehensive review and study you have proposed, and would agree that such an examination should be carried out by an independent and broadly constituted group with no commitment to the operating policies of a particular agency of government."

9. WHERE WILL YOU STAND?

I urge you to support actively and editorially legislation which would create an independent commission to review these nuclear problems. Without public support, there is no chance that such legislation will pass both houses of Congress—or even get out of committee.

I urge you to promote the inclusion of nuclear radiation in new ecology curriculums.

I urge you, in spite of all the other urgent pollution problems which need your participation, to study radiation before it is too late.

I urge you to help protect life on this planet from irrevocable contamination.

MIKE GRAVEL,
U.S. Senator from Alaska.

SOME SUGGESTED REFERENCES

Hearings: Before the Joint Committee on Atomic Energy, in particular, Part I of the hearings on "Environmental Effects of Producing Electric Power," Oct. 28–Nov. 7, 1969. This volume contains much new data, including some of Gofman's work and an initial rebuttal from the AEC. Unfortunately, the 1800 copies allowed to the JCAE for free distribution are already gone. The Govt. Printing Office, Washington, D.C. 20402, has another 880 copies for sale at $4.50 each. Catalog #Y4.AT7/2:EL2/3/Part One.

To put yourself on the JCAE mailing list for future hearings, address Mr. Burris, Joint Committee on Atomic Energy, U.S. Capitol Room H–403, Washington, D.C. 20510.

Hearings: Before the Senate Public Works Subcommittee on Air and Water Pollution. The hearings from Nov. 18–20, 1969 will soon be published. They include testimony about excavation experiments and the need for an independent commission. The Gofman-Tamplin documents will also be included as an appendix.

Monthly magazine: "Environment," published by the Committee for Environmental Information, 438 North Skinker Blvd., St. Louis, Mo. 63130.

Monthly Report: "Radiological Health Data and Reports," from the HEW's Public Health Service, Bureau of Radiological Health, Rockville, Maryland 20852. Figures on contamination levels in rivers, air, food.

Semi-annual report: "Nuclear Reactors Built, Being Built, or Planned," from the AEC Division of Technical Info., Oak Ridge, Tennessee 37830. Publication #TID–8200, revised every 6 months.

Booklets: The AEC's "Understanding the Atom" series, particularly:

1968: "The Genetic Effects of Radiation," by Isaac Asimov.

1968: "Your Body and Radiation," by N. Frigerio.

1967: "Radioactive Wastes," by Charles Fox.

1969: "Fallout from Nuclear Tests," by C. L. Comar.

1967: "Nuclear Reactors," by John Hogerton.

1966: "Plowshare," by Gerber, Hamburger and Hull.

1969: "Nuclear Terms: a Brief Glossary."

All from the AEC Div. of Technical Info., Oak Ridge, Tenn. 37830.

Book: 1969, "Perils of the Peaceful Atom," by Richard Curtis and Elizabeth Hogan. New York: Doubleday. Also Ballantine paperback.

Book: 1969, "The Careless Atom," by Sheldon Novick. Boston: Houghton Mifflin.

THE TEXTILE INDUSTRY

Mr. HOLLINGS. Mr. President, on March 31, 1970, the Senate and the House of Representatives of the State of South Carolina passed a concurrent resolution, calling on the President of the United States to take immediate action to correct a situation resulting in the financial losses suffered by the textile industry and the loss of income of individuals employed within the textile industry.

As we all know, this industry has been severely crippled by the lack of regulation and control of the importation of foreign textile products.

I ask unanimous consent that the text of the resolution and the text of my recent statement on this point be printed in the RECORD.

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

A CONCURRENT RESOLUTION MEMORIALIZING THE PRESIDENT OF THE UNITED STATES TO TAKE ACTION TO PROTECT THE TEXTILE INDUSTRY OF THE UNITED STATES BY REGULATING FOREIGN TEXTILE IMPORTATION

Whereas, the United States textile industry has been crippled by the lack of regulation and control of the importation of foreign textile products; and

Whereas, positive action must be taken to correct the situation resulting in the financial losses suffered by the textile industry and the loss of income of individuals employed in such industry due to curtailment; and

Whereas, it is believed that the Executive Branch of the United States Government is the power to take action which can improve and correct this deplorable situation. Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

That the President of the United States is hereby memorialized to take action within the next sixty days to correct the situation which has resulted in the crippling of the textile industry by foreign textile importation.

Be it further resolved that a copy of this Resolution be sent to the President of the United States and to each member of the Congress of the United States representing the State of South Carolina.

FOREIGN POLICY—UNEMPLOYMENT IN SOUTH CAROLINA

Prior to the election in 1960, John F. Kennedy stated in a letter to me, dated August 30, 1960, that if elected President, he would take action. "Because of the broad ramifications of any action and because of the necessity of approaching a solution in terms of total needs of the textile industry, this is a responsibility which only the President can adequately discharge." On May 2, 1961, he promulgated the 7-point Kennedy program for textiles and by October 1, 1961, he had obtained an agreement on cotton textiles, which is now joined by 34 nations.

This positive result by President Kennedy in eight months was without palaver. He acted promptly under the present law.

Candidate Richard M. Nixon, in a telegram to Republican senators on August 21, 1968 stated: ". . . I will promptly take the steps necessary to extend the concept of international trade agreements to all other textile articles involving wool, man-made fibers and blends."

In contrast to Kennedy, Nixon's commitment has been lost amid statements of hope and concern. He sent Secretary Stans to Japan several times to negotiate and presented a petition of senators to Prime Minister Sato when he visited in November. But as the Attorney General admonished, this Administration should be known not for what it says but for what it does. Significantly, President Nixon appointed Special Representative for Trade Negotiations, Carl Gilbert, well-known enemy of the textile industry. And when we passed a textile quota amendment in the Senate last December, the While House opposed it. The Japanese got the message. The President, with due regard for domestic politics, would make statements about textiles, but no action would be taken. Not surprisingly, this week, the Japanese gave us an outright rebuff.

The Nixon Administration has lowered its voice on everything but textiles. Because of its loud voice, and carrying no stick at all, the textile industry has lost 50,000 more jobs to imports—and the chickens have come home to roost in South Carolina. Five hundred jobs gone in the Greenwood area since February, and J. P. Stevens announcing the lay-off for a week of 2,000 more. Here are the official facts:

In January, 1969, there were an even one million persons employed in the textile mill products industry. By February, 1970, employment dropped to 967,000—a loss of 33,000 American jobs. In the apparel industry in January, 1969, there were 1,424,000 jobs. By February of this year, there were 1,407,000, a drop of 17,000 jobs, for a total of 50,000 jobs.

Why? Not difficult to fathom. In January, 1969, the United States imported 69 million square yards of cotton textiles, most of it from Japan. But, in January, 1970, it had more than doubled to 150 million square yards. In January, 1969, we imported 85 million square yards of man-made fabrics; again, more than doubled in January of this year, the figure was 188 million, or the largest monthly total increase in the last six years. For all textiles: January, 1969, 163 million square yards—but by January of this year, 350 million square yards.

The result—Japan has a trade advantage in textiles alone with the United States of over 525 million dollars. Japan gets to keep her Okinawa while we spend billions to provide for Japan's national defense. We expend precious American lives daily to preserve freedom in the Far East and now we are supposed to put everybody in South Carolina on the unemployed list so that we can maintain what Vice President Agnew calls the best foreign policy yet.

Inflation, deflation, depression, foreign policy—give it all the high sounding names—it amounts to the same thing. South Carolinians are losing their jobs by the thousands because of Richard Nixon.

THE MONEY SQUEEZE AND TIMBER

Mr. HATFIELD. Mr. President, in Oregon, timber is the primary source of income for tens of thousands of people, almost one-half of the State's population depending directly on trees for their economic well-being. Because one out of every five trees in the Nation is in Oregon, Oregon and the Nation's housing needs are very closely related. In 1968 the goal for the next decade for housing starts was established by the National Housing Act, based on studies estimating the needs of our country. To date we are producing at approximately one-half the rate established as our goal and are, consequently, falling far short of meeting our Nation's housing needs.

In Oregon, we are facing high unemployment in lumber-producing areas, 17 percent in some cases, two causes ostensibly being inflation and high interest rates. I have long been critical of anti-inflationary policies which have such an adverse effect on Oregon's economy. But we must look at the primary cause of this situation: the misplaced spending priorities of our country. When over two-thirds of our Federal budgetary outlays goes to paying for past, present, and future wars, much of it being needlessly spent on expensive, nonproductive defense purchases, the productive sectors of our economy suffer. This is the case in Oregon's timber industry, and, consequently, in housing our Nation's rapidly increasing population.

An excellent article describing some of the problems facing the loggers in Oregon, written by Robert A. Wright, was published in the New York Times of April 5, 1970. I ask unanimous consent that it be printed in the RECORD.

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

LOGGERS IN OREGON FEEL MONEY MARKET SQUEEZE

(By Robert A. Wright)

ROSEBURG, OREG.—A big automated saw moved loudly through a steady supply of cedar logs with alternating deep-throated whirs and piercing squeals.

As the logs tumbled down a chute, slashed up into cedar shingles, James Pinkard, a stacker on the receiving end, was working away as busy as a man could be.

Rapidly selecting the irregular pieces from the chute, he snapped them into a frame, nailing up uniform rectangular bundles at the rate of about one every five minutes.

But Mr. Pinkard's pace was deceptive. This was only his sixth week of work so far this year. He will not be working next week. He and his employer, the Roseburg Shingle Company, are victims of the fight against inflation.

Tight money and high interest rates have diverted money from the home mortgage market, contributing to a slump in housing construction. This, in turn, has cut into demand for shingles and all types of lumber products, and the workers here are bearing much of the impact.

THOUSANDS FACE LAYOFFS

Thousands of workers in the lumber county of Oregon and Washington State have faced periodic layoffs over the last year as sawmills and plyboard plants have been forced to shut down for weeks at a time because of a lack of orders.

"Any time the Government raises that interest rate, it cuts out all building," Mr. Pinkard said. "That's one of Nixon's ideas. You'll never get me to vote for him. I'll take a little inflation any time."

The first ray of hope for a break in this bleak situation came late last month when several banks across the country announced that they were trimming their prime interest rates from 8.5 per cent to 8 per cent.

The reverberations from those money market movements have reached all the way to the timber regions around Roseburg, where the activities of Wall Street are as commonly talked about—even by counter girls in coffee shops—as the possible spring pickup in logging.

Roseburg, a community of 15,000 in southwestern Oregon, about 60 miles south of Eugene, has not been hurt as badly as other timber towns. Unemployment in surrounding Douglas County stands at 9 per cent, compared with 4.5 per cent for all manufacturing in Oregon. But in Grants Pass, 70 miles south of Roseburg, 15.4 per cent of the work force is unemployed.

OVER 100 TRUCKS A DAY

The activity in Douglas County seems to belie the depressed state of the lumber industry. More than 100 big logging trucks a day barrel down Route 138 toward Roseburg from the cutting areas in Umpqua National Forest.

Most of the trucks pour into the Southern Oregon Scaling Bureau, a cooperative 18 miles north of here, where logs are graded and ownerships transferred to the various sawmill members.

Don Staseck, a scaler, stabbed a huge log with a spur to check its quality. "Our business here doesn't change, except for the weather," he said. "Price doesn't make any difference. We handled 115 to 120 loads here yesterday. In the summer, maybe 250."

The valley along Route 138 is lined with sawmills. Every several miles or so, where a farmhouse might stand in another rural area, smoke billows from a big, bee-hive-shaped, bark-burning furnace that marks a sawmill.

A LOSING BUSINESS

At the Roseburg Shingle Company, where Mr. Pinkard works, Duane Roles, co-owner with his brother, Dale, said business was terrible. "We can't saw shingles at a loss," he said. "The quote is $15 at mill for shingles that cost $15.50 to produce. We're going to shut down again."

Where mills have continued to operate, depressed prices in a thin market have eliminated overtime and second and third shifts. Some are on three-day and four-day work weeks.

In Roseburg, where every lumber job supports about six jobs outside the industry, everybody talks knowledgeably about timber and sawmills. But this week, the activities of the Wall Street money market were as commonly talked about—even by counter girls in coffee shops—as was the hoped-for spring pickup in logging.

Some of the big banks had cut their prime interest rates to 8 per cent from 8.5, raising hopes here that it marked the beginning of the end of the year-long depression in the lumber industry. But no one expected any sudden reversal for lumber. As one sawmill operator put it, "When the prime rate hit 7 per cent, my phones stopped ringing."

KEY IS AVAILABILITY

It is the availability of money to the mortgage market, rather than its cost, that has stopped home building, lumbermen say. The industry expects 1.4 million housing starts in the nation this year, a 7 per cent decline from that of last year, and half the annual rate set by the National Housing Act of 1968. Still, balmy spring weather, pointing to an early start of the logging season, and the prime rate news were hopeful signs.

Roseburg, which calls itself the "timber capital of the nation," does not feel the impact of lumber slowdowns as much as other lumber centers because of the dominance here of the Roseburg Lumber Company, the largest of the independent concerns, and a big plant of United States Plywood.

These companies have national outlets and financial resources not available to the small sawmills that are more typical of the industry and can maintain operations more easily during the slow periods. Because a large proportion of lumber workers are transients who

move on when jobs are scarce, there is less of a drag on the community's economy than might be the case otherwise. And there is an acceptance in timber towns of the boom and bust cycles common to the industry.

The impact of the depression in lumber is greater in Grants Pass. But even the high unemployment rate in that community is viewed with some optimism. It is down from 16.3 per cent reported early this month. And Grants Pass residents compare it with the rate of March, 1961, when unemployment was reported at 24.4 per cent.

The manager of a supermarket said sales were down 3 to 4 per cent from last year. "Usually, tourists (the area's second largest industry) give us a really big boost in summer," he said. "But it won't be enough to offset things if the mills stay down."

The source of the trouble in Grants Pass is apparent at the Agnew Plywood Company. Don Deardorff, the plant manager, said that business was terrible and did not expect any recovery before the end of the year.

The Agnew plant was closed in January and February and is working only one of the customary three shifts a day on a four-day week. Forty employees work in the plant, which ordinarily provides jobs for 150.

U.S. LACK OF SCHOLARLY COMPETENCE CALLED SCANDALOUS

Mr. MUSKIE. Mr. President, the March 16 issue of the Chronicle of Higher Education contains a thought-provoking article discussing the surprising lack of expertise on Vietnam in the American academic community. The article notes:

The United States does not have a single Vietnam scholar who:

Holds a full professorship;

Has substantial standing in his discipline;

Has a language background in Vietnamese, French, and Chinese;

Has conducted in-country field research; and

Has a body of published work dealing with Vietnam.

Mr. President, I ask unanimous consent that the full text of the article, entitled "U.S. Lack of Scholarly Competence on Vietnam Is Called a Scandal," written by William Hamilton Jones, be printed in the RECORD.

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

U.S. LACK OF SCHOLARLY COMPETENCE ON VIETNAM IS CALLED A SCANDAL

(By Wm. Hamilton Jones)

In a widely reported 1966 speech before the International Congress of Orientalists, John K. Fairbank, Harvard University's respected Sinologist, emphasized the almost total lack of American scholarly competence with regard to Vietnam.

"Not only have we been caught with our pants down, but with our pants off," he said. "We can't even send 100 specialists into the provinces of Vietnam to sit in the back room and read documents. We have this terrific firepower, and we tear things up. But we don't know what the people are saying."

FIELD IS "VERY LETHARGIC"

Today, three-and-a-half years later, Mr. Fairbanks finds little evidence of improvement. He says the field is "very lethargic," a judgment echoed by virtually every scholar working in the area.

"It's absolutely incredible to me," Mr. Fairbank continues, "that the American academic community has responded so slowly to such a clear need. The net result is a scandal."

At the highest level of competence, the lack of expertise on Vietnam has been dramatically apparent. When the Senate Foreign Relations Committee held televised hearings on Vietnam, for instance, it could not locate an academic specialist of national stature. Instead, the central witnesses were George F. Kennan, an expert on Russia, and China-scholar Fairbank.

NO ONE WITH ALL QUALIFICATIONS

Indeed, the United States does not have a single Vietnam scholar who:

Holds a full professorship,

Has substantial standing in his discipline,

Has a language background in Vietnamese, French and Chinese.

Has conducted in-country field research, and

Has a body of published work dealing with Vietnam.

There are barely more than a dozen men nationally who combine knowledge of the Vietnamese language, a Ph. D. in a traditional discipline, and a scholarly commitment to Southeast Asia.

In a volume called *Treasures in Trivia*, Paul W. van der Veur, director of Southeast Asia studies at Ohio University, lists all doctoral dissertations written in the United States on Indochina. He finds that by mid-1968, 67 dissertations had been written dealing with Vietnam, Laos, or Cambodia, with only two of these completed prior to 1945, and 47 done since 1960.

Only about half of the dissertations deal directly with Vietnam, and about half of those are foreign-policy dissertations that do not represent attempts to study specific aspects of the history, culture, or life of Vietnam.

Within a core of perhaps a score of scholars concerned with Vietnam, the disciplinary range is restricted. Historians and political scientists dominate the field. Very little work has been done in sociology, anthropology, economics, or literature.

There is, of course, a group of people who have written on Vietnam or the war. In general, however, they came to the study of Vietnam by way of an interest in American foreign policy or in other Asian nations, rather than on the basis of a continuing commitment to Vietnam.

Even now, when the continued American involvement in Southeast Asia might be expected to have swelled interest in Vietnam among graduate students, there are still few people concentrating their studies on Vietnam. A generous estimate is that no more than two dozen students are working on Ph. D.'s with a special interest in Vietnam.

WHY THE DEARTH?

There are a variety of interrelated reasons for the dearth of Vietnamese scholars in the United States.

First, there has been little academic tradition to draw on. The U.S. had few missionary, trading, or colonial contacts with Southeast Asia, so scholars here never really had a basis for becoming interested in Vietnam the way they did in China or Korea.

Because the French were already involved in Vietnam, it was simpler for Americans to study the results of French scholarship. The liability of that attitude proved to be that, even after the French left Vietnam, a combination of chauvinism and bureaucratism impeded American access to primary source materials. In contrast, Cambodia, which was never a colonial country, has not presented American scholars with the practical difficulties Vietnam has.

A second problem has been that the commitment necessary to become a Vietnam scholar is prohibitive for many people. Mastery of language alone is likely to take five or seven years of intensive work, since fluency in Vietnamese and French, as well as in Chinese, is required for anyone concerned with historical questions.

Add to language and area training the normal time necessary to complete a Ph. D., and the total elapsed time to achieve specialized competence on Vietnam can easily run to 10 years.

PRACTICAL OBSTACLES EXIST

Even those willing to vault the first two hurdles have faced a number of practical obstacles in recent years. For the most part, these difficulties have existed because of the war and the U.S. government's deep involvement.

For example, access to Vietnam, particularly North Vietnam, has been a formidable problem. Extended in-country research requiring free movement will continue to be virtually impossible for some time. In addition, many important government documents have been classified.

Another factor is money. The amount of available fellowship funds seems disproportionately low when measured against the years of study required. Nor has money for research been readily available, except for operational research under government contracts, an arrangement most scholars prefer to avoid.

As a result, Vietnam has never been a particularly inviting prospect for scholars with any stirrings of interest in Asia. Compounding the situation, colleges and universities themselves have been slow to accept and encourage area specialists.

The overall effect, notes I. Milton Sacks, a political scientist at Brandeis University and himself a Vietnam scholar, has been a feeling "that Vietnam has been ignored out of temerity—a judgment which doesn't speak well for American higher education."

In general, the interest of American colleges and universities in Vietnam has fallen within one of two broad categories: Vietnamese studies, where the concern is to build a base for academic understanding of the people, the culture, and the country; or technical assistance, where the concern is to provide aid in terms of American advice and expertise, to the Vietnamese.

Technical assistance involves practical help of various kinds in fields such as engineering and agriculture, and is usually carried out under government contract, normally through the Agency for International Development.

In recent years, however, technical assistance frequently has been viewed suspiciously, largely as a result of the disclosure that the Central Intelligence Agency was using a Michigan State University project in Vietnam as a cover for some of its agents.

Vietnamese studies have developed along quite different lines from technical assistance. Their bases of strength overlap little if at all. For example: Michigan State, with a large AID contract in Vietnam for public administration projects, has never developed a competence in Vietnamese studies.

12 UNIVERSITY PROGRAMS

There are no fully reliable surveys of precisely what institutional resources for Vietnamese studies exist in the United States.

This past January, Education and World Affairs, a New York foundation, could locate only 12 universities with language and area studies programs for Southeast Asia.

Of those 12 institutions, seven have varying degrees of capability in Vietnamese studies: the University of California at Berkeley, the University of Hawaii, the University of Michigan, and Cornell, Harvard, Yale, and Southern Illinois Universities.

The programs vary in strength, depending on such factors as library resources, available people, breadth of language training, and the climate toward area studies programs in general at each institution. Of the seven, only four—Cornell, Harvard, Yale, and Southern Illinois—have concentrated enough resources and people to support Vietnamese studies across a broad spectrum of disciplines.

There is wide agreement that Cornell's program in Vietnamese studies is the best in the country. In library resources, for instance, Cornell is well ahead of the other three institutions, having roughly 5,000 Vietnamese language books and another 5,000 on order.

Two of the outstanding young Vietnam historians—David Marr and John Whitmore—are at Cornell. Mr. Marr came to Cornell last fall from Berkeley, where he had completed his doctoral work and then taught Vietnamese history for a year. Mr. Whitmore, who joined Yale's history department after receiving his Ph.D. from Cornell, has returned to Cornell this year as a visiting lecturer.

Much of Yale's reputation in Vietnamese studies derived from the fact that since the early 1950's, Paul Mus, the highly regarded French scholar, spent one semester a year at the university.

Mr. Mus' recent death put a serious crimp in Yale's capabilities in Vietnamese studies, although the university still is very strong in language training. The first Vietnamese language course in the country was offered at Yale in 1957, and Yale continues to cosponsor with Cornell a summer language institute, where Vietnamese is taught.

HARVARD'S APPROACH

While Cornell and Yale have developed competence in Vietnamese studies on the basis of Southeast Asian studies programs, Harvard's strength in Vietnamese studies as grown out of the university's well-known Chinese studies program.

Vietnam owes a great deal to Chinese influence, and Harvard can claim a third outstanding young historian of Vietnam—Alexander Woodside—who is well-grounded in Chinese history, as well. After studying Chinese, Japanese, and Vietnamese, Mr. Woodside received his doctorate from Harvard in 1968.

Vietnamese studies at Harvard received a substantial boost last month when the Ford Foundation announced a $300,000 grant to the university to help establish an endowed professorship of Vietnamese studies.

Harvard also is planning to begin Vietnamese language instruction, perhaps as early as next fall.

One of the most visible lacks in Vietnamese studies has been that no comprehensive center of scholarly expertise on Vietnam exists anywhere. The competence in the field is divided among a number of institutions and nowhere is it really drawn together.

SOUTHERN ILLINOIS' EFFORT

Last July, Southern Illinois University at Carbondale launched an ambitious effort to remedy that situation. Creating a Center for Vietnamese Studies and Programs, the university made the largest single institutional commitment to Vietnamese studies that has been undertaken in the country.

The center received its initial funding from a five-year, $1-million grant from the Agency for International Development. While AID is concerned primarily with technical assistance, its grant to Southern Illinois was intended specifically to help the university develop an academic competence in Vietnamese studies.

"The center is really just beginning," says Horace B. Jacobini, its director and a professor of government at Southern Illinois. "We are focusing now on getting staff, an appalling problem given the scarcity of people with academic competence on Vietnam. We are making progress in terms of developing library resources, and we are in the process of developing a scholarly journal for Vietnam and Southeast Asia, since at present none exists in this country."

The center's plan calls for combining teaching and research with a number of "service functions," such as providing consultation and training services for private and governmental organizations working in Vietnam, sponsoring conferences, and maintaining inventories of people and programs dealing with Vietnam at various colleges and universities. In addition, the center is exploring the idea of establishing "sisterhood" relationships with five Vietnamese universities.

A fellowship program administered by the center already is helping to support the work of three students in Vietnamese studies at other institutions.

Despite the fact that the center is only barely operational, it has generated a variety of misgivings. One outside consultant, himself a Vietnamese scholar, resigned his advisory post because he felt some people at the center "favored programs in support of the United States position in Vietnam over any patient, long-term development of academic excellence."

Others, feeling that expertise on Vietnam cannot be built apart from a regional competence, have criticized the center for having a "one-country orientation." Mr. Jacobini, however, points out that Southern Illinois has had an Asian studies program for several years, although it has not been degree-granting.

ORIENTATION SEEN AS ADVANTAGE

He maintains that the one-country orientation was an advantage when the proposal for the center came before the statewide planning board in Illinois, since it made clear that the center would not replicate Southeast Asian studies at Northern Illinois University.

"Our main feeling was that out of all this trauma and experience in Vietnam, there ought to be a university somewhere that sought to develop a special expertise," Mr. Jacobini says.

He says the proposal for the center did grow out of a long-term, well-proved Southern Illinois interest in Vietnam. For several years, the university has had two technical assistance contracts in Vietnam with AID—one in elementary education, one in vocational education. In all, 41 people at Southern Illinois have served in Vietnam, and the university has acted as a host for 57 Vietnamese studying in this country.

Late last month there was an abrupt escalation of the controversy surrounding the center when students at Carbondale held a two-day demonstration to protest the center's activities and the fact that it was receiving funds from AID. The students demanded a voice in reviewing all technical assistance contracts undertaken by the university.

Criticism of the center was directed at a description contained in the AID grant, itself, which said the grant was made to "strengthen the existing competency of the Southern Illinois Center for Vietnamese Studies and Programs for its programs of technical assistance and consultation, research and training related to the economic and social needs of Vietnam and its postwar reconstruction."

Opponents of the center claimed that such technical assistance would imply that the center—and, by extension the university—were part of the U.S. government's military and political strategy.

Mr. Jacobini, responding to the charges, says: "We conceive of programs as meaning lecture series, our journal, and efforts of that sort. Technical assistance as we conceive it is not the province of the center."

PROBLEMS OF DEVELOPMENT

While there have been indications of new vitality in the field of Vietnamese studies, important problems remain that could limit the pace of further development.

First, within the small community of scholars interested in Vietnam, there is some division between those who have been involved in or provided advice toward the formation of government policy in Vietnam, and those who have not done so.

In a sense, the existence of the division is reflected in the two "superstructure" academic groups concerned with Vietnam: the Southeast Asia Development Advisory Group (SEADG), and the Interuniversity Southeast Asia Committee (ISAC).

Created in 1966, SEADG is an offspring of the Asia Society, which is supported by AID money. While SEADG has been given about $500,000 in AID funds to dispense for research at its own discretion, the group's activities generally have been to provide advisory help to AID officers. The SEADG council on Vietnamese studies includes government members, and its main function apparently is to serve as a channel between the academic community and the government.

The interuniversity committee, on the other hand, was set up in late 1968, with the help of a Ford grant, as a deliberative body that would generally monitor the field of Vietnamese studies.

A Vietnam studies coordinating committee was formed as a subcommittee of ISAC in January. In contrast to SEADG's council on Vietnamese studies, this group seems primarily concerned with defining and developing possible cooperative ventures between universities in order to strengthen Vietnamese studies.

The maze of acronyms and subcommittees reflects two different groups of people concerned with Vietnamese studies working in a relatively uncoordinated—and at times mutually suspicious—manner.

LACK OF STUDENT INTEREST

A second problem is that there seems to be no widespread student interest in Vietnamese studies, although no one is quite sure why.

"My own hypothesis," says Mr. Marr, "is that many students today feel that Americans just don't belong in Vietnam in any way, shape, or form—even as scholars. Given the fact that a lot of students are alienated from the war, they want to avoid tangling themselves in the rat's nest. There's a feeling that it's a very loaded subject."

On a less political level, others argue that students are attracted to a field by the professors who stimulate their interest and respect. The short supply of Vietnam scholars, according to this line of reasoning, is bound to affect the degree of interest shown by undergraduates.

In fact, the only consistent pool of students seems to be made up of veterans, Peace Corps volunteers, and International Voluntary Service returnees.

"These people want to understand more about Vietnam," says Mr. Whitmore of Cornell. "They have gotten involved, learned some of the language, gotten to know the country and people, and found they liked the area. From that they want to move on to a more disciplined understanding of what their experiences have been about."

Along this line, Vietnamese language training provided by Defense Department language institutes may be expected, by giving a basic acquaintance with Vietnamese, to stimulate increased interest among veterans in resuming academic work. Between 1964 and 1969, the institutes taught Vietnamese to 16,127 servicemen, in courses ranging in length from 12 to 47 weeks.

Meanwhile, there is a clear need for a great deal of academic "housekeeping" work in the field. For example, at present there is no bibliographic listing of government-held documents concerning Vietnam. On a more substantive level, library development and translations are two areas badly in need of strengthening.

The future of Vietnamese studies is very much tied to the fortunes of area and international studies as a whole. Shifts in federal funding priorities, therefore, are likely to have a sharp impact on the growth of Vietnamese studies, especially since a number of foundations have cut back their international education grants in recent years.

Under the proposed federal budget for fiscal 1971, moreover, funds for two of the largest programs of support for international education—and indirectly for Vietnamese studies—would be reduced by one-third.

The new budget would provide $6-million for foreign language and area studies support under the National Defense Education Act and for fellowships under the Fulbright-Hays Act. Those programs received between $17-million and $18-million a year for fiscal 1969 and 1970. According to the U.S. Office of Education, the Administration plans to phase out both programs in 1972.

"I think the budget cuts will create some very serious problems," says Mr. Jacobini. "They will clearly slow the potential for research, among other things."

Adds Mr. Whitmore: "Vietnamese studies are very much wrapped up with other area studies. If money begins to dry up across the board, Vietnamese studies will find it almost impossible to expand in terms of people, or library resources—two crucial areas."

SENATOR MILLER SPEAKS OUT FOR FARM POWER

Mr. HRUSKA. Mr. President, the productivity and stability of our Nation's agriculture are vital to the economic well-being of the entire Nation. However, the farmer's problems are many and serious and require our active assistance. It is no secret that the farmer's share of the consumer's dollar has changed little in the past decade. Nor is it any secret that the farmers, more than any other group in our society, are the victims of inflation rather than the instigators. In addition, the competition in the foreign agricultural market is probably stiffer today than in any other market.

As the senior Senator from Iowa (Mr. MILLER) recently observed at the 45th annual Colorado Grain and Feed Dealers Association Convention:

> No segment of our economy is less isolated from the tremendous pressures of change taking place in our country and, indeed, in the world.

Mr. President, all of us should keep this fact in mind when we begin the consideration of new farm program legislation in the near future. It is my fervent hope that we will not be pressured into enacting poorly drawn or hastily devised legislation which will work against the best interests of agriculture. The efforts of Secretary Hardin and the Senate and the House Agriculture Committees to arrive at sound and supportable agreement on legislation deserve our attention and support.

What my distinguished colleague from Iowa, who is an outstanding member of the Committee on Agriculture and Forestry, had to say at the Colorado Convention is well worth noting as consideration of that legislation draws closer.

I ask unanimous consent that Senator MILLER's speech of February 23 be printed in the RECORD.

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

SURVEYING THE 1970'S

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

I appreciate very much this opportunity to address the 45th annual convention of this outstanding association.

When I see people like you with mutual problems and interests, joined together to seek sound solutions and to improve your part of American industry, I must say my confidence in our capitalistic economic system is always renewed.

Here in Colorado, farm cash receipts from marketings of food and feed grains amount to nearly $220 million annually. Add to this the $700 million in livestock receipts, and one cannot but be impressed by the strength and viability of agriculture in your great and beautiful state.

When I seek to promote the theme of this convention, "Surveying the 70's," and to relate it to agriculture and agribusiness, I have the feeling that my position on your fine program should more appropriately have been assigned to someone from the ministerial profession—one who, perhaps, is a little closer to divine inspiration than a member of the political profession. Of course, all politicians—they think—are more or less divinely inspired. However, I don't believe anyone can accurately forecast very far ahead what is in store for this vital segment of our economy. If there is such a person, he can name his price in Washington.

No segment of our economy is less isolated from the tremendous pressures of change taking place in our country and, indeed, the world. This is particularly true in a capitalistic economic environment—although even those economies which are controlled—where risk and incentive are absent—cannot escape the impact of change.

Before feeling our way very far into the seventies, it might be helpful to look at where we are and note the trends.

After enjoying a favorable balance of exports over imports totaling $7.5 billion in 1964, the balance had practically dropped to zero by 1969. Indeed, if one adds shipping costs to our imports, as we do in the case of some of our exports, such as Food for Peace shipments, we had an unfavorable balance. Exports have been climbing, but imports have been climbing much faster.

Over the years, one of the major elements of our favorable balance of trade was the favorable balance of agricultural exports over agricultural imports. In fact, had it not been for this, our overall trade balance would have been in deficit for 1968 and 1969—quite apart from the shipping cost differential. But the trend has been steadily downwards in the volume of our exports since 1966. This has been true both in P. L. 480 shipments and in commercial shipments, except that last year commercial shipments did go up some $200 million—a small, though favorable component of the total of over $5.9 billion.

Since 1967, we have actually been in a deficit position as far as commercial exports of agricultural commodities versus commercial imports are concerned. And while our Food for Peace program is an integral part of our foreign relations policy, these exports do not help our balance of payments deficit problem, which came to nearly $7 billion last year.

With Pakistan already largely self-sustaining in food grains production, and with India likely to meet its goal of self-sufficiency in food grains by 1972, the downward trend in non-commercial shipments is most likely to continue—although it is likely that several hundred million dollars worth of Food for Peace shipments will continue into the indefinite future.

So, we are forced to turn to an expansion of commercial exports if we wish to maintain, and preferably increase, utilization of our grain—especially wheat—outside our own domestic market. There are two considerations here: (1) we must be competitive in world markets, and this may involve some sort of subsidy to our farmers to enable them to produce for this competition; and (2) we must avoid violation of the GATT rules, which clearly prohibit direct subsidies and probably prohibit export certificates for wheat.

The question may be asked, why should the taxpayers subsidize such exports? There are two answers: (1) we can be hopeful that by meeting our competition in world markets, we can maintain and even increase our share which, as time goes on and changes in the economies of our competitors take place, can become profitable; and (2) to forfeit this outlet for our wheat production, over half of which moves into exports, would have terrible social and economic consequences to our country.

Assistant Secretary of Agriculture Clarence Palmby struck a cautiously optimistic note last month when he forecast that wheat exports this year would rise from 544 million bushels a year ago to 600 million bushels. True, this is considerably under the 1965–1966 total of 867 million bushels, when Food for Peace shipments were at their peak, but it represents improvement in commercial sales to Japan, Korea, Taiwan, and the Philippines.

It is these considerations which have caused the Secretary of Agriculture to propose a lowering of price supports or loan rates—on the one hand, to help meet our overseas competition, and some increase in diversion payments to farmers, on the other hand, to offset any loss of income from lower price supports. Call this an "indirect subsidy" if you wish, but it apparently would satisfy the GATT rules.

Members of the Congress, particularly those on the Agriculture Committees, understand very well the concern of wheat growers over the 37 percent reduction in their wheat allotments over just the last three years. And we can understand their concern over a proposal to lower price supports. However, the alternative—loss of overseas markets—would seem to lay a foundation for further reductions in allotments.

Secretary Palmby suggested another opportunity for expanded use of wheat for feed. He forecast that this would reach 200 million bushels in the current marketing year—up from an average of under 100 million during the early and mid-1960's.

I realize that feed grains producers need some reassurance on this point, and I believe Secretary Palmby gave it. He noted that domestic food use of wheat runs far behind population growth; but that meat consumption has been increasing faster than population growth. Last year, beef consumption was 110 pounds per capita—up 30 pounds in 10 years. When you couple such a per capita increase with an expected rise in our population during the 1970's, there would seem to be room for an increase in the use of both feed grains and wheat for the increased livestock and poultry that will be required. Also, to keep the matter in perspective, he stated that even if we fed 500 million bushels of wheat a year, this would be only 6 percent of total feeding.

During the seventies, I believe we will see considerable expansion in exports of quality meat. Japan and other countries which are not suited to ranching and feeding will, as their economies grow, turn increasingly to our quality production to meet their demands. Larger, more economical cargo aircraft will keep time and transportation factors quite manageable. Any decrease in grain exports to such markets would be more than offset by the volume of grains used to produce these exports.

A word of caution should be voiced with respect to the European Economic Community. Their common agricultural policy is costing those countries in the neighborhood of $12 billion a year—equal to $24 billion in this country in comparison to our respective Gross National Products. Both the EEC and the UK have substantially increased their use of wheat for feed, and it is likely that this trend will continue. Thus, we could be

faced with a reduced demand for our feed grain exports on the one hand and cut-throat competition on meats and poultry on the other, as the EEC tries to get the burdensome cost of its common agricultural policy off its back.

I have been talking quite a bit about the foreign trade picture—not because Colorado agriculture is directly involved very much, but because it will be indirectly and substantially affected by developments in this area. Also, I thought it would be helpful to your understanding the ideas of the Secretary of Agriculture in his efforts to develop bipartisan follow-on farm programs when the present ones expire at the end of this year.

We have been holding hearings on the subject of follow-on farm programs in the Senate, starting only last Wednesday, and it is apparent that the battle lines are drawn between those who favor high price supports—even higher than we now have—and those who, like the Secretary, wish to try a different approach.

The high price support advocates are, of course, all in favor of increased exports, but they would appear to be caught by the GATT rules prohibiting subsidies. Their hopes that the International Grains Arrangement would relieve the situation have not materialized, nor can I be optimistic that it will do so. Their fall-back position seems to be to settle for a mere continuation of what we have now. Most of them do not like to admit that their policy is one which would perpetuate the dependence of farmers on federal government payments for over 20 percent of their net income. Instead, they say that the consumers are getting food for only 16½ cents per consumer dollar, compared to 20 cents ten years ago, so they should not object to footing the cost of farm payments to the tune of nearly $4 billion a year, or even more, for that matter.

On the other hand, those who believe strongly in a market system for agriculture are somewhat divided over just how or just how fast to make the transition from present programs to those which will reduce dependence on federal government payments. They all agree that the consumer has reaped the benefits at the expense of the farmer, but they believe the farmer ought to be given his fair share through better prices—even though this increases consumer costs. Needless to say, there are a lot of politics involved.

The Farm Bureau, for example, would like to have the transition made in five years. The Secretary's proposal would quite clearly take much longer, and it represents a compromise approach—giving emphasis to the present annual contracts for diversion and payments, but blending in a modest program for permanent retirement of crop acreage.

I could not predict how all of this will turn out, but I would hope that whatever we come up with will be geared to meet the problem of exports. Another point of deep controversy will be the subject of limitation on payments. As you may recall, the House passed a payment limitation of $20,000 last year and, with the greatest reluctance, gave in to the Senate's position that this was not the answer, which, of course, it isn't. Farm organizations are badly split on this point, but the House, I believe, reflects public opinion that something should be done. The Secretary has proposed a sliding scale of reduction in payments: the first $20,000 would have no reduction; the next $10,000 would be reduced by 10 percent; the next $10,000 by 20 percent, and so on. And there are other approaches—most of which seek to encourage larger producers to remain in the programs so that the surplus problem will not get worse. The Chairman of our Senate Agriculture Committee has suggested that the problem be handled by variations in the amount of price supports. I have suggested that payments limitations be established by commodity groups, because the problem is considerably different in cotton, for example, where there are seven times as many producers receiving $20,000 or more as there are wheat producers.

In any event, "reform" is the key word around Washington these days, and it is a much better word than "change". One can have change for the sake of change, change for the better, change for the worse. But "reform" implies change for the better. I believe our action last year on tax reform was for the better; and social welfare reform advocated by the President certainly is for the better. We shall hope that "reform" characterizes our action on the new farm legislation.

There are some, I know, who are not impressed by the idea of "reform" in farm programs, because they believe we should do away with farm programs. Why, they ask, if this is supposed to be a capitalistic economic system, shouldn't we just let the law of supply and demand take over, and eventually everything will level out. This is an expression of the "laissez-faire" type of capitalism, which had its roots in Europe and had a short-lived existence in our country in the early days. Today, we call our system "people's capitalism", and this embraces many variations of strict capitalism—most of them based on a desire to avoid harmful social consequences, consequences which might endanger our economic system itself.

Iowa State University ran a computer analysis of what would happen if farm programs were thrown out the window—the best analysis I have seen. Instead of $16 billion net farm income, which we had last year, the short-term effect would be a little over $10 billion; and about $12 billion over the long-run.

The harmful social effects this would have are easy to imagine. And I do not refer just to the farming population, but to the entire industry known as "agribusiness".

These prospective results translate themselves into powerful political pressures—not just from the farming community, but from agribusiness with its over 20 million jobs.

The Iowa State study revealed that a long-term land retirement program of 60 million acres (compared to the nearly well over 50 million acres now retired) would yield annual net farm income of about $1 billion less than the present; and a mandatory or compulsory acreage retirement program would come out about the same way. Surveys show that farmers are overwhelmingly opposed to compulsory programs and greatly prefer voluntary programs with incentives. I believe we will see this approach followed during the seventies—probably with a mix of both annual and long-term acreage retirement contracts. However, I am not optimistic about any substantial increase in national net farm income in the short range. Indeed, if inflation is not brought under control and costs of production continue to rise, if, in other words, the cost-price squeeze continues, my optimism is even less.

These consideration bring me to two developments which I believe the seventies will bring to considerable prominence.

The first relates to "bargaining power" for farmers—a concept which is quite popular, but not easily reduced to specifics. There have been proposals advanced to extend the marketing order laws now covering milk to other commodities, as determined by referenda of the producers in regions or throughout the country. I would be doubtful that this will happen except, possibly, in the case of certain specialty crops. Probably not for wheat and feed grains, and certainly not for livestock.

On the other hand, "bargaining power" for farmers already exists in the form of cooperatives. Here is one point on which all farm organizations can reach agreement, and I believe we will see increased mergers and affiliations of farm cooperatives designed to provide greater strength at the market place. Along with this will probably come changes in the antitrust laws which will go beyond present exemptions to permit these more powerful combinations. At the same time, I am doubtful that there will be legislation placing farm workers under the National Labor Relations Act or, if this might happen, permitting activities which would lay a foundation for endangering the planting or harvesting of crops. Assuring our people of their food is such a basic national interest that it seems to me that public opinion will not permit it to be endangered.

The second development I foresee rests on the sad but very real developments in agriculture during the past decade.

In 1960, total farm debt was $26 billion. Today it is $58 billion.

During this period, while debt was piling up by $32 billion, net farm income went up only $4 billion.

Some consolation can be taken from the fact that net farm equity increased during this period of time by $95 billion—most of it in inflated land values. But, before becoming over-enthusiastic about this, it should be noted that national net farm income last year represented only about a 5½ percent return on net farm equity—no great achievement in the present state of interest rates, and leaving nothing whatsoever attributable to the farmers' labor or managerial skills.

In the last decade, over one million farms went out of existence. Larger, more efficient units are the order of the day, and the trend has not stopped. The concept of the "family farm" is changing, and while there are a great many farm families on the farm, many of them are tenants and many of them are involved in very large unit operations which may involve several farm families. There is a great amount of emotional appeal in the term "family farm," but analysis reveals that what is most important is the farm family—its integrity and its prosperity. This can be assured on large units operated by several farmers just as well as on smaller units operated by a single farmer—and in some cases assured even better. In fact, because of capital requirements, it can often be assured only on large units.

Larger unit development can take place through partnerships, corporations, or even through cooperatives, but the major capital resources will be found in corporations. This does not necessarily mean that farmers need become employees of a corporation, but some kind of contractual relationship may be required to enable the capital requirements to be met. Vertical integration can occur either through contractual arrangements or within a single corporate structure. Either way, the demands for capital and the technologies of production and processing are likely to bring about more vertical integration. Indeed, this is already an accomplished fact in the poultry industry.

The problems of credit, manpower, marketing, transportation, and, indeed, political power are going to bring agriculture and agribusiness much closer together in the seventies and beyond. A basic industry which last year purchased $30 billion of production goods means jobs. The commercial farmers buy 5 percent of our total steel production and 11 percent of our petroleum production, for example. It is estimated that six million jobs in machinery, chemical, and other supply industries depend on farming; and another 14 to 16 million jobs are involved in processing and marketing farm products. The people involved in this vast complex, along with their families, mean votes in Congress. Their economic well-being is very greatly interrelated. In short, just as so many labor unions, with somewhat different problems but some even more important mutual prob-

lems, have become affiliated in the AFL–CIO for economic and political power, the people involved in agriculture and agribusiness, both management and employees, have sufficient commonality of interest to join forces—politically, financially, and economically.

This is already occurring in some areas—and it can include both cooperatives and corporations, incidentally. Private utilities are joining with rural electric cooperatives in acquiring nuclear generating plants and transmission lines. Contract buying from producers is widespread in the meat packing industry. Contract raising of hogs and cattle has been going on for years and seems to be working out satisfactorily. The meat futures market is taking hold and lends itself most appropriately to larger combinations of producers. So my forecast is not entirely the result of my imagination.

Nevertheless, imagination—another nicer word is "innovation"—is hopeful in preparing for the future. More and more we are realizing that many of our problems today are the result of too many members of Congress failing to look ahead and, instead, concentrating on some quick solution having voter appeal. As our society becomes more sophisticated—and this always happens when people in a democracy get hurt, as they have been by the profligate multi-billion-dollar spending activities by those in control of the Congress for a good many years, as our society becomes more sophisticated, I believe the peoples' needs for prudent, imaginative, long-range planning and action by the Congress will begin to be matched by government responses comparable to what has been going on in the private sector. And as they do, ours will become a better, more prosperous nation—in the seventies.

U.S. POLICIES IN THE MIDDLE EAST

Mr. RIBICOFF. Mr. President, the past few months have witnessed a number of ominous developments in American policies in the Middle East. They have a direct bearing on the chances for achieving greater stability, if not a lasting peace, in this troubled region.

The denial of jet aircraft to Israel by our own country is only the latest in a policy pattern reflecting a dangerous erosion of American support for Israel. This poses a danger not only to Israel, but for the United States—and ultimately world peace.

The Nixon administration has sought to put a sugarcoating of limited economic aid on the bitter pill of its latest decision. But the net effect is still a weakening of Israel's ability to deter future Arab attacks. With Israel's military successes have come its growing international isolation. The old saying that everybody loves a winner does not seem to apply where the winner turns out to be Israel.

It is now in vogue for Israel's so-called friends to uniformly advise her to show restraint and magnanimity. All of a sudden the Israelis have become supermen—able to leap pyramids in a single bound.

President Nixon's decision on further sales of aircraft to Israel means that the United States expects the Israelis, through some kind of military magic, to overcome a ratio of 5 to 1 in supersonic jet aircraft. The question I would ask is whether the President would accept the same position of inferiority vis-a-vis the Soviet Union in numbers of aircraft—or missiles—or what have you.

The official word now is that the United States is seeking limitations on shipments of arms to the Middle East. We are trying to set a good example.

But for years now the United States had been counseling restraint in arms shipments to the Middle East in vain. In practice, since 1967 this has actually worked out to mean that we deny—while they supply; and we restrain—while they retrain.

We all know how young David beat the giant Goliath. But now that David has already beaten Goliath three times in the past 20 years—the United States is asking David to do battle with the same old sling. Worse yet—maybe Goliath is learning how to duck.

Half of Israel's small air force is composed of jet aircraft over 20 years old. Vatours, Ouragons, and Magister trainers were fine aircraft—particularly when they were flying in the early 1950s. I am certain there are many military museums which would be pleased to have them on display—if they have not already done so. Compared to Mig–21's and Sukhoi–7's they are a poor joke.

On the ground the situation is equally ludicrous. Included in Israel's armor are some 200 World War II Sherman tanks. The Israelis have made some modifications, and with their typical aplomb now designate them as "Super Shermans." The newest tanks the Israelis have—were acquired indirectly from Israel's newest and by far, cheapest source—the Soviet Union. These are the T–54's and T–55's captured in Sinai during the Six-Day War, and pressed into service in the Israeli army.

Our Government has sought to justify its turndown of the Israeli request for Phantoms and Skyhawks as part of our new even-handed compromising approach. As Prime Minister Meir has pointed out—it is difficult to find a middle ground between being dead or alive—you are either one or the other.

The increased peril to Israel as a result of the plane decision is clear. What is not as clear in the minds of many Americans, and certainly not in the minds of our Middle East "experts" in the State Department is the corresponding peril to U.S. interests in the Middle East as a result of this strangely shortsighted decision.

Israel's diplomatic trump card in trying to get her Arab neighbors to negotiate is the territory she occupied in June of 1967. The military ace up Israel's sleeve has been her air superiority—to offset serious deficiencies in numbers of men and weapons. It is the Israeli air force which is the key to the maintenance of the balance of power and peace in the Middle East.

In essence, our Government proposals for a settlement would pull the rug out from under Israel's feet while the denial of planes encourages Israel's enemies to give her a push at the same time.

By risking the loss of Israel's air superiority in the pursuit of peace, the United States is increasing the chances of war. The credibility of Israel's deterrent is the only guarantee against the outbreak of full-scale hostilities.

The actual arms supply situation at the present moment borders on the absurd. The Soviet Union, of course, is supplying Egypt, Iraq, and Syria with as many modern tanks and jets as they can possibly handle—and perhaps more. SAM–3 missiles and Russian troops to operate them have been added to the equation. Since the June war, the only additions to Israel's Air Force have been some 30 Phantom jets, with 20 more to be received by the end of the summer. Egypt alone has overwhelming superiority over Israel in men, planes, tanks, and artillery. The United States, however, considers this to be a balance.

At the same time that Israel has no place to turn for weapons, the Arabs are running out of places to keep theirs. Just to make sure, perhaps, that the poor Arabs have enough, we are considering sending more F–5 jets to Libya, and are in the process of shipping a squadron of F–104 Starfighters to Jordan—while training their pilots in Arizona.

The French, as we know too well, will be sending 108 advanced Mirages to Egypt—via Libya. Britain which graciously accepted Israeli technical advice in developing their new Chieftain tank, has now refused to sell any of them to Israel and is reportedly negotiating for their sale to Libya.

Thank goodness that the Israelis still have some people they can count on for military assistance—the Arabs.

From Israel's point of view the aircraft they have been seeking to acquire could not have been more appropriately named than the Mirage and the Phantom. Now you see them, now you do not.

The introduction of SAM–3 missiles and 1,500 Russians to join the 3,000 already in Egypt is a clear indication of the peaceful intentions of the Soviet Union. The Israelis, on the other hand, are now faced with a serious undercutting of both their diplomatic and strategic positions. Fortunately, it is not too late to reverse ourselves and face up to the facts of life—and death in the Middle East.

We must counter lavish Russian and French arms shipments to the Arabs by selling more Skyhawks and Phantom jets to Israel now. A small country like Israel must plan well ahead for such purchases. It is not exactly the same as buying a new car. It is ridiculous to shrug off the significance of the SAM–3 missiles by terming them defensive. They constitute a shield for the intensification of Nasser's so-called war of attrition—which is definitely not defensive. This represents a new situation—and a serious shift in the balance of power.

It should not be necessary to invoke sentiment, guilt feelings and past history to justify stronger American support for Israel. Support of Israel, at a minimum insures the existence of at least one country in the Middle East friendly to the United States. In the cold light of international politics, Israel is a valuable asset for America in the Middle East today. Many of our allies have in fact, turned out to be liabilities—witness Vietnam. Israel does not seek nor need American troops—her war is 100 percent Israelized. But she is also fighting to protect American interests.

To get an understanding of this, Israel must be viewed as a dam preventing Soviet pressures from flooding not only the Middle East but also Turkey, Iran and Ethiopia. It should be obvious that only a well-armed Israel, within secure borders, and with a strong economy can carry out this blocking function.

If we attempt to abate the Soviet flood by punching small holes in the dam, temporary results might be expected. But inevitably, the barrier would be weakened and the Russian tide would sweep throughout the Middle East and Africa. Then the age-old dream of the czars to expand southward would be realized to the detriment of vital U.S. interests in this region.

Any deterioration of Israel's position as a result of American action or inaction, will be viewed by the Arabs as a Soviet triumph and as a sign of Soviet strength. The United States would not even get a begrudging thank you. Unless the United States actively participates in Israel's destruction, we cannot hope to compete on even terms with the Soviets in currying favor with the extremists in the Arab world.

At tremendous sacrifices to her economy and her people, Israel has been paying cash on the barrelhead for the sophisticated weaponry and technology needed to counter the huge arsenals in the hands of her numerous enemies.

Courage, skill and blood can make up for vastly inferior numbers of weapons and men—but not forever, and not without serious damage to the quality of Israeli society. I would hate to see still another generation of Israelis growing up to be fighter pilots, tank commanders and artillerymen rather than physicists, musicians and doctors.

If our government is truly seeking a "better balanced" policy in this area, it must pay much closer attention to the arms balance. The United States in the interests of peace must assure that Israel does not fall further behind in this critical race. How long can Israel be expected to bear the burden of spending 25 percent of her gross national product on defense? Even with our expenditures in Vietnam, we spend less than 10 percent of our own GNP on defense. The reported cost overrun on our C–5A plane alone is greater than Israel's total military budget.

Israel recognizes from her own bitter experience what help to expect in a time of crisis from the U.N., the big powers, and the conscience of mankind. She has had the lesson of the 1957 pull-back from Sinai and the Gaza Strip. Where were the U.N. emergency force and the major maritime powers in May of 1967? And more recently, where was the public outcry over the murder by Arab terrorists of 47 innocent air travelers aboard the Swissair plane? The voices which had previously been raised in protest and denunciation over the destruction of 13 hunks of metal at the Beirut Airport—were deafeningly silent over the destruction of lives.

I need not cite the shocking indifference of the civilized world to the deaths of 6 million Jews a quarter of a century ago—we have a more recent example—the deaths of 2 million Biafrans. They, too, can remind us of the fate of those who rely on the conscience of the world.

Israel plainly does not intend to rely on the goodwill of others for her national existence. But she must rely on our own country for the vital ingredients for survival—jet aircraft. The Soviet Union must not have a veto right over the supply of these aircraft to Israel. This, in effect, is what the situation is today.

If the United States really wants peace, she must enable Israel to prepare for war. This is the crucial fact that must be made clear to our decisionmakers. What is good for Israel in this case, is good for the United States. I would admit it may not necessarily be good for Standard Oil.

With the realization of how Israel is steadfastly serving the national interest of the United States in the Middle East, a small investment now by our country in insuring Israel's future security would yield considerable dividends. I realize, of course, that Phantom jets and Skyhawks are not the ultimate answer. But unless Israel has them—the Arabs will seek to impose their own "final solution."

If Israel is willing to endure until the Arab governments she has beaten three times on the battlefield are ready to negotiate, why is the United States in such a hurry? Israel is merely asking our country to be more patient, and not to lessen her support.

The Soviet Union has consistently displayed an appreciation of military power as a factor in international relations.

They are not blind to the military prowess of the Israeli defense forces nor the lack of it on the part of their own clients. The United States should exploit Israel's strength, not dissipate it in vain efforts to placate the Arab regimes and the Soviet Union.

ENVIRONMENT

Mr. CRANSTON. Mr. President, on March 26, I wrote to Hon. Russell Train, Chairman of the Council on Environmental Quality, urging the Council to undertake a comprehensive review of the extension of environmental planning for freeways supported by Federal funds. This letter was prompted by the proposed Malibu-Whitnal freeway and interchange in southern California. The freeway would encourage extensive residential and commercial development to the Malibu area and would destroy a major open space area in the Los Angeles metropolitan region. Since I believe such a study would have an important effect on the survival of the green belt areas around our major metropolitan centers, I would like to bring the letter to the Senate's attention. I ask unanimous consent that the letter be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., March 26, 1970.

Hon. RUSSELL TRAIN,
Chairman, Council on Environmental Quality, Washington, D.C.

DEAR MR. CHAIRMAN: Since the review and appraisal of Federal programs which affect the environment is a major responsibility of the Council on Environmental Quality, I want to bring to your attention a situation which I believe demonstrates the need for a comprehensive investigation of our Federal programs to fund highway construction.

The Malibu area of Southern California is one of the last remaining open space resources in the proximity of the Los Angeles basin. Freeways have been proposed for both the coast and the Malibu Canyon, without, I believe, adequate consideration being given to either the immediate or the long term environmental consequences of such freeways. While the Malibu-Whitnall freeway may not involve Federal funds, the Pacific Coast freeway and the Malibu interchange do, so I would like to discuss the freeway proposals as a package to illustrate the problems they create.

It will be apparent from my comments that I am not in favor of the freeway proposals. However, I am not certain that it would be possible to stop the freeways on the Federal level even if such a decision were made by appropriate Federal agencies. That is part of the problem I wish to raise.

I understand that the Assistant Secretary of Transportation, J. D. Braman, has requested the Bureau of Public Roads to make a full review of the Malibu projects and to report back to him before issuing any further approval. Under the circumstances, I believe the Assistant Secretary's action is commendable. However, I believe the freeways must be reconsidered on the State level, if there is to be a change in present plans.

The proposed Malibu-Whitnall freeway (Route 64) and the proposed interchange with Route 1 on the Pacific coastline at Malibu can clearly be objected to on tangible environmental grounds.

The Secretary of Transportation is legally required to "preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites." (49 USC 1653) By these criteria, it is difficult if not impossible to justify cutting an eight-lane freeway through the Malibu Canyon. This is a beautiful area, an environmental asset still comparatively undisturbed by the suburban developments of the surrounding areas. A freeway with its burden of internal combustion engines will be ecologically destructive and aesthetically deplorable. This is a fragile area in many respects. The plant life, from the big oaks to the tiny succulents, maintain a precarious balance in this coastal yet semi-arid ecosystem. The threat of erosion from land cuts which affect the natural watershed in California's coastal mountains is well known, as is the seismic instability of the area.

In addition, a part of the proposal involves channeling Malibu Creek, which will destroy the Malibu estuary and its notable waterfowl and marine life. Instead of being wiped out by a freeway, this estuary should be made into a waterfowl sanctuary, particularly because of the great educational and recreational potential of its close proximity to the many schools and colleges of the Los Angeles basin.

Further, the project will destroy two important archeological sites, one of which is the oldest known site of human habitation in the Los Angeles area.

Notwithstanding the importance of these environmental problems, the Malibu freeway proposals raise a larger question in my mind. The major reason for the slow development of the Malibu region has been its relative inaccessibility. The building of a freeway to provide high speed transportation to the Los Angeles basin will clearly accelerate the residential and commercial development of the area. With easier accessibility, this last pocket of natural coastal mountains in the Los Angeles area will be engulfed in the tide of subdivisions, tract houses, schools, filling stations, and drive-ins—which we know as "California living."

The use of Federal funds to promote a project which will put residential subdivisions into this last remaining coastal open space area near Los Angeles seems to me to

violate the whole intent of the recently adopted Declaration of National Environmental Policy (Title I of Public Law 91–190). There has been no "systematic, interdisciplinary approach . . . in planning and in decision-making" for the Malibu area or for the whole Los Angeles basin. Instead there has been a mindless leapfrogging of commercial ventures aimed at cramming an apparently infinite horde of people into an environment whose finite dimensions we do not even understand.

While the various counties and municipalities have planned and zoned for their development, they have, with rare exceptions, proceeded on the basic assumption that growth *per se* is a virtue and that their job is to determine how best to accommodate growth. Furthermore, growth has added to their respective property tax bases, a hardly unattractive consequence. Thus we are in great need for an environmentally sound plan for the growth and distribution of California's population, a plan which begins with the understanding that there are limits to the Southern California coastal area's capability to sustain human population and which proceeds with a complete interdisciplinary ecosystems analysis.

In California, there is a growing awareness of the need for such planning. For example, the Land Use Committee of the State Environmental Quality Council has recently recommended that proposed freeways in the Malibu area be delayed until there has been an in-depth study of Malibu's potential as an open space resource for the Los Angeles basin. In the absence of such planning, it is unreasonable that we are entertaining proposals for a Malibu freeway.

Moreover, assume for the moment that the Secretary of Transportation reviews the problem and reaches the same conclusions I do. Can he justify denying a State's application for Federal highway funds on these more basic environmental grounds? Or is he limited to the important but nevertheless more superficial environmental problems I mentioned earlier?

The environmental problems of "population growth, high-density urbanization, industrial expansion, [and] resource exploitation" play a critical role in every decision to build a California freeway—and I suspect this is also true nationally. Therefore, I urge that the Council on Environmental Quality place high on its agenda a comprehensive review of the extent of environmental planning for new freeway systems which are supported by Federal funds, and of the need to expand the environmental criteria which must be satisfied before such projects are approved. Since the Malibu area situation is an excellent example of the problem, I suggest you make it a case study in your review.

I will be happy to provide any assistance I can offer to this endeavor.

Sincerely,

ALAN CRANSTON.

OREGON-WASHINGTON LITHUANIAN COMMUNITY RESOLUTION

Mr. HATFIELD. Mr. President, recently, many Senators paid tribute to the anniversary of Lithuanian independence on February 16. We heard many glowing tributes and calls for attention to House Concurrent Resolution 146, adopted by the 89th Congress.

The Lithuanian-American Communities of Oregon and Washington met in February in Portland. The group's officers, Joseph V. Paulus, president, and Koste Garolis, secretary, sent me a copy of a resolution passed at that meeting.

I wish to assist them in their efforts to publicize the plight of the Baltic countries. Because of the interest shown by my colleagues, I want to share the contents of this resolution with others.

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

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

RESOLUTION OF LITHUANIAN-AMERICAN COMMUNITIES OF OREGON AND WASHINGTON

MARCH 10, 1970.

The Hon. MARK O. HATFIELD,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: The Americans of Lithuanian descent, and their friends now residing in Oregon and Washington have unanimously adopted the following resolution at a meeting held on February 15, 1970 at Portland, Oregon.

That the present regime in Lithuania did not come to power by legal or democratic process. The Soviet Union occupied Lithuania by force of arms in June of 1940, and to this date continues to exploit the people as well as the nation's resources. This act was and is an imperialistic occupation for the benefit of, and for the expansion of the Soviet empire. It is grossly unjust that Lithuania with its own distinct culture, and 700 years of independent life has been reduced to colonial status.

The House of Representatives, created by H. Res. 346 of the Eighty-third Congress to investigate the incorporation of Lithuania, Latvia, and Estonia into the Soviet Union, found that the incorporation of these nations were contrary to established principles of international law.

The House of Representatives, and the United States Senate (of the 89th Congress) unanimously passed *House Concurrent Resolution 416* urging the United States to direct the attention of world opinion at the United Nations by such means as appropriate, to the rights of self-determination for the peoples of Lithuania, Latvia, and Estonia, and to bring the force of world opinion to bear on behalf of the restoration of these rights to the Baltic peoples.

It was resolved that the United States carry out the expression of the U.S. Congress contained in *H. Con. Res. 416* by bringing up the question of Lithuania, Latvia, and Estonia at the United Nations, and demand the Soviets to withdraw from these three nations.

JOSEPH V. PAULUS,
President.

SIOUX FALLS SERTOMA AMERICANISM PROGRAM

Mr. McGOVERN. Mr. President, I take this occasion to commend the Sioux Falls, S. Dak., Sertoma Club for sponsoring as a part of its freedom program, a student competition to answer the question, "Why Is Our American Heritage of Freedom Important to the Young People of Today?"

The contest was won by two eighth-grade students—Mary Kay Wiche and Duane Benson, who have been awarded a trip to Washington, D.C., for their winning efforts.

My distinguished colleague from South Dakota (Mr. MUNDT) and I have had the privilege of being hosts to these young contest winners at breakfast in the Senate dining room and they are now our guests in the Senate gallery.

They are accompanied by Mr. and Mrs. Richard Briggs and Mr. Louis James, of the Sioux Falls Sertoma Club, and Mr. and Mrs. David James, Jr., of Arlington, Va.

I ask unanimous consent that explanatory material relating to the contest and the trip and the statements of the two contests winners be printed in the RECORD.

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

SERTOMA FREEDOM REPORTERS DEPART FOR WASHINGTON

Two eighth grade students from Sioux Falls will be in Washington, D.C., April 5–9 to represent their fellow students in an attempt to answer the question, "Why is our American Heritage of Freedom Important to the Young People of Today?"

Duane Benson and Mary Kay Wiche won the title "Sertoma Freedom Reporters" in a city-wide competition sponsored by the Sioux Falls Sertoma Club as part of the club's Freedom program.

They will depart from Joe Foss Field at 1:30 PM Sunday for a four-day visit to the nation's capital where they will visit various government officials and historic landmarks. Their classmates and members of the Sertoma Club are planning to give them a big send-off.

Sertoma member Dick Briggs and his wife Colleen will accompany Duane and Mary Kay as chaperones. Another Sertoman, Lou James will also accompany them. Briggs is head cameraman for KELO-LAND TV, and he will be shooting a complete film report on the trip which will be telecast on the TV station following their return. The film will also be made available to schools and other organizations for showings in connection with Freedom program.

Duane Benson is in the eighth grade at Axtell Park Junior High. He is the son of Mr. and Mrs. Arnold Benson, 718 West 15th St. He has two brothers, one a Marine helicopter pilot, and two sisters, and lists his favorite subject as history.

Duane participates in wrestling, basketball, and football. Mary Kay Wiche is in the eighth grade at St. Joseph's Cathedral School. Her parents are Mr. and Mrs. Paul Wiche, 416 N. Summit. She has one sister and two brothers. She is a cheerleader at St. Joseph's and lists her favorite subject as Math.

To qualify as Sertoma Freedom Reporters, Duane and Mary Kay first were chosen as representatives of their respective classes, by their classmates. Each class representative submitted two essays, one entitled "Why Our American Heritage of Freedom is Important to the Youth of Today", and a shorter one on the subject "Why I would like to be the Sertoma Freedom Reporter".

From these essays, judges selected ten finalists, five boys and five girls. These finalists presented their essays verbally at the Sertoma Freedom Happening on March 10 which was attended by Sertoma members, class representatives, and special guests including South Dakota Governor Frank Farrar. Judges made the final selection of one boy and one girl Freedom Reporter. Each class representative received a supply of copies of the Declaration of Independence to take back to members of his class.

The Freedom program has been part of the Sioux Falls Sertoma Club's activities for many years. This year marks the first selection of Freedom Reporters for a trip to Washington. It is planned as a continuing future project.

WHY I WOULD LIKE TO BE THE SERTOMA FREEDOM REPORTER

(By Mary Kay Wiche)

As it is always said, "experience is the best teacher," and this is no exception. Reading

and discussing famous documents, statues, and places will not give me nearly as much knowledge as viewing the actual documents and statues in Washington. Those four days could give me more knowledge of my country's heritage than many weeks of continuous study from a text.

This would be a once-in-a-lifetime dream coming true, although it would have its responsibilities. Representing my school alone would be a great honor and privilege.

Such a trip would also help me meet new people and new surroundings. It would help me get to know about things such as riding in an airplane, living in a city temporarily where I know few, and few have ever met me. I would learn to experience being away from my family and my friends.

If I were ever to win such a trip, it would mean very great responsibilities. I must realize I am representing many, many people including the children of my school and family. I would like to represent Cathedral School, the Sertoma Club, and the citizens of Sioux Falls. Such an adventure would be great and I know I would enjoy it immensely.

WHY I WOULD LIKE TO BE THE SERTOMA FREEDOM REPORTER

(By Duane Benson)

If I were the Sertoma Reporter I would like to be at the place where the Americans' march for freedom was originated. I would like to be where one of the greatest historical phenomena of all times is being held: More than 195,000,000 people actually governed by themselves. I shall like to be where so many great Americans gave their life for our march to freedom. The Capitol of the United States, symbol of the power of the people, holds the architectural direction and the thinking of George Washington and Thomas Jefferson. As Virginian gentlemen they were schooled in architecture and on the Capital City the imprint of their personality. Washington laid the cornerstone on September 18, 1793. I would like to see where the laws and control for this great country are. I shall like to see where the United States' symbolic freedom is and where it is preserved.

WHY IS OUR AMERICAN HERITAGE OF FREEDOM IMPORTANT TO THE YOUTH OF TODAY?

(By Mary Kay Wiche)

Our freedom, although it is very important, is often taken for granted. Not enough of us stop to think about it. All our freedoms like those of speech, press, religion, and assembly are there in our Constitution. It just seems natural to us that citizens should sign a petition when something is wanted from the government or vote so a favorite candidate may be put into office. We can stage a peaceful demonstration or speak out in criticism when we believe something should be changed or altered. All this seems natural because we have grown up under these conditions. This is the American way of life and no teenager of today would want it different.

As we study history and gain a knowledge of our heritage, we come to recognize that this freedom was not easily won nor has it been easily kept. Each generation which enjoys it has a responsibility to preserve it.

Today, teens have more freedom than ever before. Some of kids are only interested in doing their own "thing" but many times their "thing" is rioting and injuring innocent people. These teens have to learn to be responsible enough to stay within the limits of the law. Danger is ahead when they get out of hand. They should be able to dress, talk, and live the way they feel is right but they in turn must respect the freedom of others.

When we infringe on the freedom of others we will lose our own.

To understand the importance of our heritage should make us alert to the need for preserving our freedom and more willing to do whatever it takes so we can have a similar heritage to pass on to others.

WHY OUR AMERICAN HERITAGE OF FREEDOM IS IMPORTANT TO THE YOUTH OF TODAY

(By Duane Benson)

"I am an American, I am free".

What awesome pictures come to mind at the very mention of these words. Pictures of the Minutemen who fought at Lexington and Concord; of the boys in blue and gray who died side by side at Gettysburg; of the khaki-clad doughboys who smashed their way through the Argonne in World War I; and the tough never say-die Marines who stormed the beaches at Iwo Jima in World War II; and not to forget the fearless Americans who fought in Viet Nam to secure this so-called freedom we love. We call this freedom? What did we get out of this? We got the *American* people. The American people so eager to help yet they couldn't help a person who was clubbed in a big city.

The Viet Nam war started as a conflict between a French colony called Indochina and the Japanese. We now have 543,000 United States troops in Viet Nam.

The air in this country is so bad that scientists predict that within thirty years the American race could be wiped out.

People literally ruin themselves taking drugs, such as marihuana, heroine, L.S.D., Amphetamines, and stimulants.

This is the richest country yet we have poverty in the heart of our country.

This is one of the leading countries that has the rebellion and the lack of respect for authority that we have today.

The youth of today are tempted. Our forefathers tackled the problems which seemed insurmountable in their times and left us with a heritage to preserve and the will, foresight, and courage to tackle new problems unique to our generation. With their example of courage before us we can and will tackle the problems of our generation. The concept of home, family, God, and country before self is not outdated, but not unlike the problems facing our forefathers.

It will take time, faith, perserverance, courage, and most of all *love*, outside of love for ourselves, to overcome our current problems. Our nation is too great and humanity is too important. We shall preserve our wonderful heritage.

INQUIRY BRINGS FORD AND CHRYSLER ASSURANCES ON ANTI-AIR-POLLUTION DEVICES

Mr. GOODELL. Mr. President, on February 27, 1970, Jack Anderson's column in the Washington Post reported that the Ford Motor Co. and the Chrysler Corp. had been withholding from the consumers of all States besides California the advanced antiair pollution equipment which they make available to consumers of that State, pursuant to the State's legal requirements.

Dismayed at this report, I sent letters that very day to Lynn Townsend, chairman of Chrysler Corp., and to Henry Ford II, chairman of the Ford Motor Co., requesting that they verify or refute the allegations in the Washington Merry-Go-Round column. I requested that should they verify the allegations, they specify what they intend to do to rectify the situation, to make the most advanced antiair pollution equipment available to the consumers of every State, including my own.

I have received replies from Ford and Chrysler. They confirm that the facts in the Anderson column are quite correct. They promise, moreover, to make those antipollution devices which have been previously withheld immediately available to consumers in New York and all other States.

I shall be watching to insure that those devices are, indeed, made available to consumers in New York, and I trust that other Senators will do likewise for their States.

Mr. President, I ask unanimous consent to have printed in the RECORD the text of my letters and of the Ford and Chrysler replies.

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

FEBRUARY 27, 1970.

Mr. LYNN TOWNSEND,
Chairman, Chrysler Corp.
Highland Park, Mich.

DEAR MR. TOWNSEND: Jack Anderson's "Washington Merry-Go-Round" column in yesterday's *Washington Post* alleges that Chrysler is discouraging the sale, in all states other than California, of the most advanced air pollution equipment now available to car-owners. The column makes the further allegations that (1) the price manuals issued to your dealers across the country state unequivocally that the anti-pollution equipment is available on California cars only, (2) that your computer system is programmed to reject automatically an order for the equipment should one come in from any of the other states, and (3) that there is really no reason why a determined buyer, willing to endure some delay, cannot obtain the $40 device, and that your company has therefore unnecessarily issued to its dealers, information which will discourage the purchase of pollution-control equipment.

The column concludes that consequently, if anyone outside California walked into a Chrysler showroom and ordered a new car with the advanced equipment now required by California anti-pollution law, he would be flatly—and erroneously—told that he cannot obtain the equipment.

I am dismayed by the gravity of these charges, and anxious, therefore, to learn whether each of the Anderson allegations is true. Moreover, in the event that the column is substantially accurate, I would appreciate hearing what, it anything, you intend to do to remedy the situation and to make advanced air pollution devices which your company already sells in California easily available to the consumers of New York and of every other state.

Sincerely,

CHARLES E. GOODELL.

FEBRUARY 27, 1970.

Mr. HENRY FORD,
Chairman, Ford Motor Co.,
Dearborn, Mich.

DEAR MR. FORD: Jack Anderson's "Washington Merry-Go-Round" column in yesterday's *Washington Post* alleges that Ford is discouraging the sale, in all states other than California, of the most advanced air polution equipment now available to car-owners. The column makes the further allegations that (1) the price manuals issued to your dealers across the country state unequivocally that the anti-pollution equipment is available on California cars only, and (2) that there is really no reason why a determined buyer, willing to endure some delay, cannot obtain the $40 device, and that your company has therefore unnecessarily issued to its dealers, information which will discourage the purchase of pollution-control equipment.

The column concludes that consequently, if anyone outside California walked into a Ford showroom and ordered a new car with the advanced equipment now required by California antipollution law, he would be

flatly—and erroneously—told that he cannot obtain the equipment.

I am dismayed by the gravity of these charges, and anxious, therefore, to learn whether each of the Anderson allegations is true. Moreover, in the event that the column is substantially accurate, I would appreciate hearing what, if anything, you intend to do to remedy the situation and to make advanced air pollution devices which your company already sells in California easily available to the consumers of New York and of every other state.

Sincerely,

CHARLES E. GOODELL.

CHRYSLER CORP., *March 20, 1970.*

SENATOR CHARLES E. GOODELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GOODELL: Your letter to Mr. Townsend has been referred to me for reply. And since the responsibility for manufacturing and sales is mine, I am grateful for the opportunity to make our position clear.

The facts in the Anderson story are essentially correct, although the conclusions he draws from them are rather severe. Our price manuals do list certain anti-pollution equipment as "unavailable outside California," and our computers are programed to reject any car order from other states which ask for that equipment. As a general practice, if a buyer desires special or unique equipment, his dealer can order it by using a manual order system. Such an order will then be routed around the computer, and the equipment installed on the new car.

The dealer in question should have been aware of that policy, and we may have been remiss in not making it more clear. The procedure is now clear, however, and the customer who was turned down has been offered a car complete with the anti-pollution device.

Moreover, our 1971 model manuals are being rewritten to make it clear that all non-required anti-pollution devices will be available to anyone, and our computer program will be adapted to accept such orders from all states. We are also currently notifying our regional managers and field representatives that all requests for non-required anti-pollution devices on 1970 models will be honored.

We at Chrysler are well aware of the need for an organized and effective attack on air pollution. We have been leading that attack for many years. I am sure you recognize that we have never intended to discharge the sale of anti-pollution devices in New York or any other state, and we welcome all orders from individuals who wish to help in the fight for clean air.

Sincerely,

E. A. CAFIERO.

FORD MOTOR CO.,
Dearborn, Mich., March 16, 1970.

HON. CHARLES E. GOODELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GOODELL: Thank you for the opportunity to comment on the references in Jack Anderson's February 26 column to the availability of our fuel evaporative control system on Ford Motor Company cars sold outside California.

Our experience indicates that items of this kind are rarely purchased as options. Thus we would not anticipate a demand outside California sufficient to warrant preparing all of our assembly plants to produce cars equipped with these devices. On this basis, our initial price lists and catalogs showed the evaporative control system as an item that was required on all cars to be delivered in California and not available on cars destined elsewhere.

With changes in industry demand levels since the first of the year, we are presently in a better position than originally anticipated to meet possible demand for this item outside California. Ten of our sixteen passenger car assembly plants are staffed and equipped to install evaporative controls, and the remaining plants are scheduled to be similarly equipped in the near future. Accordingly, our car line divisions are notifying their dealers that evaporative control systems are available as options outside California and the language on our official price lists will reflect this change in their next editions.

I assure you that we are firmly committed to do all that we can to advance the cause of clean air and I hope that you will not interpret the circumstances surrounding the availability of our evaporative control systems as any deviation from that commitment.

Yours sincerely,

HENRY FORD.

ADDITIONAL DEATHS OF ALABAMIANS IN VIETNAM WAR

Mr. ALLEN. Mr. President, I have previously placed in the RECORD the names of 969 Alabama servicemen who were listed as casualties of the Vietnam war through December 31, 1969. In the period of January 1 through March 31, 1970, the Department of Defense has notified 28 more Alabama families of the death of loved ones in the conflict in Vietnam, bringing the total number of casualties to 997.

I wish to place the names of these heroic Alabamians in the permanent archives of the Nation, paying tribute to them, on behalf of the people of Alabama, for their heroism and patriotism. May the time not be distant when there will be no occasion for more of these tragic lists.

I ask unanimous consent to have printed in the RECORD the names and the next of kin of these 28 Alabamians.

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

LIST OF CASUALTIES BY U.S. MILITARY PERSONNEL FROM THE STATE OF ALABAMA IN CONNECTION WITH THE CONFLICT IN VIETNAM, JANUARY 1, 1970 THROUGH MARCH 31, 1970

ARMY

SPA Max D. Kersey, husband of Mrs. Jennifer B. Kersey, Route 3, Box 30, Opp, 36467.

PFC Roy L. Bass, son of Mr. Leamon Bass, P. O. Box 154, New Brockton, 36351.

SP5 Kenneth L. Stokes, son of Mr. and Mrs. Hilery K. Stokes, P. O. Box 171, Stapleton, 36578.

PVT Eugene Hood, son of Mr. John H. Hood, 1661 Opp Street, Montgomery, 36104.

SP4 Charles T. Russell, husband of Mrs. Louise L. Russell, Route 2, Box 189, Tuscumbia, 35674.

SP5 Roger E. Key, son of Mr. Earnest C. Key, Route #2, Box 240A, Jasper, 35501.

SP4 Robert Ford, son of Mrs. Willie B. Boose, Route 2, Box 145, Grady, 36036.

SGT Kenneth R. Lasseter, son of Mr. and Mrs. John E. Lasseter, 309 College Avenue, Boaz, 35957.

SP4 Robert L. Walker, Jr., son of Mr. and Mrs. Robert L. Walker, Sr., Route 1, Box 83, Midway, 36053.

PFC Thomas M. Hill, Jr., husband of Mrs. Nancy J. Hill, 728 Belle Avenue, Tarrant, 31217.

PFC Gary Smith, son of Mrs. Martha Smith, Route 6, Box 376, Tarrant City, 35217.

SSG Bobbie H. Brewer, husband of Mrs. Judy G. Brewer, 707 Frazier Street, Athens, 35611.

SP4 Larry D. Wood, son of Mr. and Mrs. Hubert A. Wood, 808 Chatterson Road, Huntsville, 35009.

LTC Frank C. Newman, husband of Mrs. Eva J. Newman, 101 Del Rio, Ozark, 36360.

SP4 Charles Whatley, son of Mr. Lorenzo Whatley, Route 2, Box 237, Opelika, 36801.

PFC James M. Stanley, son of Mr. and Mrs. James M. Stanley, 908 Alston Avenue, Gadsden, 35903.

PFC James L. Downs, son of Mr. and Mrs. James B. Downs, Route 2, Box 378, Toney, 35773.

MSG James E. Dodd, husband of Mrs. Opal M. Dodd, Route 2, Box 448, Guntersville, 35976.

CPT David L. Mathis, husband of Mrs. Patricia G. Mathis, c/o Billy Welch, Route 1, Notasulga, 36866.

PFC Donnie S. Bartlett, husband of Mrs. Ann C. Bartlett, 607½ Geneva Street, Opelika, 36801.

SP4 Oscar A. Connell, husband of Mrs. Abbie M. Connell, P. O. Box 344, Montevallo, 35115.

SP4 James S. Stanley, son of Mr. and Mrs. Fred O. Stanley, 715 Brantley Street, Opp, 36467.

SP4 Willie T. Walker, Jr., son of Mr. and Mrs. Willie T. Walker, Sr., Route 3, Box 171, Abbeville, 36310.

SP4 Raymond E. Ott, son of Mr. and Mrs. Arthur L. Ott, 1339 South St. Andrews Street, Dothan, 36301.

NAVY

LTJG John C. Brewton, son of Mr. Henry E. Brewton Jr., 58 Mohawk Street, Mobile.

BMI (Boatswain's Mate 1st Class) Freddie L. Edwards, husband of Mrs. Willie P. Edwards, 7109 11th Street, Mobile.

MARINE CORPS

LCpl. Guy McAuley, son of Mr. and Mrs. Guy McAuley, 113 Wacker Lane, Mobile.

LCpl. Joseph W. McDonald, son of Mrs. Mabel C. Schmitt, Route 1, Box 172A, Letohatchie, 36047.

ENVIRONMENT—KEY PROBLEM OF MODERN SOCIETY

Mr. GRAVEL. Mr. President, there does not seem to be much argument anymore that the environment is one of the key problems of modern society. For too many years, man assumed that the resources of his world were in limitless quantities and that everything was there for the taking.

Even during much of this century, man failed to notice that the resources around him were not limitless and that there was only a very limited supply of air and water.

It is to this problem that the youth of the Nation are meeting this month in universities all across the Nation in earth day teachins to discover where their environment is going and if they will have a livable future to look forward to.

It is to that concern that the Progressive magazine has dedicated its April issue, entitled "The Crisis of Survival," which the editors of the publication have dedicated to the Nation's youth.

I ask unanimous consent that the prolog entitled "Action for Survival," be printed in the RECORD.

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

ACTION FOR SURVIVAL: A PROLOGUE BY THE EDITORS

Less than a year ago, *The Progressive* published a special issue entitled "The Power of the Pentagon." In it more than a score of the nation's leading scientists, scholars, and public officials examined the social, poli-

tical, and moral challenge confronting America. They discussed, documented, and denounced the militarization of our foreign policy and the distortion of our national priorities. They also emphasized the critical need for more helpful and creative policies and programs for our country.

Now we publish a companion special issue entitled "The Crisis of Survival." In it a dozen or more distinguished authorities examine the challenge to our physical environment. They underscore their anxiety that man and his planet face extinction as a consequence of our mindless abuse and greedy exploitation of nature. But, for all their deep concerns, they are not ecological doomsayers. They beckon us to alternative paths that carry the prospect of hope, not despair; life, not death.

Both special issues of *The Progressive*, each in its own way, are committed to the same goal: the survival of man, but not that alone—the enrichment of life as well.

It may sound apocalyptic to suggest that man and the nature he corrupts are speeding toward extinction. But the harsh reality, as emphasized by many of our hard-headed experts, is that a new Four Horsemen—Overpopulation, Pollution, the Famine of Resources, and Nuclear War—are riding relentlessly on their mission of destruction.

The process of ravaging our planet has been going on for a long time. The obsessive American hunger for growth, more creature comforts, and an ever fatter Gross National Product—no matter how great the price for polluting and pillaging our national heritage—has contributed significantly to the mounting crisis in our segment of the earth. To question the sacred assumption that economic growth is always an unmixed blessing is, as *The Wall Street Journal* noted recently, "to threaten the American dream itself."

But the dream has become a nightmare. A runaway technology, whose only law is profit, has for decades corrupted our air, ravished our soil, denuded our forests, and polluted our water resources. The result is an environment assailed by noxious doses of fumes, sewage, smoke, noise, filth, chemicals, ugliness, and urban decay. And the crisis is compounded by a steadily rising population in defiance of all sense and science.

The worsening crisis commanded little concern until recently. It is one of the more curious phenomena of our time that the subject of our environment is now capturing such extraordinary public interest and concern after these many years of indifference and neglect.

Everyone, it seems, is getting into the act. *Time, Life,* and *Fortune, Newsweek, Esquire,* and *McCall's* are only some of the slicks among the Establishment media which have given splash treatment to the threat to the environment in the past few months. The daily press has poured out a multitude of news stories and editorials to mark its own concern. And the television networks have been competing with a spate of "specials" to announce their arrival at the scene of crisis.

The politicians, not sure whether concern over deterioration of the environment is a craze or a crusade, have elected, predictably, to play it safe. From President Nixon to the local alderman, they have pounced on the issue and commandeered it as the new vehicle of consensus politics. Mr. Nixon, especially, has come rushing forward with a loud "me too" although he never before displayed much concern for the problem. Even now he seems more given to rhetoric than action, and appears none too eager to use the funds and powers he already commands to fight pollution. Since his ecological spree earlier this year, he has resumed his emphasis on a greater buildup of military hardware, especially ABM and MIRV nuclear missiles.

The polluters, too, want their share of the action. Some of them are buying four-color advertisements in the slicks to assure us that they too love the land and water and woods they go on polluting for profit. Their enthusiasm for the rhetoric of the great environmental crusade does not prevent them from exercising their political clout to soften the penalties for pollution and to dilute enforcement of the many laws, largely unenforced, now on the books. Joseph Wood Krutch, the noted essayist in the environmental field, has told us, for example, about an air pollution ordinance passed in Pima County, Arizona. The ordinance contained an exemption: It does not apply to the copper smelting plants, which are responsible for ninety per cent of the local air pollution.

The sudden and spectacular emergence of the environmental issue poses a host of problems. Perhaps the most important is that involvement in ecological concerns could readily serve—and to some extent may have already served—to divert public attention and the crusading zeal of progressive forces from the continuing tragedy in Vietnam, from an imperialistic foreign policy that invites more Vietnams, from a catastrophic arms race that could gut our planet more rapidly than the many-sided process of pollution, from a callous neglect of persistent poverty and racism in the United States.

These are understandable apprehensions. Former Supreme Court Justice Arthur Goldberg expressed his misgivings when he told the American Association of School Administrators that racial discrimination, poverty amid affluence, urban squalor and decay, and alienation of young people pollute the environment as much as garbage and industrial smoke.

"Unemployment and the alienation of the disadvantaged and the young make for a bad environment," he rightly pointed out. "Garbage and smog pollute our neighborhoods, but hate and prejudice do so in even greater degree. Environmental reform calls imperatively for water and air pollution control, but even more importantly for enhancing educational and job opportunities."

Mr. Goldberg is concerned to have the concept of environmental crisis broadened to include long neglected social and economic problems. This makes great sense to us. To think of cleaning up the environment without emphasizing the social structure at least as much as the physical strikes us as an exercise in self deception. Neither means much without the other. A polluted political system which enables a handful of senile Southerners to dominate, through the seniority system, the law making body of a supposedly free people is a political system which finds racism, poverty, *and* poisoned rivers equally congenial in its scheme of things.

Readers of this special issue will note the strong emphasis of our contributors on the links between the challenge on the environmental front and these other problems. For example, they cite the war in Vietnam as a major *obstacle* to meeting the environmental crisis. It is significant that such men of science as George Wald, Paul Ehrlich, Barry Commoner, and David Inglis, and men of politics such as Mayor John Lindsay and Senator Gaylord Nelson—all contributors to this issue—are among the country's most outspoken critics of the Vietnam war and of the enormously swollen U.S. military budget. The true ecological crusaders and the peace crusaders have a common objective—a world to save from war, poverty, racism—and pollution.

This objective is poison to right wing forces now contributing to the verbal overkill on the issue of environment while they oppose action programs of basic reform. They view the current environmental movement with good-natured tolerance so long as it languishes in the realm of rhetoric, so long as it goes no farther than it did in the halcyon days when the conservation movement was thought to be in the hands of nature nuts passing out packets of seedlings to Boy Scouts and litle old men in overshoes flitting through the forests with their nets hunting for butterflies.

Whatever it may have meant in previous times, conservation today is a grim synonym for survival.

Crusaders for a genuinely fundamental program to clean up the environment will know they are on the right track when the spokesmen for the corporate establishment switch from their present purring approval of something they call conservation to roars of recrimination against those who, in the process of combatting pollution, would disturb their corporate profits and power.

A good sign of the progress achieved thus far by the ecological movement turned up recently in *National Review,* William Buckley's journal for the literates of the Far Right. The magazine hoisted storm signals for its arch conservative readership, warning of the "climate of hysteria that clouds the pollution question," expressing fear that enthusiasm for conservation "can be fashioned into a nasty weapon for those who dislike business or general principles," and snorting at talk that there is "an unavoidable conflict between the 'economy' and the 'environment.'"

We would be lacking in candor if we did not agree that there are discouraging symptoms of faddism—and political opportunism—in the newly regenerated ecological movement. To all the other hazards that peril the environment we must add the danger that it will be talked to death. "Ecology," says California's consummate politician Jess Unruh, "has become the political substitute for the word 'mother.'"

The politics of the environmental movement can be discerned only dimly at the moment. Columnist Joseph Kraft may have been partly right in observing recently: "So far, at least, the politics of environment is very largely the politics of eyewash." But there can be no doubt that the nature of the crisis and the urgency of the challenge are rendering that judgment less accurate every day.

Fortune magazine, in its own special issue on ecology, expressed a view shared by a sizable number of careless observers when it wrote: "For a politician it is the safest of all issues, since conservation has no admitted enemies."

But the politics of survival, as *The Progressive* envisions it, *will* have enemies—powerful enemies. Not surprisingly, many of them will be familiar faces and familiar forces. For the struggle for survival will demand a degree of public spending and public management and control that will constitute a political and social revolution. The confrontation will be between those who are committed to making our presently inadequate social, economic and political institutions equal to the task of repairing our ravaged environment as against those whose first and enduring allegiance is to private profit and corporate power and the political institutions which stand guard to protect and preserve that profit and power.

So high is the humbug piled on this "safest of all issues" that it is only with the greatest difficulty that even the usually well-informed citizen will be able to find his way in the next few election campaigns. The choice, both within and between parties, will be between those who make speeches and pass resolutions and those who recognize and act upon the fact that time is running out, that only the resolute rejection of war, profits-as-usual, procreation-as-usual, comforts-as-usual, and politics-as-usual will prevent our planet from sliding into disaster. The score cards will be misleading, but you will be able to tell the players by how willing they are to

expand public controls designed to combat pollution and other environmental perils, spend the money needed to achieve desperately needed reforms, advocate urgently needed legislation to speed population control, insist on the strictest possible enforcement of anti-pollution laws, impose massive penalties on corporate and individual violators, and propose even stronger measures to stop the wholesale pollution by industry, government, and individuals.

It may be that neither major party will move quickly or boldly enough. The result could be the long talked-about political realignment in America which would enable those who want to clean up our social and economic pollution, as well as the physical environment, to build a great new movement dedicated to striking at the status quo through the instruments of democracy.

If such a new and forward-looking political instrument is forged, it will be the enlightened vanguard of the nation's youth—those who have mastered the methods of democratic action—who will provide much of its dynamism.

The young have been rebelling against an immoral war and unjust social system and a tawdry culture; now they are massing against the polluted physical environment as well. They have designated the day of their national teach-in on the environment as Earth Day. It could also become the birthday of a new and more hopeful movement affecting all our lives in all ways. It is with this hope that we of *The Progressive* dedicate this special issue to these, the young, who understand and are prepared to act on The Crisis of Survival.

REPORTS CONCERNING USE OF FOREIGN CURRENCIES AND U.S. DOLLARS IN CONNECTION WITH FOREIGN TRAVEL

Mr. RUSSELL. Mr. President, in accordance with the Mutual Security Act of 1954, as amended, I ask unanimous consent to have printed in the RECORD the reports of the committees of the Senate, certain joint committees, and parliamentary bodies concerning the foreign currencies and U.S. dollars utilized by those committees in 1969 in connection with foreign travel.

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

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON APPROPRIATIONS, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. equivalent or U.S. currency	Foreign currency	U.S. equivalent or U.S. currency	Foreign currency	U.S. equivalent or U.S. currency	Foreign currency	U.S. equivalent or U.S. currency	Foreign currency	U.S. equivalent or U.S. currency
Senator Norris Cotton:											
Germany	German marks						$816.00			3,264	$816.00
Switzerland	Swiss francs		$36.10		$36.38				$8.75	349.30	81.23
France	French francs		37.33		72.70				11.09	671.00	121.12
Total			73.43		109.08		816.00		19.84		1,018.35
Senator Warren G. Magnuson:											
Japan	Yen		208.00		143.00		181.00		98.00	226,850	630.00
Taiwan	New Taiwan dollars		85.00		81.00		54.00		30.00	10,000	250.00
Hong Kong	Hong Kong dollars		276.00		118.00		115.00		55.00	3,429	564.00
Airline transportation	German marks						2,171.00			7,945	2,171.00
Total			569.00		342.00		2,521.00		183.00		[1]3,615.00
Senator Gale W. McGee:											
Netherlands	Guilders						477.26			1,728.64	477.26
United Kingdom	Pounds						9.93		183.24	81.0.4	193.17
Total							487.19		183.24		670.43
Wesley Powell:											
Germany	German marks						816.00			3,264	816.00
Switzerland	Swiss francs		36.10		39.71				8.34	361.85	84.15
France	French francs		37.33		69.44				14.35	671.00	121.12
Total			73.43		109.15		816.00		22.69		1,021.27
Grand total			715.86		560.23		4,640.19		408.77		6,325.05

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $6,325.05

RICHARD B. RUSSELL,
Chairman, Committee on Appropriations.

Mar. 16, 1970.

[1]Includes expenses in Okinawa.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON AERONAUTICAL AND SPACE SCIENCES, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

James J. Gehrig:											
Ireland	Pounds	6.9.2	15.50	3.9	8.28	2.4.8	5.36	1.12.6	3.90	13.15.4	33.04
France	Franc	459	93.67	453.2	92.46	50.5	10.30	50	10.19	1,012.7	206.62
Germany	Mark	80	20.00	42.30	10.57	526.57	131.49	44	11.00	692.87	173.06
Total			129.17		111.31		147.15		25.09		$412.72

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $412.72

$126.56 of the funds spent on transportation was commercial from Dublin to Munich to Paris—other air travel on military plane. The State Department paid for the commercial transportation in German marks.

CLINTON P. ANDERSON,
Chairman, Committee on Aeronautical and Space Sciences.

Feb. 18, 1970.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON AGRICULTURE AND FORESTRY, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1900

Senator Jack Miller: Italy	Lire	74,972	$119	20,300	$32	11,360	$18.20	1,000	$1.60	107,720	$170.80
Total			119		32		18.20		1.60		170.80

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $170.80

ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry.

Mar. 5, 1970.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON ARMED SERVICES, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John G. Tower:											
Thailand	Baht					2,550.08	123.37				123.37
Hong Kong	Dollars					328.50	53.83				53.83
Germany	Deutsche marks					7,112.00	1,775.78				1,775.78
Col. John O. McFalls, USAF:											
South Vietnam	Piasters							500	4.24	500	4.24
Thailand	Baht	1,555	75.00	944	46.00	207.00	10.00	394	19.00	3,100.50	150.00
Hong Kong	Dollars	580	95.00	475	78.00	91.00	15.00	72	12.00	1,218.00	200.00
Germany	Deutsche marks						1,778.00				1,778.00
Charles B. Kirbow:											
Hong Kong	Dollars	800	130.00	572	95.00	60.00	10.00	90	15.00	1,522	250.00
South Vietnam	Piasters	18,600	158.00	9,430	80.00			1,470	12.00	29,500	250.00
Thailand	Baht	1,555	75.00		56.00	205.00	10.00	180	9.00	3,100	150.00
Germany	Deutsche marks						2,085.35				2,085.35
Total			533.00		355.00		5,861.33		71.24		6,820.57

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $6,820.57

JOHN C. STENNIS,
Chairman, Committee on Armed Services.

March 6, 1970.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON BANKING AND CURRENCY, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Carl A. S. Coan:											
Dominican Republic	RD$	87.12	$87.12	24.18	$24.18	6.60	$6.60	26.40	$26.40	144.30	$144.30
Germany	Deutsche marks					364.00	91.43			364.00	91.43
Total			87.12		24.18		98.03		26.40		235.73
John B. Childers:											
Belgium	Francs	5,994	119.88	5,513	110.26	700	14.00	2,537	50.74	14,744	294.88
Germany	Deutsche marks					3,368	840.95			3,368	840.95
Total			119.88		110.26		854.95		50.74		1,135.83
Stephen J. Paradise:											
Israel	Israeli Pounds	416.40	118.98	466.45	133.27	4,904.20	1,401.20	123.40	35.25	5,910.45	1,688.70
Senator Harrison A. Williams, Jr.: Israel.	do	724.77	207.88	688.32	196.67	4,904.20	1,401.20	222.16	63.47	6,539.45	1,868.42
Senator Charles H. Percy:											
Belgium	Francs	4,497	89.97	2,885	57.70	7,915	157.52	1,618	32.36	16,915	337.52
Germany	Deutsche marks					3,165.92	842.00			3,165.92	842.00
France	Francs	607.80	108.92	229.20	41.08					837	150.00
Total			198.86		98.78		999.52		32.36		1,529.52
Total			731.92		563.16		4,754.90		208.22		6,258.20

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $6,258.20

JOHN SPARKMAN,
Chairman, Committee on Banking and Currency.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON COMMERCE, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Dykstra, Jacob J.: Poland	Zl	5,100.00	$212.50	3,672.00	$153.00	23,932.80	$997.20	828.00	$34.50	33,532.80	$1,397.20
Goodell, Charles:											
Germany	DM					5,854.53	1,461.55			5,854.53	1,461.55
Nigeria	Nl							25,13.10	71.81	25.13.10	71.81
Portugal	Esc							1,822.02	64.00	1,822.20	64.00
Subtotal							1,461.55		135.81		1,597.36
Markel, Daniel B:											
France	Fr	1.526.70	275.67	1,139.00	205.59	376.00	67.87	469.30	84.70	3,511.00	633.83
Germany	DM					3,368.00	842.21			3,368.00	842.21
Subtotal			275.67		205.59		910.08		84.70		1,476.04
Total			488.17		358.59		3,368.83		255.01		4,470.60

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $4,470.60

WARREN G. MAGNUSON,
Chairman, Committee on Commerce.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON FOREIGN RELATIONS, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
John Sherman Cooper:											
Belgium	Franc					1144	21.98				21.98
France	do	100.44	18.00	100.44	18.00			22.32	4.00		40.00
Jacob K. Javits:											
Belgium	do	12,904	258.08	2,251.49	77.92	1075	21.00	250	5.00	16,480.49	362.00
France	do	1,273.75	246.46	534.25	103.54					1808	350.00
Germany	Marks	218.76	54.69	220	55.00	140	35.00	21.24	5.31	600	150.00
Italy	Lire	64,500	103.20	25.00	40.00	3,000	4.80	1,250	2.00	93,750	150.00
Israel	Pounds			402.5	115.00	85.5	25.00	35	10.00	525	150.00
United Kingdom	do	95.7.1	228.23	2,314.11	56.85	4.3.8	10.00	2.12.10	5.00	125.7.7	300.08
Israel	Pounds					4,342.90	1,240.83			4,342.90	1,240.83

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Mike Mansfield:											
Philippines	pesos	120	30.00	96	26.00			141	35.25	357	91.25
Indonesia	rupiahs	46,855	121.00	15,400	40.00	27,335	71.00	11,550	30.00	100,870	262.00
Hong Kong	HK dollar	729.60	120.00	383.04	63.00	282.70	46.34	413.44	68.00	1,808.78	297.34
Burma	Kyats	215.97	11.37	268.22	14.12	311.13	16.38	1,946.62	102.45	2,741.98	144.32
Germany	DM [1]					3,983.26	923.59			3,983.26	923.59
Karl E. Mundt:											
France	France, Francs [1]					4,664.68	842.00			4,664.68	842.00
Belgium	Belgium, Francs	1,332.00	26.64	1,995.00	39.90	850.00	17.00	283.00	5.66	4,460.00	89.20
France	France, Francs	207.00	37.37	154.20	27.83	75.00	13.54	59.80	10.80	496.00	89.54
Claiborne Pell:											
Belgium	Francs [1]					14,400	276.66			14,400	276.66
Switzerland	Francs	107	25.00	106	24.78					213	49.78
John Sparkman:											
Germany	DM [1]					659.30	180.14			659.30	180.14
Ireland	Pounds	20.0.0	47.92	21.14.10	52.08	26.0.0	61.99			67.14.10	161.99
Stuart Symington:											
Italy	Lira	23,700	37.98	32,623	52.28	16,193	46.80	2,938	4.70	88,454	141.76
Israel	Pound	174.02	49.72	10.26	2.93	93.92	26.83	21.25	6.07	299.45	85.55
Greece	Drachma	403	13.43	60	2.00			200	6.66	663	22.09
Belgium	Belgian franc	726	14.52	315	6.30			720	14.40	1,761	35.22
France	French franc	155	31.63	132.65	27.07	226.04	46.13	1.20	.24	514.89	105.07
England	Pound	24.16.8	59.60	2.10.5	5.05			2.13.4	6.40	30.0.7	72.05
Germany	Mark [1]					3,455.60	863.90			3,455.60	863.90
Pat M. Holt:											
Ecuador	Sucre	2,265	99.12	1,921	84.07	421	18.42	593	25.95	5,200	227.56
Peru	Sol	4,639	107.38	6,310	146.06	5,629	130.30	1,167	27.01	17,745	410.75
Bolivia	Peso	702	59.12	1,273	107.17	555	46.43	34	2.87	2,564	215.59
Germany	Mark [1]					4,704.80	1,175.75			4,704.80	1,175.75
Arthur M. Kuhl:											
Italy	Lira	32,410	51.93	32,623	52.28	17,192	27.55	3,748	6.00	85,973	137.76
Israel	Pound	67.30	19.22	38.75	11.07	93.92	26.83	16.87	4.82	216.84	61.54
Greece	Drachma	403	13.43	92	3.07					495	16.50
Belgium	Franc	726	14.52		4.40			460	9.20	1,406	28.12
France	do	155	31.63	204.25	41.68	239.03	48.78	27.10	5.53	625.38	127.62
England	Pound	13.4.0	31.68	3.2.3	7.47			0.7.3	.87	17.3.6	40.02
Germany	Mark [1]					3,455.60	863.90			3,455.60	863.90
Donald G. Henderson:											
Belgium	Franc	1,332	26.64	2,957	59.14	1,250	25.00	541	10.82	6,080	121.60
France	do	517.50	93.02	654.20	117.44	155	27.90	318.90	57.24	1,645.6	295.60
Do	do					7,004.68	1,261.36			7,004.68	1,261.36
Richard M. Moose											
Hong Kong	Hong Kong dollar	244.46	40.34	133.20	21.98	830.00	136.06	28.34	5.22	1,236	203.60
Vietnam	Piastre	29,500	250.00	27,140	230.00	4,720	40.00	3,540	30.00	64,900	550.00
France	Franc	208	37.50	167.10	30.00			42.73	7.54	41.783	75.04
Germany	Mark [1]					8,211.40	2,052.85			8,211.40	2,052.85
James G. Lowenstein:											
Australia	Australian dollar	100.08	112.00	110.81	124.00	21.80	24.37	12.51	14.00	245.20	274.37
Denmark	Deutsche krone			172.29	23.00			52.43	7.00	224.72	30.00
U.S.S.R.	Ruble			30.50	33.89	601.80	668.67	4.50	5.00	636.80	707.56
Hong Kong	Hong Kong dollar	785.50	125.00	461.59	76.07	942.15	154.45	162.62	26.80	324.98	382.32
Indonesia	Rupiah	18,480	48.00	6,140	15.95			4,620	12.00	292.40	75.95
Philippines	Peso	91.73	23.40	209.96	53.56			70.56	18.00	372.45	94.96
Burma	Kyat							174.00	9.15	174.00	9.15
Vietnam	Piastre	31,022	262.90	15,972	135.35	472	4.00	12,154	103.00	59,620	505.25
France	Franc	228.37	41.00	295.54	53.06			61.27	11.00	585.18	105.06
Germany	Deutsche mark					15,569.40	3,892.81			15,569.40	3,892.81
Roland Paul:											
Spain	Peseta	3,139	45.03	951	13.64			150	2.16	4,240	60.83
Italy	Lira	66,750	106.54	50,105	79.88	30,875	49.24	4,125	6.18	151,855	241.84
Greece	Drachma	1,341	44.70	689	22.96	750	25.00	20	.67	2,800	93.33
Turkey	Turkish lira	769.65	85.51	370	41.11			25.35	2.82	1,165	129.44
Portugal	Escudo	562.20	19.74					65.90	2.30	628.10	22.04
Korea	Won	36,863	129.81	5,068	17.81			100	.33	42,031	147.95
Japan	Yen	26,564	73.79	26,671	74.09	8,376	23.27	1,000	2.77	62,611	173.92
Republic of China	Yuan	1,932.80	48.32	796.20	19.90			100	2.50	2,829	70.72
Thailand	Bhat	2,055.10	98.43	2,964.15	142.29			100	4.07	511,925	244.79
Philippines	Peso	343.64	87.62	196.36	50.12			10	2.55	550	140.29
Germany	Marks [1]					13,186.80	3,292.59			13,186.80	3,292.59
Walter Pincus:											
Spain	Peseta	3,000	43.30	1,405	20.03			535	7.55	4,940	70.88
Italy	Lira	15,800	24.89	37,867	60.25	17,844	28.46	18,933	29.92	90,444	143.52
Greece	Drachma	2,390	79.67	231	7.70	750	25.00	82	2.73	3,453	115.10
Turkey	Turkish lira	580.75	64.53	346.17	38.46			173.08	19.23	1,100	122.22
Portugal	Escudo	769.16	27.01	54.44	1.90					823.70	28.91
Korea	Won	29,530	104.47	8,447	29.47			3,905	13.49	41,882	147.43
Japan	Yen	28,576	79.38	15,068	41.85	8,376	23.27	23,274	64.65	75,294	209.15
Republic of China	NT$	1,916	48.00	596.20	14.91			162.80	4.09	2,675	67.00
Thailand	Baht	2,183.50	104.62	1,234.45	58.82			806.30	38.15	4,224.25	201.59
Philippines	Peso	350.62	89.46	161.38	41.16			89.65	22.86	601.65	153.48
Germany	Marks [1]					13,186.80	3,292.59			13,186.80	3,292.59
Francis R. Valeo:											
Philippines	Peso	224	56.00	260	65.00	60	15.00	260	65.00	804	201.00
Indonesia	Rupiah	17,710	46.00	11,550	30.00			9,240	24.00	38,500	100.00
Burma	Kyat	173.30	9.12	268.21	14.12	311.14	16.38	807.75	42.51	1,560.40	82.13
Hong Kong	Hong Kong dollar	480	80.00	450	75.00	54	9.00	420	70.00	1,405	234.00
Germany	Deutsche mark [1]					3,993.26	923.59			3,993.26	923.59
Total			4,618.61		3,241.83		23,139.73		1,151.49		32,151.66

[1] Used to purchase airline tickets for countries visited.

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $32,151.66

J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations.

Mar. 14, 1970.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON MEXICO-U.S. INTERPARLIAMENTARY CONFERENCE, AGUASCALIENTES, U.S. SENATE MEXICO CITY, AND COZUMEL, MEXICO, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mansfield: Mexico	Dollar		$226.98		$94.71				$8.00		$329.66
Senator Byrd (W. Va.): Mexico	do		97.27		29.86				6.00		133.13
Senator Dodd: Mexico	do		99.67		50.54				.40		150.61
Senator Fannin: Mexico	do		24.01		7.60		$124.40				156.01
Senator Gravel: Mexico	do		99.67		55.21				.52		155.40
Senator Hartke: Mexico	do		24.01		31.18		153.00		20.01		228.20
Senator Javits: Mexico	do		16.81		31.71		351.00		16.01		425.53
Senator Miller: Mexico	do		99.67		18.13				3.20		121.00
Senator Montoya: Mexico	do		102.88		50.40		120.00		7.61		280.89
Senator Nelson: Mexico	do		97.27		40.95				7.76		145.98
Senator Saxbe: Mexico	do		97.27		38.99				18.01		154.27
R. Dockery: Mexico	do		66.65		20.63		6.50		9.20		102.98
P. Holt: Mexico	do		111.68		17.08		11.01		.40		140.17
M. Jensen: Mexico	do		66.65		16.82				13.60		97.07
A. Kuhl: Mexico	do		78.60		17.82		1.84		.88		99.14
D. Paton: Mexico	do		40.54		38.71		8.00		7.04		94.29
F. Valeo: Mexico	do		78.60		41.82				7.68		128.10
E. Vogtmann: Mexico	do		66.65		2.46		.40		1.20		70.71
Delegation Expenses:											
Official meals and receptions	do				359.18						359.18
Transportation	do						246.03				246.03
Telephone charges	do								95.27		95.27
Stationery supplies	do								23.22		23.22
Miscellaneous	do								49.89		49.89
Total			1,494.88		973.80		1,022.18		295.90		3,786.76

RECAPITULATION

Appropriated funds: Other Public Law 86-420	$3,786.76

MIKE MANSFIELD,
Chairman, Committee on Senate Delegation.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE SENATE DELEGATION, BRITISH-AMERICAN PARLIAMENTARY CONFERENCE (BERMUDA), EXPENDED BETWEEN MAR. 15 AND MAR. 20, 1969

J. W. Fulbright: Bermuda	Pound	62-10-0	$150	56-5-0	$135			6-5-0	$15	125-0-0	$300
Clifford P. Case: Bermuda	do	62-10-0	150	56-5-0	135			6-5-0	15	125-0-0	300
Frank Church: Bermuda	do	62-10-0	150	56-5-0	135			6-5-0	15	125-0-0	300
Alan Cranston: Bermuda	do	62-10-0	150	56-5-0	135			6-5-0	15	125-0-0	300
Ted Stevens: Bermuda	do	62-10-0	150	56-5-0	135			6-5-0	15	125-0-0	300
Carl Marcy: Bermuda	do	62-10-0	150	56-5-0	135			6-5-0	15	125-0-0	300
Milrae Jensen: Bermuda	do	62-10-0	150	56-5-0	135			4-0-0	9.60	122-15-0	294.60
Total			1,050		945				99.60		2,094.60

RECAPITULATION

	AMOUNT
Foreign currency (U.S. $ equivalent)	$2,094.60

J. W. FULBRIGHT,
Chairman, U.S. Senate Delegation,
British-American Parliamentary Conference.

Mar. 3, 1970.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON SENATE DELEGATION, 12TH CANADA-UNITED STATES INTERPARLIAMENTARY CONFERENCE (OTTAWA, JASPER PARK, AND BANFF), EXPENDED BETWEEN JUNE 3-8, 1969

Frank Church: Canada	Dollar		95.98		41.05				1.40		138.43
George Aiken: Canada	do		97.94		43.47						141.41
Sam Ervin: Canada	do		95.98		40.02						136.00
Mike Gravel: Canada	do		34.06		7.90		70.25				112.21
Robert P. Griffin: Canada	do		95.98		51.65				6.15		153.78
Clifford P. Hansen: Canada	do		95.98		44.09				.45		140.52
Len B. Jordan: Canada	do		94.02		47.67						141.69
Mike Mansfield: Canada	do		93.03		42.03		168.00		.94		304.00
William B. Spong: Canada	do		45.14		13.26		58.80		.23		117.43
Norvill Jones: Canada	do		92.06		44.39				2.12		138.57
Milrae Jensen: Canada	do		71.28		38.90				5.51		115.69
Mildred Mitchel: Canada	do		69.32		28.97						98.29
Myrna Sasser: Canada	do		71.28		27.94						99.22
Delegation expenses:											
Control room rental	do		124.47								124.47
Official meals and receptions	do				279.30						279.30
Transportation							14.25				14.25
Telephone charges	do								36.74		36.74
Gratuities	do								19.40		19.40
Travelers check charges	do								3.33		3.33
Office supplies	do								22.36		22.36
Total			1,176.52		750.64		311.30		98.63		2,337.09

RECAPITULATION

Appropriated funds: Public Law 86-42	$2,337.09

Mar. 6, 1970.

FRANK CHURCH,
Chairman, Senate Delegation, 12th Canada-United States Interparliamentary Meeting.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY 15TH COMMONWEALTH PARLIAMENTARY ASSOCIATION CONFERENCE (TRINIDAD AND TOBAGO)—EXPENDED BETWEEN OCT. 14 AND 19, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
J. W. Fulbright: Trinidad and Tobago	Dollar		$116.48		$128.77		$15.00		$12.20		$272.45
Marlow W. Cook: Trinidad and Tobago	do		109.29		125.63		15.00		13.93		263.85
Seth Tillman: Trinidad and Tobago	do		82.96		102.74		15.00		13.05		213.75
Delegation expenses:											
Official meals					154.57						154.57
Car rentals							185.15				185.15
Conference room rental			179.70								179.70
Telephone charges									.38		.38
Total			488.43		511.71		230.15		39.56		1,269.85

RECAPITULATION

Appropriated funds: S. Res. 65 ..... $1,269.85

J. W. FULBRIGHT,
Chairman, Senate Delegation.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE NORTH ATLANTIC ASSEMBLY MEETING, BRUSSELS, BELGIUM, EXPENDED BETWEEN OCT. 15-22, 1969

Senator John Sparkman:											
Belgium	Dollar		139.86		160.62				5.94		306.42
Senator John Cooper:											
Belgium	do		93.24		128.00		20.00		22.18		263.42
Senator Thomas F. Eagleton:											
Belgium	do		139.86		130.84				24.24		294.94
Senator Edward J. Gurney:											
Belgium	do		93.24		102.96		8.40		10.80		215.40
Senator Edward M. Kennedy:											
Belgium	do		139.86		130.78				44.12		314.76
Senator Karl Mundt:											
Belgium	do		53.28		57.40				17.00		127.68
Senator Claiborne Pell:											
Belgium	do		126.54		116.08				23.82		266.44
Senator Charles Percy:											
Belgium	do		119.88		156.20		25.40		40.56		342.04
Senator William Spong:											
Belgium	do		139.86		104.56				29.10		273.52
Sentor Ted Stevens:											
Belgium	do		139.86		122.06				28.30		280.22
Senator Stephen Young:											
Belgium	do		39.96		105.16						145.12
Margaret Brown:											
Belgium	do		93.24		96.46						189.70
John B. Childers;											
Belgium	do		106.56		47.40				7.36		161.32
William O. Farber:											
Belgium	do		66.60		47.14				5.04		118.78
Charles Ferris											
Belgium	do		93.24		131.74		25.99		40.88		291.85
Donald G. Henderson:											
Belgium	do		139.86		96.40		18.20		21.24		275.70
Arthur Kuhl:											
Belgium	do		93.24		117.72		8.50		17.58		237.04
William Miller											
Belgium	do		139.86		92.02				19.64		251.52
Nel F. Ryan											
Belgium	do		93.24		69.12				10.14		172.50
Carolyn Smith											
Belgium	do		93.24		79.04				14.28		186.56
Delegation expenses:											
Official meals					1,834.70						1,834.70
Hotel offices			502.08								502.08
Transportation							331.66				331.66
Telephone and telegrams									59.17		59.17
Office equipment rental									81.00		81.00
Overtime, embassy personnel									1,035.14		1,035.14
Office supplies									78.39		78.39
Miscellaneous									65.62		65.62
Total			2,646.60		3,916.40		438.15		1,701.54		8,702.69

RECAPITULATION

Public Law 84-689 ..... $8,702.69

JOHN SPARKMAN,
Chairman, Committee on Senate Delegation.

March 14, 1970.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY DELEGATIONS OF THE UNITED STATES GROUP, INTERPARLIAMENTARY UNION, EXPENDED BETWEEN JAN. 1, AND DEC. 31, 1969

Birch Bayh:										
Austria	AS	7,353.00	294.12	2,280.00	91.20	672.00	$26.10	10,305		$411.42
Denmark	D. kr	262.00	34.93					262.00		34.93
U.S.S.R.	US$		297.74							297.74
India	Rupee	1,228.92	161.70	1,534.21	201.87	1,122.49	147.69	3,885.62		511.26
Pakistan	PRs					240.75	50.00	240.75		50.00
Thailand	Baht	836.00	41.80	451.00	22.55	1,864.61	89.53	3,151.61		153.88
Korea	Won	6,534	21.57	1,442.00	4.76	15,100	50.00	23,076		76.33
Japan	Yen	11,072.00	30.75	9,592.00	26.65			20,664.00		57.40

REPORT OF EXPENDITURES OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY DELEGATIONS OF THE UNITED STATES GROUP, INTERPARLIAMENTARY UNION, EXPENDED BETWEEN JAN. 1, AND DEC. 31, 1969—Continued

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Ernest F. Hollings:											
Denmark	D. kr	262.00	34.93	206.00	28.80					468.60	63.73
U.S.S.R	US$		297.74								297.74
India	Rupee	1,222.92	161.70	94.00	12.37			225.95	29.74	1,542.87	203.81
Thailand	Baht	836.00	41.80	80.43	40.21			4.00	.20	1,644.30	82.21
Korea	Won	6,534	21.57							6,534.	21.57
Japan	Yen	10,912	30.31	19,332.	57.70			2,000.	5.56	32,244.	93.57
B. Everett Jordan:											
Austria	AS	7,870.50	314.82	3,361.00	134.45			834.70	36.20	12,066.20	485.47
Denmark	D. kr	279.00	37.20							279.00	37.20
U.S.S.R	US$		297.74								297.74
Do	Ruble					282.45	313.83			282.45	313.83
India	Rupee	1,085.92	142.88	126.77	16.68			1,212.36	159.53		319.09
Pakistan	PRs							200.25	41.59	200.25	41.59
Thailand	Baht	836.00	41.80	215.60	10.78			1,862.61	89.54	2,914.21	142.12
Korea	Won	7,260	23.97	850.00	2.81					8,110.	26.78
Japan	Yen	10,912	30.31	600.00	1.67			10,500.	29.17	22,012.	61.15
Lee Metcalf:											
Denmark	Krone	262.00	34.93							262.00	34.93
U.S.S.R	U.S. dollar		297.74								297.74
India	Rupee	1,228.92	161.70	72.50	9.54			52.75	6.94	1,354.17	178.18
Pakistan	U.S. dollar								25.00		25.00
Thailand	Baht	836.00	41.80	253.00	12.65					1,089.00	54.45
Korea	Won	6,534	21.57	1,006	3.32					7,540	24.89
Japan	Yen	14,800	41.11	5,460	15.17			690	1.91	20,950	58.1
William B. Saxbe:											
Denmark	Krone	301.00	40.14							301.00	40.14
U.S.S.R	U.S. dollar		297.74								297.74
India	Rupee	1,228.92	161.70	152.98	20.12			213.00	28.03	1,594.90	209.85
Thailand	Baht	836.00	41.80	159.50	7.98					995.50	49.78
Korea	Won	6,534	22.57	1,080	3.57					7,614	25.14
Japan	Yen	10,912.00	30.31	2,400.00	6.67			4,000.00	11.11	17,312.00	48.09
Hugh Scott:											
Austria	Schilling	7,870.50	314.82	1,615.00	64.60			837.40	33.50	10,322.90	412.92
Czechoslovakia	U.S. dollar				30.00						30.00
John Sparkman:											
Austria	Schilling	7,870.50	314.82	4,063.00	161.27			12,367.00	478.69	24,300.00	954.78
Denmark	Krone	468.00	62.40	55.00	7.33			704.00	93.86	1,227.00	163.59
U.S.S.R	U.S. dollar		297.74								297.74
India	Rupee	1,250.92	164.59	788.20	103.71			2,000.83	263.26	4,039.95	531.56
Pakistan	Pakistan rupee							194.75	40.45	194.75	40.45
Thailand	Baht	836.00	41.80	584.10	29.21	914.00	43.90	1,866.61	89.63	4,200.71	204.54
Korea	Won	7,260.00	23.97	620.00	2.04			21,250.00	68.73	29,130.00	94.74
Japan	Yen	16,960.00	47.11	17,316.00	48.10			36,010.00	100.00	70,286.00	194.21
Strom Thurmond:											
Austria	Schilling	5,497.00	219.90	2,854.90	114.20					8,351.90	334.10
Harrison A. Williams, Jr.:											
Austria	do	4,711.50	188.46	3,584.00	142.30	501.00	19.42	3,837.10	149.80	12,633.60	499.98
Czechoslovakia	U.S. dollars				24.00						24.00
Ralph Yarborough:											
Austria	Schilling	7,870.50	314.82	956.00	38.25			1,104.40	43.37	9,930.90	396.44
Denmark	Krone	262.00	34.93							262.00	34.93
U.S.S.R	U.S. dollars		297.74								297.74
India	Rupee	1,228.92	161.70	1,697.91	223.40			1,496.76	196.94	4,423.59	582.04
Thailand	Baht	836.00	41.80	55.00	2.75			1,789.61	85.94	2,680.61	130.49
Korea	Won	6,534	21.57	1,273	4.23			25,880	84.91	33,687	110.71
Japan	Yen	16,960	47.11	2,232	6.20			29,560	71.00	48,752	124.31
Katharine St. George: Austria	Schilling	4,711.50	188.46	680.00	27.20			645.00	25.00	6,036.50	240.60
James Lowenstein:											
Denmark	Krone	159.00	21.20					41.80	5.68	200.80	26.88
U.S.S.R	U.S. dollar		148.87								148.87
Thompson Buchanan:											
Denmark	Krone	159.00	21.20							159.00	21.20
U.S.S.R	U.S. dollar		148.87								148.87
Mark Garrison: Austria	Schilling	523.50	20.94					2,237.50	86.72	2,761.00	107.66
Octa Watson:											
Austria	do	3,150.00	126.00	1,196.00	47.85			645.00	25.00	4,991.00	198.85
Austria	U.S. dollar				50.00						50.00
Denmark	Krone	148.00	19.74					375.00	50.00	523.00	69.74
U.S.S.R	U.S. dollar		148.87								148.87
India	Rupees	1,157.42	152.90	87.70	11.54			2,681.07	352.78	3,931.19	517.22
Pakistan	do							195.75	40.03	192.75	40.03
Thailand	Bahts	748.00	37.40	22.00	1.10			1,868.61	89.74	2,638.61	128.24
Korea	Won	6,534	21.57					28,200	93.01	34,734	114.58
Japan	Yen	12,152	33.76					54,000	150.00	66,152	183.76
Milrae Jensen:											
Denmark	D. Krone	159.00	21.20	141.00	18.80			75.00	10.00	375.00	50.00
U.S.S.R	U.S. dollar		148.87								148.87
India	Rupees			655.00	86.18					655.00	86.18
India	U.S. dollar		89.20		7.23				.87		97.30
Pakistan	Rupees			111.75	23.21					111.75	23.21
Thailand	Bahts	933.00	45.00	931.61	44.53					1,864.61	89.53
Korea	U.S. dollars		21.57								21.57
Japan	Yen	10,800	30.00	10,200	28.33					21,000	58.33
William Gleysteen:											
Austria	Schilling	4711.50	188.46	1,611.00	64.45			455.20	18.	6,777.70	271.11
Denmark	Krone	159.00	21.20	103.20	14.04					262.20	35.24
U.S.S.R	U.S. dollar		148.87								148.87
India	Rupee	1,184.12	155.81	98.15	12.91			146.30	19.24	,428.57	187.96
India	U.S. dollar								11.50		11.50
Germany	Deutsche mark					5,091.06	1,391.00			5,091.06	1,391.00
Mary McLaughlin:											
Austria	Schilling	4,711.50	188.46	1,079.00	42.55			342.00	13.10	6,122.50	244.11
Denmark	Krone	148.05	19.74	150.00	20.00	136.88	18.25	174.90	23.32	609.83	81.31
U.S.S.R	U.S. dollar		148.87								148.87
India	Indian rupee	930.24	122.40	773.30	101.75	423.24	55.69	752.40	99.00	2,879.18	378.84
Pakistan	Pakistan rupee							59.75	12.41	59.75	12.41
Thailand	Baht	748.00	37.40	348.00	19.20	235.60	11.78	215.20	10.76	1,582.80	79.14
Korea	Won	7,333	21.57	2,750	8.09			10,108	29.73	20,192	59.39
Japan	Yen	12,153	33.76	9,252	25.70	7,470	20.75	6,757	18.77	35,632	98.98

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY A COMMITTEE

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Darrell St. Claire:											
Austria	Sch lling	7,353.00	294.12	3,263.70	130.02			1,825.00	71.40	12,441.70	70,495.54
Delegation expenses:											
Transportation						111,183.50	4,309.52			111,183.50	4,309.52
Hotel office		30,837.50	1,195.25							30,837.50	1,195.25
Official photos								1,840.00	72.28	1,840.00	72.28
Delegation meals				30,829.10	1,194.92					30,829.10	1,194.92
Receptions, official											
Functions				24,675.00	956.40					24,675.00	956.40
Embassy overtime, costs								25,758.16	998.37	25,758.16	998.37
Communication								777.00	30.11	777.00	30.11
Gratuities, misc								4,099.90	158.90	4,099.90	158.90
Austria											
Receptions, official functions	U.S. dollars				461.35						461.35
Communications									220.48		220.48
Books, gifts									54.00		54.00
Czechoslovakia:											
Transportation	Kr					15,219.33	1,060.58			15,219.33	1060.58
Czechoslovakia:											
Official luncheon	U.S. dollars				931.18						931.18
Yugoslavia:											
Transportation	Dinar					2,312.50	185.00			2,312.50	185.00
Yugoslavia:											
Reception	U.S. dollars				106.50						106.50
Communications, M'sc									11.84		11.84
Hungary:											
Transportation	Forint					5,913.50	197.12			5,913.50	197.12
Hungary:											
Luncheon	U.S. dollar				215.67						215.67
Communications									4.26		4.26
Denmark		234.00	31.20					391.00	52.15	625.00	83.35
Transportation	Krone					12,510.00	1,673.30			12,510.00	1,673.30
Reception, official dinner				4,311.70	586.62					4,311.70	586.62
Denmark:											
Gifts	U.S. dollar								17.75		17.75
U.S.S.R	U.S. dollar		297.74								297.74
Delegation expenses:											
U.S.S.R.:											
Transportation	do						990.00				990.00
Official reception	do						257.48				257.48
Gratuities, miscellaneous	Ruble							380.00	418.00	380.00	418.00
India	Rupee	1,228.92	161.70	274.70	36.15			802.35	105.57	2,305.97	303.42
Transportation	do					37,378.00	4,918.17			37,378.00	4,918.17
Hotel office		964.00	126.85							964.00	126.85
Delegation meals, receptions, commissary				11,943.67	1,472.16					11,943.67	1,472.16
Embassy overtime, costs		451.00	59.36	6.05	.86			26,825.08	3,458.60	26,742.13	3,518.82
Communications								749.06	98.56	749.06	98.56
Gifts, books								1,288.20	169.49	1,288.20	169.49
Gratuities, miscellaneous								1,660.00	218.42	1,660.00	218.42
India:											
Books, gifts	U.S. dollar								144.05		144.05
Gratuities, miscellaneous	do								92.40		92.40
Delegation expenses:											
Nepal:											
Embassy costs, miscellaneous	Rupee							2,303.70	303.12	2,303.70	303.12
Nepal:											
Books, Gifts	US dollar								45.00		45.00
Pakistan:											
Transportation	PRs					200.38	41.60			200.38	41.60
Reception	do			1,500.00	311.53					1,500.00	311.53
Wreath, gratuities, miscellaneous	do							150.33	31.22	150.33	31.22
Pakistan:											
Gifts	US dollar								17.75		17.75
Thailand	Baht	836.00	41.80	27.50	1.38			1,891.62	90.89	2,755.12	134.07
Hotel office		2,008.30	100.41							2,008.30	100.41
Delegation meals				303.00	15.15					303.00	15.15
Gratuities, miscellaneous								465.00	23.25	465.00	23.25
Thailand	U.S. dollar										
Reception					165.00						165.00
Gifts									31.25		31.25
Korea	Won	6,534	21.57	177	.59					6,711	22.16
Transportation						637,042	2,153.84			637,042	2,153.84
Hotel office		23,232	76.70							23,232	76.70
Gratuities, miscellaneous								13,120	40.32	12,120	40.32
Korea:											
Reception	U.S. Dollars				197.40						197.40
Commissary					78.41						78.41
Gifts									70.75		70.75
Wreath, miscellaneous									28.06		28.06
Japan	Yen	16,960	47.11	3,252	9.04			58,500	162.50	78,712	218.65
Transportation						88,982	247.17			88,982	247.17
Hotel office		83,920	233.33							83,920	233.33
Embassy overtime								126,100	350.46	126,100	350.46
Communications								19,000	52.78	19,000	52.78
Delegation meals				13,490	37.40					13,490	37.40
Commissary				16,500	45.62					16,500	45.62
Embassy expenses								12,750	35.47	12,750	35.47
Japan:											
Transportation	U.S. dollars						130.74				130.74
Reception							297.25				297.25
Gratuities, papers											
Miscellaneous							166.60				166.60
Gifts									38.75		38.75

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY A COMMITTEE—Continued

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Switzerland:											
Transportation	U.S. dollar						500.00				500.00
Total			11,366.07		9,341.12		19,002.99		11,530.98		51,241.16

RECAPITULATION

Foreign currency (U.S. dollar equivalent)	$29,591.39
Appropriated funds: Other: 22 U.S.C. 276	21,649.77
Total	51,241.16

Mar. 24, 1970

JOHN SPARKMAN,
President of the U.S. Group, IPU and Chairman of the Delegations.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON GOVERNMENT OPERATIONS, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Dr. Wm. O. Farber:											
West Germany	Deutsche mark					2,188	547.14			2,188	547.14
Belgium	Belguim francs	4,875	97.50	3,950	79.00	1,350	27.00	913	18.26	11,088	221.76
Subtotal			97.50		79.00		574.14		18.26		768.90
Albert A. Lakeland:											
Belgium	Franc		66.55		150.00		16.00		7.45		240.00
France	do		35.00		35.00		12.00		8.00		100.00
England	Pound		12.50		38.00		5.00		2.00		57.50
Subtotal			114.05		233.00		33.00		17.45		397.50
Total			211.55		312.00		607.14		35.71		1,166.40
Frederick J. Asselin:											
Japan	Yen	6,218	17.38	5,581	15.60	1,431	4.00			13,231	36.98
Hong Kong	Hong Kong dollars	1,187	196.00	757	125.00	290	48.00			2,236	369.00
Vietnam	Piastre	8,732	74.00	47,200	400.00	16,700	150.00	15,770	133.65	88,402	757.65
Thailand	Baht	567	27.00	315	15.00	93.95	4.95			975	46.95
Malaysia	Malaysian dollar	189	61.67	95	30.88	95	31.00			380	123.55
Philippines	Peso	273	70.00	149.72	38.69	62	16.00	39	10.00	524	134.69
Indonesia	Rupiah	8,500	22.08							8,500	22.08
Germany	Deutsche mark					7,530	1,880.15			7,530	1,880.15
Subtotal			468.13		625.17		2,134.10		143.65		3,371.05
LaVern J. Duffy:											
Japan	Yen	65,520	182.00	37,800	105.00	8,280	23.00	14,400	40.00	126,000	$350.00
Hong Kong	Hong Kong dollar	2,849		1,254		377		347		4,828	
		6328	467.92	5400	206.00	5800	62.00	1300	57.00	[1] 88	[1] 792.92
Malaysia	Malaysia dollar	315		181		176		109			
		1200	104.00	8000	60.00	1945	58.15	0800	36.00	782.00	258.15
Vietnam	Piastre	14,160	120.00	58,174	493.00	7,316	62.00	8,850	75.00	[2] 88,500	[2] 750.00
Philippines	Peso	423		227		203		174			
		25200	108.00	30200	58.00	78800	52.00	39550	44.50	[3] 1,028.74	[3] 262.50
Germany	Deutsche mark					7,454	1861.17			7,454.00	1,861.17
Total			981.92		922.00		2,118.32		252.50		4,274.74
Philip W. Morgan:											
Japan	Yen	6,256	17.37	6,501	18.06			560	1.55	13,315	36.98
Hong Kong	Hong Kong dollar	463.68	76.13	275.21	45.19	110.29	18.11	146.16	24.00	995.34	163.43
Vietnam	Piastre	1,880	16.00	7,906	67.00			3,186	27.00	12,980	110.00
Thailand	Baht	993.30	47.94	978.30	47.22			76.40	3.68	2,048.00	98.84
Greece	Drachmae	513	17.10	450.00	15.00			37	1.23	1,000.00	33.33
International transportation (Germany)	Deutsche mark					7,530	1,880.15				1,880.15
Greece	Drachmae					11,907	396.90				396.90
Total			174.54		192.47		2,295.16		57.46		2,719.63
Abraham A. Ribicoff:											
England	Pound	92.10	221.04	28.20	68.16			4.60	11.00	124.90	300.20
Sweden	Krona	425.95	82.00	529.62	102.00			82.43	16.00	1,038	200.00
France	Franc	1,230	222.00	709.00	128.00					1,939	350.00
Subtotal			525.04		298.16				27.00		850.20
Paul Danaceau:											
England	Pound	71.15	170.76	11.80	28.08			2.15	5.16	85.10	204.00
Sweden	Krona	378.95	73.00	446.57	86.00			206.48	41.00	1,032	200.00
France	Franc	782.80	141.00	603.20	108.00	221.60	40.00	341.40	61.00	1,949	350.00
Subtotal			384.76		222.08		40.00		107.16		754.00
Cermine S. Bellino:											
Japan	Yen	38,804	107.79	34,696	96.38	1,800	5.00	13,100	36.39	88,400	245.56
Hong Kong	Hong Kong dollar	1,966.25	322.87	1,346.75	221.14	219	35.96	481	78.98	4,013	658.95
Malaysia	Malaysian dollar	89.52	29.84	126.48	42.16			37	12.33	250	84.33
Vietnam	Piastre			40,640	344.40	344.40				40,640	344.40
International transportation:											
Germany	Deutsche mark					8,167.00	2,039.20				2,039.20
Total			460.50		704.08		2,080.16		127.70		3,372.44

RECAPITULATION

Foreign currency (U.S. dollar equivalent)	$16,508.46

J. L. McCLELLAN,
Chairman, Committee on Government Operations.

Mar. 14, 1970.

[1] Refunded, 1,667.20 Hong Kong dollars; 273.31 U.S. dollars.
[2] Refunded, 15,000 Piasters; 127.12 U.S. dollars.
[3] Refunded, 180.00 Piasters, 45.94 U.S. dollars.
[4] Includes, 7 days in Okinawa and Honolulu where no counterpart or per diem received for expenses.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Ted Stevens:											
Belgium	Belgium franc						$24.75				$24.75
France	Franc		$40.00		$30.00		84.10		$37.95		192.05
United Kingdom	Pound		30.00		35.00				22.89		87.89
Total			70.00		65.00		108.85		60.84		304.69

HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs.

Mar. 11, 1970.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON THE JUDICIARY, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Bayh, Birch:											
U.S.S.R.	Ruble	804.58	$893.98							804.58	$893.98
Portugal	Esc.	945	35.00	945	$35.00			1,202.70	$44.43	3,092.70	114.43
United Kingdom	Pound	14.5	35.00	10.5	25.00			16.16.0	39.88	41.16.0	99.88
Germany	DM					2,595.86	$709.25			2,595.86	709.25
Total			963.98		60.00		709.25		84.31		1,817.54
Blair, John:											
United Kingdom	Pound	25	60.00	15	36.00	19.3.6	44.78	10	24.00	69.3.6	164.78
Germany	DM	200	50.00	400	100.00	3,475	868.67	303.60	75.00	4,378.60	1,093.67
Total			110.00		136.00		913.45		99.00		1,258.45
Durant, Dr. Thomas S.:											
Hong Kong	Hong Kong dollar	522	87.00	690	115			468	78.00	1,680	280.00
Vietnam	Piastre	26,786	227.00	38,114	323			6,726	57.59	70,800	607.59
Germany	Mark					7,570	1,890.14				1,890.14
Total			314		438		1,890.14				2,777.73
Karlin, George: Germany	Mark					3,457.24	944.60			3,457.24	944.60
Kennedy, Edward M.: Belgium	Franc					104	2.00			104	2.00
Klein Wells Campbell: Vietnam	Dong	29,972	254.00	19,470	165.00			15,458	131.00	64,900	550.00
Levinson, John M.:											
Vietnam	Dong	30,798	262.00	26,050	205.00			17,000	140.00	70,800	607.00
Hong Kong	Hong Kong dollar	222	37.50	270	45.00			240	40.50	780	123.00
Total			299.50		250.00				180.50		730.00
Mathias, Charles McC., Jr.:											
Germany	Deutsche mark					2,879.44	719.07			2,879.44	719.07
Morocco	Dirkam					1,232.96	243.66	1,692.00	343.39	2,924.96	578.05
Spain	Peseta							6,980.00	99.57	6,980.00	99.57
Switzerland	Swiss Franc							864.00	200.00	864.00	200.00
United Kingdom	Pound					62.13.6	149.80	40.7.0	96.85	102.20.6	246.65
							1,112.53		730.81		1,843.34
Refund									−549.30		−549.30
							1,112.53		181.51		1,294.04
Fred M. Mesmer:											
Germany	Deutsche mark	1,248	312.00	1,568	392.00	4,369.90	1,133.17	384	96.00	7,569.90	1,933.17
Ireland	Pound	89.4.2	214.50	112.8.8	269.50	102.19	246.29	27.9.4	66.00	333.2.4	796.29
Switzerland	Franc	980.50	226.43	1,260.50	291.22	337.50	77.47	224.50	54.88	2,803	650.00
United Kingdom	Pound	26	62.40	37	88.80	6	14.40	14.7	34.40	83.7.0	200.00
Total			815.33		1,041.52		1,471.33		251.28		3,579.46

JAMES O. EASTLAND,
Committee on the Judiciary.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON LABOR AND PUBLIC WELFARE, U.S. SENATE, EXPENDED BETWEEN JANUARY 1 AND DECEMBER 31, 1969

Thomas F. Eagleton:											
Belgium	Franc					5,515	$105.96			5,515	$105.96
France	Franc	300.00	$54.00	258.00	$46.00					558	100.00
United Kingdom	Pound	21.14.0	52.00	20.0.0	48.00					41.14.0	100.00
Gaylord Nelson:											
Italy	Lira	93,787.50	150.00	31,262.50	50.00					125,050	200.00
Total			256.00		144.00		105.96				505.96

RALPH W. YARBOROUGH,
Committee on Labor and Public Welfare.

Mar. 12, 1970.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON PUBLIC WORKS, U.S. SENATE, EXPENDED BETWEEN JANUARY 1 AND DECEMBER 31, 1969

Senator William B. Spong, Jr.:											
Jordan	Dinar			3.000	8.40					3.000	8.40
Lebanon	Pound	56.75	16.49							56.75	16.49
United Arab Republic	Pound					3.470	6.25	7.715	13.89	13.965	20.14
Italy	Lira			4,000	6.26					4,000	6.26
Germany	Deutsche mark					5,302.80	1,332.03			5,302.80	1,332.03
Israel	Pound	313.00	89.43			461.99	132.00			774.99	221.43
Senator Mike Gravel:											
Hong Kong	Hong Kong dollar	405.00	66.67	215.00	35.38	28.00	4.59	37.00	6.15	685.00	112.79
Korea	Won							805.00	1.87	805.00	1.87
Thailand	Baht	655.15	31.47	342.10	16.42			44.00	2.11	1,041.25	50.00
U.S.S.R.	Ruble					45.05	50.00	22.95	25.56	68.00	75.56
Vietnam	Piastre	5,915	50.13	3,635	30.80	785	6.66	815	6.90	11,150	94.49
India	Rupee			456	60.00	76	10.00	378	49.74	910	119.74

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON PUBLIC WORKS, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969—Continued

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mike Gravel:											
Denmark	Krone	559.90	74.40	135.40	18.00	841.50	111.89	57.20	7.60	1,594.00	211.89
Germany	Deutsche mark					9,722.00	2,431.10			9,722.00	2,431.10
Charles Hamel:											
Hong Kong	Hong Kong dollar	405.00	66.67	215.00	35.38			37.00	6.15	657.00	108.20
Korea	Won							6,765	22.88	6,765	22.88
Thailand	Baht	655.15	31.47	342.10	16.42			44.00	2.11	1,041.25	50.00
U.S.S.R.	Ruble					45.05	50.00	22.95	25.56	68.00	75.56
Vietnam	Piastre	5,915	50.13	3,635	30.80	785	6.66	815	6.90	11,150	94.49
India	Rupee			456	60.00	76	10.00	378	49.74	910	119.74
Denmark	Krone	559.90	74.40	135.40	18.00	9.11	1.21	26.34	3.50	730.75	97.11
Germany	Deutsche mark					9,722.00	2,431.10			9,722.00	2,431.10
Total			551.26		335.86		6,583.49		230.66		7,701.27

RECAPITUALTION

Foreign currency (U.S. dollar equivalent) 7,701.27

April 1, 1970.

JENNINGS RANDOLPH,
Chairman, Committee on Public Works, U.S. Senate.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON RULES AND ADMINISTRATION, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

William M. Cochrane:											
Italy	Lire	33,000	$52.46	23,300	$37.24			6,000	$9.54	62,300	$99.24
Germany	DM	16	4.00	144	36.00			50	12.50	210	52.50
England	Pound	6.7.0	15.24	7	16.80			3	7.20	16.7.0	39.24
Transportation (air)	DM					3,556.80	$971.80				971.80
Transportation (ground)	Pound					50.01.9	119.71				119.71
Subtotal			71.70		90.04		1,091.51		29.24		1,282.49
John F. Haley:											
Italy	Lire	32,600	52.16	19,000	30.40			8,000	12.80	59,600	95.36
Germany	DM	128	32.00	120	30.00			100	25.00	348	87.00
England	Pound	34	81.60	27	64.80			9	21.60	70	168.00
Transportation (air)	DM					3,556.80	971.80				971.80
Transportation (ground)	Lire					82,832	131.90				131.90
Subtotal			165.76		125.20		1,103.70		59.40		1,454.06
Total			237.46		215.24		2,195.21		88.64		2,736.55

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $2,736.55

Mar. 12, 1970.

B. EVERETT JORDAN,
Chairman, Committee on Rules and Administration.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE JOINT ECONOMIC COMMITTEE, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Richard Bolling:											
Finland	Markka	330	$78.82	250	$59.71	1,500	[1] 358.25	259	$61.86	2,339	$558.64
Germany	Deutsche mark	280	70.35	100	25.13	6,657	[3] 1,672.68	217	54.52	7,254	1,822.68
Israel	Pound	320	91.43	165	47.14	686.76	[1] 196.22	215	61.43	1,386.76	396.22
Sweden	Krona	130	25.18	100	19.37	409	[1] 79.23	28.50	5.52	667.50	129.30
United Kingdom	Pound	44	105.60	30	72.00	215-6-3	[1] 516.75	30-12	73.44	319-18-3	767.79
Total			371.38		223.35		2,823.13		256.77		3,674.63
Douglas C. Frechtling:											
Finland	Markka	300	71.65	180	42.99	50	11.94	149	35.59	679	162.17
Germany	Deutsche mark	210	53.00	53	13.32	3,058	768.35			3,321	834.67
Israel	Pound	235	67.14	165	47.14	125	35.72	175	50.00	700	200.00
Sweden	Krona	155	30.03	45	8.72	20	3.87	38.50	7.46	258.50	50.08
United Kingdom	Pound	45	108.00	28	67.20	8	19.20	23-12	56.64	104-12	251.04
Total			329.82		179.37		839.08		149.69		1,497.96
Congresswoman Martha W. Griffiths:											
Finland	Finmark	420	100.31	144	34.39			275	65.68	839	200.38
Germany	Deutsche mark	350	87.94	103	25.88	6,657.00	[2] 1,672.68	33	8.29	7,143.00	1,794.79
Sweden	Krona	180	34.87	71	13.75			7.50	1.45	258.50	50.07
United Kingdom	English pound	57	136.80	20	48.00			27.12	66.24	104-12	251.04
Total			359.92		122.02		1,672.68		141.66		2,296.28
Albert A. Lakeland:											
Belgium	Franc	991.23	19.36	1,280.00	25.00	256.00	5.00	186.37	3.64	2,713.60	53.00
France	Franc	596.15	120.41	297.06	60.00	54.46	11.00	42.53	8.59	990.20	200.00
Germany	Deutsche mark	261.13	65.20	88.11	22.00	86.11	21.50	15.22	3.80	450.57	112.50
Israel	Israeli pound			122.50	35.00	5,070.90	[3] 1,448.83	17.50	5.00	5,210.90	1,488.83
Italy	Lira	34,164	54.75	9,360	15.00	3,120	5.00	1,716	2.75	48,360	77.50
United Kingdom	English pound	39-6	94.32	25-15	61.80	10	24.00	2-10	6.00	77-11	186.12
Total			354.04		218.80		1,415.33		29.78		2,117.95

Name and country	Name of currency	Lodging: Foreign currency	Lodging: U.S. dollar equivalent or U.S. currency	Meals: Foreign currency	Meals: U.S. dollar equivalent or U.S. currency	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency	Miscellaneous: Foreign currency	Miscellaneous: U.S. dollar equivalent or U.S. currency	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency
Margie B. Morris:											
Finland	Finmark	786.23	187.78	366.44	87.52	205.20	49.01	205.29	49.03	1,563.16	373.34
France	Franc	829.79	166.86	402.61	80.96	869.73	174.89	57.44	11.55	2,159.57	434.26
Germany	Deutsche Mark	989.84	247.15	540.07	134.85	6,563.16	[3] 1,638.74	539.79	134.78	8,632.86	2,155.52
Greece	Drachma	3,385.20	112.84	2,296.80	76.56	1,849.50	61.65	262.20	8.74	7,793.70	259.79
Italy	Lira	100,803	160.77	39,407	62.85	57,834	92.24	24,234	38.65	222,278	354.51
Netherlands	Guilder	182.67	50.17	109.08	29.96	59.31	16.29	41.73	11.46	392.79	107.88
Sweden	Krona	297.54	57.64	79.86	15.47	56.52	10.95	62.25	12.06	496.17	96.12
Switzerland	Swiss franc	425.90	98.52	214.94	49.72	258.21	59.73	180.74	41.81	1,079.79	249.78
United Kingdom	English pound	100.19.7	242.35	90.8.1	216.97	91.8.3	219.39	59.3.8	142.04	341.19.7	820.75
Total			1,324.08		754.86		2,322.89		450.12		4,851.95
Henry S. Reuss:											
Germany	Deutsche mark					2,145.20	[2] 535.63			2,145.20	535.63
Italy	Lira	40,000	64.00	73,750	118.00			11,250	18.00	125,000	200.00
Total			64.00		118.00		535.63		18.00		735.63
John R. Stark:											
Germany	Deutsche mark					2,815.60	[2] 765.04			2,815.60	765.04
Mexico	Mexican dollar	1,236.51	99.00	899.28	72.00	237.31	19.00	99.92	8.00	2,473.02	198.00
Total			99.00		72.00		784.04		8.00		963.04
Roberto Campos,[4] Brazil	Cuzeiro		[5] 150.00			3,655.08	858.00			4,294.08	1,008.00
Alex Iveroth,[4] Sweden	Krona		[5] 150.00			4,871.36	942.60			5,646.56	1,092.60
Akio Morita,[4] Japan	Yen		[5] 150.00			547,740	1,521.50			601,740	1,671.50
Pierre Uri:[4] France	French franc	[6] 150.00				4,691.62	842.00			5,527.42	992.00
Eric Wyndham-White: Switzerland	Swiss franc	[6] 150.00				3,846.00	894.21			4,491.00	1,044.21
Total			3,652.24		1,688.40		15,551.90		1,054.02		21,945.75

RECAPITULATION

Foreign currency (U.S. Dollars equivalent) $21,945.75

WRIGHT PATMAN
Chairman, Joint Economic Committee.

[1] Transportation expenses incurred on behalf of the entire party which were charged to Representative Bolling as chairman of the subcommittee.
[2] Round-trip transportation purchased by State Department.
[3] Includes round-trip transportation purchased by State Department.
[4] Testified at hearings before the Subcommittee on Foreign Economic Policy.
[5] $150 advance by U.S. embassies before departure for the United States—no breakdown furnished the Joint Economic Committee. For accounting purposes entire amount included under "Lodging."
[6] 3 days per diem at $50 per day.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON ATOMIC ENERGY, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Name and country	Name of currency	Lodging: Foreign currency	Lodging: U.S. dollar equivalent or U.S. currency	Meals: Foreign currency	Meals: U.S. dollar equivalent or U.S. currency	Transportation: Foreign currency	Transportation: U.S. dollar equivalent or U.S. currency	Miscellaneous: Foreign currency	Miscellaneous: U.S. dollar equivalent or U.S. currency	Total: Foreign currency	Total: U.S. dollar equivalent or U.S. currency
Senator Anderson:											
Switzerland	Franc	559	$130.00	432	$100.00	1,234.00	$286.88	86	$20.00	2,311	$536.88
United Kingdom	Pound	25.0.0	60.00	10.8.4	25.00	23.0.0	[1] 54.97	6.5.0	15.00	64.11.5	154.97
Germany	Deutsche mark					2,348.00	586.27				586.27
Senator Curtis:											
Belgium	Franc	1,250	25.00	1,000	20.00	250	5.00			2,500	50.00
Denmark	Krona	569.25	75.73			379	50.39	23.35	3.00	971.60	129.12
Norway	do	427.84	60.26							427.84	60.26
Sweden	do	1,085.55	208.76							1,085.55	208.76
United Kingdom	Pound	73.3.2	174.81			16.5.6	38.90			73.3.2	213.71
Congressman Price:											
Austria	Schilling	1,548	60.00	774	30.00	1,180.59	45.78	258	10.00	3,760.59	145.78
Belgium	Franc	4,000	80.00	2,500	50.00	4,921.00	98.22	1,000	20.00	12,421.00	248.22
France	do	495	90.00	412	75.00	511.00	93.05	99	18.33	1,517.00	276.38
Germany	Deutsche mark	200	50.00	160	40.00	1,881.60	514.10	40	10.00	2,281.60	614.10
Foreign currency (U.S. dollar equivalent):											$3,717.68
Italy	Lira	50,260	80.00	31,360	50.00	6,290	10.00	6,290	10.00	94,200	150.00
Switzerland	Franc	180.60	42.00	129	30.00	475.95	110.10	41	9.50	826.55	191.60
United Kingdom	Pound	20.16.8	50.00	16.13.4	40.00	21.12.0	51.63	4.3.4	10.00	63.3.7	151.63
Total			1,186.56		4,460.00		1,945.21		125.83		3,717.68

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $3,717.68

CHET HOLIFIELD,
Chairman, Joint Committee on Atomic Energy.

[1] Commercial air transportation.

Mar. 14, 1970.

ORDER OF BUSINESS

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

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair, with the understanding that the recess not extend beyond 3 p.m. today.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Thereupon (at 1 o'clock and 55 minutes p.m.) the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 2 o'clock and 43 minutes p.m., when called to order by the Presiding Officer (Mr. GRAVEL).

THE CARSWELL NOMINATION

Mr. SPONG. Mr. President, our Supreme Court is not, and has not been in recent years, held in high esteem by a majority of our citizens. The reasons for this are varied, but the fact remains that there has been a general lack of confidence in our highest court at a time

when all the institutions of our democracy are under attack. The judiciary is the one branch of our Government removed from the electorate, and considering present public opinion of the Court, plus the rather sad recent history of the seat on the Court for which Judge George Harrold Carswell has been nominated, I believe the role of advise and consent rests heavier upon the Senate than at any time in this century.

When Judge Carswell's name was presented to the Senate, I viewed the nomination with the presumption in favor of approval that I have given all nominees to the Supreme Court during my service in the Senate. Moreover, this presumption was buttressed by my own view that an able Southern jurist would be a helpful addition to the Court.

Today the South has much to offer the Nation—experience, patience, and wisdom—qualities gleaned from military defeat, poverty, and deprivation. It is in this region where blacks and whites, in nearly equal numbers, for better or worse, have coexisted for generations. A qualified southerner could give more than geographic and philosophical balance to the Supreme Court—he could give perspective.

In discussing earlier nominations, I have stated—in defining my own views of the role of advise and consent—that judicial philosophy and partisan politics have no place in the consideration of a nominee for the Supreme Court. A Senator should review carefully the nominee's qualifications—his background, experience, integrity, and temperament, mindful that this is the Nation's highest judicial tribunal and that minimal standards are not the yardstick by which a nominee should be measured.

I have regretfully concluded that Judge Carswell does not measure up to the standards I believe are required at this time of a Supreme Court Justice. This conclusion has not been arrived at hastily. I have tried, in reviewing the hearings and debate thus far, to resolve my doubts in favor of the nominee. I have not been able to do so.

I had hoped the motion to recommit this nomination to the Senate Judiciary Committee would have passed. This could have provided an opportunity for clarification of matters made public subsequent to the committee hearings and subject to much discussion in the news media. It would have been beneficial to the nominee, whether or not he is confirmed, to have competent and clarifying testimony presented to the committee, rather than allow clouds to remain.

I believe the present views of Judge Elbert Tuttle, retired chief justice of the fifth circuit court, should be clarified since he apparently no longer endorses the confirmation of his colleague, Judge Carswell. Judge Tuttle's letter, which was printed in the hearing transcript, was a significant factor in the testimony of former Gov. Leroy Collins and in the favorable recommendation given by the Judiciary Committee. During the hearings, Judge Tuttle apparently told Judge Carswell he could not testify in his behalf. This information was not known until the nomination had reached the Senate floor.

Also, I am troubled by the testimony of Judge Carswell with regard to his participation in the organization of a private country club in Tallahassee. His testimony on this matter was evasive, ambiguous, and an altogether unsatisfactory account of the facts. Evasive testimony does no credit to a man who is being considered for the Nation's highest judicial post. If answers to the committee were based upon any misunderstanding of questions propounded to him, this should be clarified by Judge Carswell. As the matter now stands, it has been made worse by the subsequent statements of two reputable lawyers that they discussed Judge Carswell's participation as an organizer with him on the very night prior to his testimony under oath before the Senate Judiciary Committee.

Justice Fortas declined reappearance before the Judiciary Committee after the matter of his lecture fees at American University and the source of these fees was made public. On the other hand, Judge Haynsworth, after it was disclosed that he had purchased stock in a company involved in litigation before him, returned with additional witnesses and gave the committee all of the factual data surrounding that transaction.

It is argued that undistinguished jurists have previously been nominated and confirmed. Perhaps so, but I must weigh this nomination in the context of the times in which we live, and my own responsibility in terms of the standards of qualification I believe are required of a Supreme Court Justice. Also, I am mindful of the probability that President Nixon will have other opportunities in the next few years to nominate men for positions on the Court. It is important, I believe, to impress upon the President that there should be no lowering of standards where the nominating process begins.

In this regard I am compelled to comment upon President Nixon's letter of March 31 to Senator SAXBE. I quote in part therefrom:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitutioon with the power of appointment. The question arises whether I, as President of the United States, shall be accorded the same right of choice in naming Supreme Court Justices which has been freely accorded by my predecessors of both parties.

In the 3 years I have served in the Senate I have opposed one nominee who was regarded as a liberal, Justice Fortas, and supported one nominee regarded as a liberal, Justice Marshall. They were nominated by a President of my own party. Subsequently, I have supported Chief Justice Burger and Judge Haynsworth, both regarded as conservatives and nominated by President Nixon.

I take exception to any inference that I am endeavoring to substitute by subjective judgment or my own philosophy for the President's. This is a question of competence and temperament rather than philosophy. Am I to believe that if President Nixon had all of the facts now before the Senate before him at the time this appointment was made that he would still nominate George Harrold Carswell? Am I asked to overlook the fact that should this nomination be defeated the President still has the constitutional authority to nominate a judge of whatever philosophy and background he chooses? I will not comment further upon the letter to Senator SAXBE, other than to observe that the President has introduced an entirely new concept of the Senate's role of advise and consent. Even the narrow interpretation of the Senator's role in which I believe, contemplates fully the Senate's right to question the qualifications, temperament, and character of a nominee, particularly for a lifetime appointment.

It is also argued that we should be mindful of a man's capacity to grow—that Judge Carswell is a relatively young man whose undistinguished record to date should not be conclusively weighed against the possibility that, as a Supreme Court Justice, he might develop a competence not heretofore apparent. I find little to sustain that hope, although I have taken the time to review many of his opinions.

It has been asserted that during his time on the district bench, 40.2 percent of Judge Carswell's appealed decisions were reversed by higher courts. The figure is 58.8 percent when only his printed or major decisions are considered. Also, figures have been presented which show that of the 67 judges who served in the fifth circuit during the 11 years of Judge Carswell's service as a district judge only six have a higher rate of reversal. I recognize the fallibility of statistical criteria.

Yet, if there are reasons for these abnormal percentages they have not been presented effectively. Moreover, it is disturbing that the reversal rate increased during his service.

Another matter of concern is Judge Carswell's apparent lack of industry as a Federal district judge. Alleged facts, presented after the hearings, indicate that while Judge Carswell had one of the lightest case loads in the entire fifth circuit, he also had one of the heaviest case backlogs, a situation that worsened as time went on and which did not improve even with the appointment of a second judge in the district. If this is true, I find it disquieting when considering the busy workload of our Highest Court.

In reviewing the nomination of Judge Carswell, I found myself inevitably comparing the nominee with other Southern jurists of recent times—Justice Reed of Kentucky, Justice Black of Alabama, and Justice Byrnes of South Carolina. I find in the Carswell record no evidence of the scholarly reasoning of Stanley Reed, no fine understanding of our Bill of Rights that has marked the service of Hugo

Black, and nothing comparable to the brilliant public service of Senator Byrnes that preceded his brief service on the Supreme Court.

Comparisons are also inevitable with two southerners who have been denied a place on the Court in this century—Judge John J. Parker of North Carolina and Judge Clement Haynsworth of South Carolina.

Dean Pollak, of the Yale Law School, when pressed for such a comparison of the nominee with Judge Parker said as follows:

Senator, Judge Parker has been very much in my mind because though I know there is a variety of view about him and in his later years he wrote a number of opinions with which I disagree, I have always thought of him as a judge of very considerable distinction, and it has been to my mind a very real question as to whether the Senate was not in error in declining to consent to his nomination. But the adjectives you use in referring to Judge Parker, the brilliance, the excellence, the ability that you properly ascribe to him, are not, I respectfully suggest, adjectives that can appropriately be attributed at this stage to this judge, the nominee who is now before you. (Transcript, Page 248)

I supported Judge Haynsworth for reasons now a matter of record. It is my view that the Senate erred in failing to consent to his nomination. While studying the Haysnworth record I was impressed that detailed briefs were presented by nationally respected legal scholars as evidence of Judge Haynsworth's abilities and, in general, praise of his judicial work in various areas of the law. Read cumulatively, they presented the portrait of a diligent, able and thoughtful judge with a quality in his work that assured he could serve with distinction on the Supreme Court of the United States. I find no comparable evidence in the Carswell transcript nor has any been presented subsequent to the hearings.

I hope I am mistaken in my assessment of Judge Carswell. The demands upon the Court during the remainder of this century will be great. It is quite possible that this nominee, if confirmed, might well serve for most of the balance of this century. This has been a difficult decision and I have come to have regrets about a system that has subjected three of the last four nominees to the type of national debate that has resulted. Nevertheless, for me there remain unanswered questions about the nominee. I believe we must seek excellence and require candor from those who are to administer justice on the highest court in our Nation.

I cannot consent to this nomination.

THE PENDING BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is Senate Resolution 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.

PROGRAM FOR TOMORROW

Mr. BYRD of West Virginia. Mr. President, as a reminder to Senators, may I say that immediately upon the disposition of the reading of the Journal on tomorrow, under the previous order the able senior Senator from South Carolina (Mr. THURMOND) is to be recognized for not to exceed 1 hour, following which it is to be assumed that the majority leader will set aside a period for the transaction of routine morning business, before the unfinished business is laid before the Senate.

ADJOURNMENT TO 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 2 o'clock and 55 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, April 7, 1970, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 6, 1970:

AMBASSADORS

Arthur K. Watson, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to France.

Walter C. Ploeser, of Missouri, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Costa Rica.

William D. Brewer, of Connecticut, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mauritius.

William C. Burdett, of Georgia, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Malawi.

DEPARTMENT OF STATE

David M. Abshire, of Virginia, to be an Assistant Secretary of State.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Vice Adm. John Marshall Lee, U.S. Navy, of Virginia, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency.

EXTENSIONS OF REMARKS

BOOM IN ABILENE EVIDENCE AMERICANS STILL LIKE IKE

HON. CHESTER L. MIZE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, April 6, 1970

Mr. MIZE. Mr. Speaker, a little more than a year has passed since the death of Dwight D. Eisenhower. Our former President and general of the Army rests peacefully, his labors done and his accomplishments remembered by Americans as a testament to their country's greatness.

Ike is buried in a simple chapel crypt at Abilene, the town that he grew up in and remembered through his life with fondness. Eisenhower Chapel is near the museum that contains the personal effects and papers of a life of selfless service and dedication to good works. Nearby, also, is the Eisenhower boyhood home, typical of the humble origins of many of our greatest leaders and most of America's heroes.

In the year since Ike was buried in Abilene, over three-quarters of a million citizens have paused to pay their respects and ponder the significance of his work, his life, and how he lived it. Abilene has welcomed visitors to its historic places with warmth and quiet dignity befitting the memory of the general.

Mr. Speaker, on Thursday, April 2, the New York Times carried an article about Abilene—1 year after Ike came home to rest. I know all Americans will be interested in reading this piece for it reflects some of the reasons why I am deeply honored and highly privileged to represent the citizens of Abilene in the Congress.

The Times article is reproduced as follows:

BOOM IN ABILENE EVIDENCE AMERICANS STILL LIKE IKE

(By Drummond Ayres, Jr.)

ABILENE, KANS., April 1.—The charisma is still there, even in death.

In the year since Dwight David Eisenhower was brought back to this old frontier town and lowered into the rich prairie soil of which he always seemed so much a part, more than 782,000 people have come here to pay their respects.

They stand silently at the foot of his simple chapel crypt, heads slightly bowed, remembering that 35-million-vote smile.

They visit the adjacent museum to relive the drama of the general's longest day, tiptoe through the library housing his presidential papers, troop through his boyhood home to soak up the atmosphere of an America that was less complicated and more cocksure.

Because Americans by the thousands, still like Ike, Abilene is prospering. Since April 2, 1969, the days of his burial, cash receipts at the several dozen local restaurants, motels, gas stations and stores have increased 10 to 30 per cent, the biggest spurt since 1867, when the Union Pacific laid its tracks into town and started hauling out the Texas longhorns coming up the Chisholm Trail.

Some of Abilene's 8,500 residents, such as Ernest Morse, president of the Citizens Bank, are beginning to use the word "boom" to describe the economic changes. In a recent lunchtime visit to the Chamber of Commerce office to get the latest facts and figures, Mr. Morse said, "there's a little boom underway. Net worth is up just about everywhere."

Other indicators tend to support Mr. Morse's view.

Two new chain restaurants recently opened on the outskirts of town, where the big Victorian houses with their wide, grassy