By Mr. COUGHLIN:

H.R. 16497. A bill for the relief of Maj. R. B. Throm, USMC; to the Committee on the Judiciary.

By Mr. HATHAWAY:

H.R. 16498. A bill to permit the sale of the passenger vessel *Atlantic* to an alien, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. PUCINSKI:

H.R. 16499. A bill for the relief of Miss Emilia Ruffolo; to the Committee on the Judiciary.

By Mr. ROGERS of Florida (by request):

H.R. 16500. A bill for the relief of Jesus Garza Venegas, Jr.; to the Committee on the Judiciary.

By Mr. RUPPE:

H.R. 16501. A bill for the relief of Bienvenido Turla Capul; to the Committee on the Judiciary.

By Mr. WIGGINS:

H.R. 16502. A bill for the relief of Gary W. Stewart; to the Committee on the Judiciary.

MEMORIALS

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

By the SPEAKER:

330. A memorial of the Legislature of the State of Idaho, relative to the treatment of prisoners by North Vietnam; to the Committee on Foreign Affairs.

331. Also a memorial of the Legislature of the State of Tennessee, relative to an amendment to the Constitution of the United States regarding the right of citizens to attend the public schools of their choice; to the Committee on the Judiciary.

332. Also, a memorial of the Legislature of the State of Tennessee, relative to amending the Constitution of the United States regarding taxation of income from interest on obligations of other levels of Government; to the Committee on the Judiciary.

333. Also, a memorial of the General Court of the Commonwealth of Massachusetts, relative to helping preserve the textile and apparel industry through international agreement; to the Committee on Ways and Means.

PETITIONS, ETC.

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

415. By the SPEAKER: Petition of the city council of East Orange, N.J., relative to using post office facilities for the registration of voters; to the Committee on House Administration.

416. Also, petition of the city council of Huntington Beach, Calif., transmitting a copy of a resolution expressing respect and gratitude for the exemplary accomplishments of Congressman James B. Utt, deceased; to the Committee on House Administration.

417. Also, petition of Henry Stoner, York, Pa., relative to reducing the voting age to include those aged 18; to the Committee on the Judiciary.

SENATE—*Monday, March 16, 1970*

The Senate met in executive session at 12 o'clock meridian and was called to order by Hon. JAMES B. ALLEN, a Senator from the State of Alabama.

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

Almighty God, our Father, in whose keeping are the destinies of men and nations, we thank Thee for this good land, born in Thy providence, nourished by Thy grace and strengthened by Thy power. Draw together the diverse populations of city, hamlet and countryside into one united people. Be in our hearts, our heads and our homes. In these turbulent times save us from evasion, from cowardice, and from violence. Order our outward action by an inner righteousness and peace. Nerve us to be firm in the right, ready to be corrected when wrong, always striving for the more perfect way. Teach us how to live for others and so fulfill the law of God. Amen.

DESIGNATION OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., March 16, 1970.

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. James B. Allen a Senator from the State of Alabama to perform the duties of the chair during my absence.

RICHARD B. RUSSELL,
President pro tempore.

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

SETTLEMENT—NOT VICTORY—IN VIETNAM

Mr. SYMINGTON. Mr. President, for some reason, in many quarters, things have developed in the country to the point where, in spite of our increasingly serious financial problems, if there is any questioning of any military policy or program, or the cost of either, by any Member of Congress, the now somewhat hackneyed word "dove" is automatically applied to the critic in question.

In this connection, it has long been my privilege to know—and at one time to work with—an outstanding American who has one of the great military records of our history, former Chief of Staff of the U.S. Army, Gen. Matthew B. Ridgway.

I ask unanimous consent that an article by this distinguished public servant in the New York Times of March 14, "Settlement—Not Victory—in Vietnam" be printed in the RECORD; and I would hope that all Members of the Senate, as well as the public at large, would weigh the wisdom of his experienced advice.

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

[From the New York Times, Mar. 14, 1970]

SETTLEMENT—NOT VICTORY—IN VIETNAM

(By Matthew B. Ridgway)

Many continue to argue that a military solution, or "victory," in Vietnam has all along been within our reach, that nothing less would serve our interests. I believe such a solution is not now and never has been possible *under conditions consistent with our interests.*

That would have required, and would still require, resort to military measures unacceptable to most of our people. But regardless of past policy decisions, were such a course to be pursued now the divisive influences throughout our land, comparatively quiescent, would be intensified.

The basic decision, which I believe is irrevocable and which was made and announced long ago, was to reduce our operations and to initiate disengagement and withdrawal according to a plan merely outlined.

Whether or not it includes an ancillary decision to complete withdrawal by a fixed date, I do not know, though I assume it does. For reasons of its own—and reasonable ones are not lacking—the Administration has not seen fit to announce it.

Last Nov. 3 the President set forth three conditions that would, he said, determine the rate of our withdrawal: progress in the Paris talks; the character of enemy operations; and the rapidity with which the South Vietnamese Army can assume full responsibility for ground operations. He warned that "if increased enemy action jeopardized our remaining forces," he would "not hesitate to take strong and effective measures," not spelled out but alluded to again in his Jan. 30 press conference.

Adherence to these conditions could result in relinquishing the initiative. Hanoi's stalling in Paris, or Saigon's unwillingness or inability to bring its army up to the requisite level of combat effectiveness, or an escalation of enemy action would then compel a choice between resort to "strong measures"—a reversion, it would seem to me, to the search for a military solution already publicly eschewed—or suspending and even reversing our withdrawal.

NONMILITARY OPTIONS

If this reasoning is sound, then it is relevant to examine our options, should events seem to demand dealing "strongly" with the situation.

We could decide: to halt and subsequently reverse the disengagement process; to resume bombing in North Vietnam on the same scale and against the same target systems as before; to widen the bombing to include key points in power grids, port facilities and utilities, even though located in population centers; to impose a sea blockade of North Vietnamese and Cambodian ports; to invade North Vietnam with ARVN or U.S. ground forces, or both; to use nuclear weapons.

Putting any of these measures into effect could result in: ending hopes for arms control; raising U.S.S.R.-U.S. tensions; causing heavy loss of life among noncombatant North Vietnamese; raising U.S. casualty rates and dollar costs; impairing our capability for quickly responding to other challenges elsewhere; seriously accentuating domestic criticism of Government policy. If there was a land invasion of North Vietnam by U.S. ground forces, the possibility, if not probability, would follow of massive Chinese ground force intervention as occurred under similar conditions in Korea in 1950; and, if nuclear weapons were employed, world and domestic opinion would revolt.

I question that the execution of any of these options would serve our interests. Most of them, I believe, should be rejected. Certainly we should repudiate once and for all the search for a military solution and move

resolutely along the path of disengagement and eventual complete withdrawal.

This will present painful problems, but they must be faced. It raises serious military questions: How long will it take to increase the combat effectiveness of the South Vietnamese Army to a necessary level? If a long time, how much U.S. combat and logistic support will be needed, and for how long? If chiefly U.S. Air Force and Navy combat elements are needed, who is to provide security for their bases? And if reliance is to be placed on South Vietnamese forces, who will command them? How will U.S. base commanders and their troops react to such arrangements? These are a few of the military problems, quite apart from the political ones.

FOR A POLITICAL SOLUTION

A negotiated political settlement, which I think we would all prefer, and which I believe we must ultimately reach, will be unattainable unless we retain the initiative and face up to these problems now.

Regardless of how much this may tax the wisdom and determination of our Government and the patience of our people, our decision is, I believe, the prudent one, and we should channel its execution into the mainstream of our long-range national interests.

TRANSACTION OF ROUTINE MORNING BUSINESS AS IN LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, notwithstanding the Senate's being in executive session, there be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

HAPPY BIRTHDAY TO SENATOR MANSFIELD

Mr. SCOTT. Mr. President, I have asked for recognition ahead of the usual requests of the distinguished majority leader for one purpose only, to say that some 39 years ago there came into this world a very much to be admired citizen, a delightful person, with an open mind, a good heart, and a sense of fairness and decency which has established a standard and a guide for all of us, his colleagues.

Thus, I wanted to have the opportunity to give us all a chance to take note that today is the birthday of the distinguished majority leader, who has served his country well in all branches of the armed services with the exception of the Coast Guard, and in both branches of Congress.

He is a modest man, a fine friend, a considerate colleague, one whose presence here has been one of the great gifts to the Nation from the Senate. I am sure we would have fewer problems if all 100 of us had the great qualities that the distinguished majority leader possesses.

Thus, I rise for the purpose of paying this tribute to him and to wish him happy birthday.

Since I cannot carry a tune, I cannot go further and indulge in song, but my heart is filled with joy and my soul with music that we have with us so good a man as Senator MANSFIELD.

Mr. SYMINGTON. Mr. President, will the Senator from Pennsylvania yield?

Mr. SCOTT. I yield.

Mr. SYMINGTON. I thank the minority leader. I want to associate myself with the statements just made by the Senator from Pennsylvania.

It was a great day for the United States of America when, 39 years ago, the distinguished majority leader was born.

Mr. MANSFIELD. Mr. President, allow me to extend my thanks to the distinguished minority leader and the distinguished senior Senator from Missouri for their kind comments.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, March 13, 1970, be dispensed with.

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

ORDER DISPENSING WITH THE CALL OF THE CALENDAR UNDER RULE VIII

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the calendar of unobjected to bills under rule VIII be waived.

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

INFORMING THE PEOPLE ON NATIONAL SECURITY

Mr. MANSFIELD. Mr. President, in reading the Washington Post on yesterday, I was struck by a very good review written by John Chancellor, former Director of the Voice of America, and now an NBC reporter. Mr. Chancellor reviewed the book "Confirm or Deny," authored by Mr. Phil G. Goulding, former Assistant Secretary of Defense for Public Affairs. The book and the documents published therein indicate that every now and again there are foulups in the Pentagon. Mr. Chancellor's skillful analysis would indicate that this book may be well worth reading. Certainly this review is well worth reading by the Members of this body, and I ask unanimous consent to have it printed in the RECORD.

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

FOUL-UPS IN THE PENTAGON

("Confirm or Deny: Informing the People on National Security," By Phil G. Goulding. Harper & Row. 369 pages $7.95; reviewed by John Chancellor)

This is a disturbing book.

An American photographic reconnaissance plane flies over the French atomic plant at Pierrelatte, and the French are furious. The American Air Force tells the office of the Secretary of Defense in the Pentagon that the plane was forced off course by a thunderstorm, and the news is duly announced in Washington. In fact, the skies were clear, and the incident occurred because of a communications mix-up. But the Secretary of Defense was given wrong information.

The American communications reconnaissance ship *Liberty* is cruising off the coast of Sinai during the 1967 Arab-Israeli war. The Pentagon sends orders for it to move farther off shore. But the orders are sent by mistake first to the Pacific, back to Fort Meade, Md., and finally to a shore station in Morocco. But the *Liberty* was listening for signals from Ethiopia which never came. Israeli planes and ships attacked the *Liberty*, and many men were killed or injured.

The Pentagon orders the Commanders-in-Chief, U.S. Pacific Command, to investigate Soviet charges that American planes strafed a Russian ship in a North Vietnamese harbor. CINCPAC replies that no American planes were over the harbor, which is announced by the Pentagon. Two weeks later, the Secretary of Defense discovers that American planes *had* been firing at anti-aircraft guns in the harbor, and could, indeed, have hit the Russian ship.

Phil Goulding was Assistant Secretary of Defense for Public Affairs when these things happened, and his book is a remarkably candid and unsettling chronicle of one foul-up after another. Nobody's perfect, but there are times, reading Goulding's memoir, when you wonder if the Pentagon isn't lowering the national average.

What is truly disturbing about some of these incidents is the degree to which the office of the Secretary of Defense is either uninformed or misinformed. While it is surely difficult to maintain instant communication with about five million people in the defense establishment, uniformed and civilians, in just about every place on earth, Goulding destroys the image we have, or the hope, perhaps, that somewhere, somebody must know what's happening. For people who worry about Presidents with fingers on the nuclear button, this kind of reading leads to bad dreams.

Goulding says, "In our office, the Secretary's office or the White House, we never knew how much we did not know." He served for four years as the senior public relations officer of the Department of Defense, and of those years, he says, "I misled and misinformed the American people a good many times in a good many ways—through my own lack of foresight, through carelessness, through relaying incomplete information which the originators considered complete, through transmitting reports which had been falsified deliberately at lower levels." That last phrase is very plain talk in the growing community of former Defense officials who are jotting down their recollections of public service.

Moreover, Goulding says that in almost every instance he operated from the very same reports which were going to his bosses, Secretaries McNamara and Clifford.

Goulding believes Lyndon Johnson fired McNamara because the Secretary of Defense had lost faith in the bombing of North Vietnam. Further, Goulding is convinced that McNamara was opposed to the military request for 206,000 more troops for Vietnam in 1968, and would have resigned if the President had pushed through any significant increase in troop levels.

As it was, McNamara was on his way out, being replaced by Clark Clifford. Goulding first regarded Clifford as a hard-line crony of the President who would be inflexible on the war. As it turned out, it took only two months for Clifford to decide that the effort in Vietnam was no longer essential to the national security of the United States.

Goulding belonged to that small, influential group of Pentagon civilians who were against further escalation of the war as early as 1967, Cyrus Vance, Paul Nitze, Paul Warnke and the late John McNaughton. His testimony confirms the brilliant reconstruction of that period written by the former Under Secretary of the Air Force, Townsend Hoopes, called *The Limits of Intervention*. Curiously, Goulding makes no mention of a long paper he wrote on the perils of escalation. According to Hoopes, the Goulding paper was a decisive document.

Nor is there any mention in either book of a proposal from Dean Rusk to limit the

bombing of North Vietnam, as described by Lyndon Johnson on television. In fairness, Goulding and Hoopes might not have known of such an uncharacteristic source, but neither account supports the Johnson version of what happened.

What does come through in Goulding's book is the picture of a very human, often disorganized, divided Pentagon, being held together by civilians in the Office of the Secretary of Defense. The book is flawed by too much insider's stuff, too many organizational outlines, plugs for parts of the bureaucracy—but it is nevertheless vivid contemporary history, of great value to people who wonder what's really going on in the Pentagon. We can, perhaps, take some perverse comfort in the fact that even the Assistant Secretary for Public Affairs didn't always know what was going on himself.

DEATH OF BEN REGAN, CLOSE FRIEND OF FORMER SENATOR DIRKSEN

Mr. MANSFIELD. Mr. President, an old friend and longtime close friend of our late beloved and distinguished minority leader, the Senator from Illinois, Mr. Dirksen, has passed to his reward.

I speak of Ben Regan, whom many of us knew, who was noted, politically speaking, for being an outstanding and uncompromising Republican at all times, but who was also a decent man, a considerate man, and to a certain extent, a man always willing to see another's point of view.

He was a great contributor to the welfare of the State of Illinois and to the Nation. He was involved in many charities. He did much that was good.

I extend on behalf of my wife and myself our deepest sympathy to his widow, Doris, also a good friend of ours, and to his two sons Royal B., of Santa Monica, Calif., and Ben, Jr., of Naperville, Ill., to his sister, four brothers, and four grandchildren.

I ask unanimous consent to have printed in the RECORD an obituary on Ben Regan which was published in the New York Times this morning in memory of this fine and outstanding man.

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

BEN REGAN, BROKER AND OFFICIAL OF PORT AUTHORITY, DEAD AT 59

WESTPORT, CONN., March 15.—Ben Regan, vice chairman of the Port of New York Authority and a general partner in the brokerage concern of Hornblower & Weeks-Hemphill Noyes, died of a heart attack last night. He was 59 years old and lived at 203 East 72d Street in New York and on Little Fox Lane here.

FREQUENT GUEST OF NIXON

Mr. Regan, who had presided over the monthly meeting of the Port Authority last Thursday in the absence of the chairman, James C. Kellogg 3d, was a former Middle Westerner who was influential in Republican politics.

He was for 33 years a confidant and adviser of the late Senator Everett McKinley Dirksen of Illinois, and he annually arranged a birthday party for the Senator in Washington.

Mr. Regan often entertained public officials and political figures of both parties at his Connecticut home and was a frequent guest of President Nixon at the White House.

He was a director of many corporations and was well known in financial circles and the aviation and food industries. He was a leading Roman Catholic layman and had a distinguished career as a public servant in Chicago, Washington and New York.

ON AUTHORITY SINCE 1963

Appointed to the Port Authority by Governor Rockefeller in 1963, Mr. Regan was reappointed in 1967 and was elected vice chairman last April.

Born in Big Rapids, Mich., Dec. 23, 1910, he was a son of J. M. Regan, a financial writer and publisher, and Mary Jeffs Regan. He attended Loyola University and held an honorary Doctor of Laws degree from Marquette University.

He began his association with Hornblower in Chicago in 1928. He had served as president of Nationwide Food Service, Inc., in Chicago and chairman of Frontier Air Lines, Inc., before coming to New York in 1961.

Mr. Regan was chairman of the board of trustees of Mundelein College in Chicago, a member of the board of advisers of the University of Illinois and of the board of regents of Marquette University, and a trustee of Fordham and Sacred Heart Universities and Marymount Manhattan and Oblate College.

IN AIR FORCE ASSOCIATION

He was chairman of the Illinois Aeronautics Commission from 1941 to 1945, director of the National Aeronautics Association from 1948 to 1958 and President of Iron Gate Chapter of the Air Force Association from 1963 to 1967.

Mr. Regan was a member of the Bishop's Finance Committee for the Diocese of Bridgeport and a director of the Joseph P. Kennedy Jr. Home. He was a Knight of Malta and of the Holy Sepulchre. He received a citation last year from the Anti-Defamation League of B'nai B'rith.

Surviving are his widow, the former Doris Barnett; two sons, Royal B. of Santa Monica, Calif., and Ben Jr. of Napierville, Ill.; a sister, four brothers and four grandchildren.

A requiem mass will be offered at 10 A.M. tomorrow at St. Jean Baptiste Roman Catholic Church, Lexington Avenue and 76th Street.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. Those of us who knew Ben Regan knew how close was the friendship between him and our distinguished and late beloved minority leader Everett Dirksen.

I suppose that nearly all of us in the Senate who have attended those parties which Ben Regan used to give for his good friend Everett knew how close they were and what a fine man Ben Regan was.

Our sympathy and condolences go out to Doris and to the family.

One can imagine Ben and Ev being reunited again in some other place. We hope that Ben still enjoys the now celestial voice of his lifelong and forever friend, Everett Dirksen.

COMMITTEE MEETINGS DURING SENATE SESSION TODAY

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.

HOUSING, NEW HOUSING, HOUSING STARTS, AND SAVINGS AND LOAN ASSOCIATIONS

Mr. SCOTT. Mr. President, I ask unanimous consent that a letter addressed to me under date of March 13, 1970, by the President of the United States on the matter of new housing starts, and savings and loan associations expressing his support of certain legislation pending in the House and certain action by the Secretary of Housing and Urban Development be printed at this point in the RECORD.

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

THE WHITE HOUSE,
Washington, March 13, 1970.

Hon. HUGH SCOTT,
Minority Leader, U.S. Senate,
Washington, D.C.

DEAR HUGH: As you know, in recent months new housing starts have fallen sharply. If we are to provide the new homes that the American people need, we must do even more at the Federal level to increase the current number of housing starts.

Savings and loans associations are a basic source of home mortgage financing. To provide these associations with funds, the Federal Home Loan Bank System in 1969 increased its advances to its member savings and loan associations by $4.6 billion. The Federal Home Loan Bank System itself borrowed this money at a high interest cost, and this cost has been passed on to the savings and loan associations. The associations, in turn, must then pass this high cost on to the homeowners taking out mortgage loans.

Savings and loan associations are at a point where they are reluctant to increase these high interest rate advances from the Federal Home Loan Bank System. As a result the shortage of mortgage funds in the hands of these associations has inhibited homebuilding.

On March 5 Mr. Patman introduced H.R. 16330 and Mr. Widnall introduced H.R. 16331 to provide the Federal Home Loan Bank System with $250 million to subsidize advances to savings and loan associations. Chairman Preston Martin of the Federal Home Loan Bank Board advises me that as a result of these advances the associations will provide financing for an additional 240,000 housing units in the near future.

I urge the Congress to pass this legislation with minimum delay so that the American people can have the benefit of these vitally needed additional houses.

In addition, on March 12 I submitted to the Congress a request for a Supplemental Appropriation that would add $50 million to the 1970 authority available for entering into interest subsidy contracts under the Homeownership and Rental Housing Assistance Programs. These programs enable the Department of Housing and Urban Development to provide subsidies for housing for low- and moderate-income individuals by reducing interest rates paid on mortgages. The Secretary of Housing and Urban Development advises me that a backlog of applications for this type of subsidy exists and therefore the result of this $50 million will be a substantial increase in housing starts in the near future. I also urge prompt action on this Supplemental request.

Sincerely,

RICHARD NIXON.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

PROPOSED LEGISLATION TO PROVIDE HOUSING SUBSIDIES

A communication from the President of the United States urging the Congress to enact proposed legislation to provide subsidies for housing for low- and moderate-income individuals by reducing interest rates on mortgages; to the Committee on Banking and Currency.

STATISTICS OF PUBLICLY OWNED ELECTRIC UTILITIES IN THE UNITED STATES, 1968

A letter from the Chairman, Federal Power Commission, transmitting, for the information of the Congress, a copy of the publication "Statistics of Publicly Owned Electric Utilities in the U.S., 1968" (with an accompanying document); to the Committee on Commerce.

HYDROELECTRIC POWER EVALUATION, SUPPLEMENT NO. 1, 1969

A letter from the Chairman, Federal Power Commission, transmitting, for the information of the Senate, a copy of the publication "Hydroelectric Power Evaluation, Supplement No. 1, 1969" (with an accompanying document); to the Committee on Commerce.

REPORT ON ADVISORY COMMITTEES ASSISTING THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE DURING 1969

A letter from the Secretary of Health, Education, and Welfare, reporting, pursuant to law, on the advisory committees which assisted him in the calendar year 1969 (with accompanying papers); to the Committee on Finance.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the examination of financial statements of the Panama Canal Company and the Canal Zone Government, for fiscal years 1969 and 1968, dated March 13, 1970 (with an accompanying report); to the Committee on Government Operations.

PROPOSED LEGISLATION WITH RESPECT TO JUDICIAL REVIEW OF DECISIONS OF THE INTERSTATE COMMERCE COMMISSION

A letter from the Attorney General of the United States, transmitting a draft of proposed legislation to amend title 28 of the United States Code with respect to judicial review of decisions of the Interstate Commerce Commission, and for other purposes (with an accompanying paper); to the Committee on the Judiciary.

REPORT ON THE COST OF CLEAN AIR

A letter from the Secretary, Health, Education, and Welfare, transmitting, pursuant to law, a report on the Cost of Clean Air, dated January 1970 (with an accompanying report); to the Committee on Public Works.

REPORT ON NATIONAL EMISSION STANDARDS FOR STATIONARY SOURCES OF AIR POLLUTION

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on the need for, and effect of, national emission standards for stationary sources of air pollution, dated January 1970, (with an accompanying report); to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore:

A joint resolution of the Legislature of the State of Idaho; to the Committee on Foreign Relations:

"JOINT RESOLUTION OF THE STATE OF IDAHO

"A joint memorial to the Honorable Senate and House of Representatives of the United States in Congress assembled

"We, your Memorialists, the Senate and House of Representatives of the state of Idaho assembled in the Second Regular Session of the Fortieth Idaho Legislature, do respectfully represent that:

"Whereas, the government of the United States is a party to the Geneva Convention, having acceded to the terms of the convention on August 2, 1955; and

"Whereas, the government of North Vietnam is a party to the Geneva Convention, having acceded to the terms of the convention on June 28, 1957; and

"Whereas, it is the intent of the Geneva Convention that the high contracting parties to the convention insure the proper and humanitarian treatment of prisoners, provide needed medical service and supplies to sick and wounded prisoners, release the names of prisoners held by them, release the names of combatants known to have been killed, deliver mail to prisoners, and allow the impartial inspection of prisoners of war camps and facilities; and

"Whereas, the government of North Vietnam has not conformed its actions to the terms of the Geneva Convention and has shown a blatant disregard for the feelings of the families of prisoners held and has ignored the representations of interested persons throughout the world.

"Now, therefore, be it resolved by the Second Regular Session of the Fortieth Idaho Legislature, speaking for and on behalf of the people of the state of Idaho, that the Congress of the United States take all possible steps to bring the weight of world public opinion to bear on the government of North Vietnam to require them to live up to the terms of the Geneva Convention which our government has signed in good faith and with which we are conforming.

"Be it further resolved that the Chief Clerk of the House of Representatives be, and she is hereby authorized and directed to forward copies of this Memorial to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States."

A telegram, in the nature of a petition, from Anita Yanoihik, of Phoenix, Ariz., praying for the enactment of the bill (H.R. 515), the school lunch bill; to the Committee on Agriculture and Forestry.

REPORTS OF A COMMITTEE

The following reports of a committee were submitted:

By Mr. FANNIN, from the Committee on Interior and Insular Affairs, without amendment:

S. 2882. A bill to amend Public Law 394, 84th Congress, to authorize the construction of supplemental irrigation facilities for the Yuma Mesa Irrigation District, Ariz. (Rept. No. 91–740).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with amendments:

S. 3426. A bill to authorize appropriations for the saline water conversion program for fiscal year 1971, and for other purposes (Rept. No. 91–741).

BILLS INTRODUCED

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

By Mr. BIBLE:

S. 3595. A bill to establish a Commission on Security and Safety of Cargo; to the Committee on Commerce.

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

By Mr. GOODELL:

S. 3596. A bill to amend the Fur Seal Act of 1966 by prohibiting the clubbing of seals after July 1, 1972, the taking of seal pups, and the taking of female seals on the Pribilof Islands or on any other land and water under the justification of the United States; to the Committee on Commerce.

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

By Mr. HRUSKA:

S. 3597. A bill to amend title 28, United States Code, with respect to judicial review of decisions of the Interstate Commerce Commission, and for other purposes; to the Committee on the Judiciary.

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

S. 3595—INTRODUCTION OF BILL TO ESTABLISH FEDERAL COMMISSION ON SECURITY AND SAFETY OF CARGO

Mr. BIBLE. Mr. President, I introduce for appropriate reference, a bill to establish a presidentially appointed commission to investigate and recommend steps to seek out methods to curb alarming increases in cargo theft, pilferage, and hijacking in the air, truck, water, and rail transport industries that today have pushed normal cargo movements to a crisis point for some businesses. This is especially true in incoming international air shipments.

The time is overdue for a hard look at both the short- and long-run approaches to this growing problem which is the heart of the biggest multi-billion-dollar racket nationally today—stealing from business. Its worst victims are the small businessmen, who can least afford it, and the consumer public who, in the final analysis, pays a crime-inflated price for his needs.

As an example, the Civil Aeronautics Board has before it a tariff revision application that could on April 1 stop interstate shipments of furs by air to and from the New York City area, the Nation's fur manufacturing center. Air Cargo, Inc., the ground service organization owned by the Nation's airlines, has asked permission to cancel pickup and delivery service for fur shipments as a result of growing thefts. Exactly what effect this will have on the fur-raising industry of Alaska and many northern and western States cannot be accurately forecast right now.

Is this the forerunner of other high-value cargoes which the airlines may find it impossible to handle in the normal course of ordinary commerce because of thievery? Likewise, is this an admission that the problem is so severe that the airlines find it impossible to control?

The Committee on Small Business, of which I have the honor to serve as chairman, has been actively involved for the last 2 years in an investigation and hearings into cargo theft in air commerce and at waterfront docks and terminals and its impact on the small business shippers who rely on public carriers to deliver their products. We are pleased that the Departments of Justice, Treasury, and Transportation have recently turned their attention to the cargo crime problem.

What the exact crime cargo losses are in our domestic-international commerce cycle today cannot be accurately measured because loss-reporting systems for all transport modes are not in use. But

our committee has some information that serves as an indicator of the real dimensions of the problem.

The growing severity of crime in air commerce is provided by the American Institute of Marine Underwriters which reveals that the theft of goods from air carriers has tripled over the past year. Stolen cargo on incoming international air shipments insured by the Institute's member companies had a value of $6 million in 1969.

Because no loss reports are kept by airlines, some estimates place domestic-international air cargo losses in this country at $20 million to $50 million or more in 1969. Most air cargo is not insured and small businessmen, as a result of loss-induced high insurance premiums, generally self insure.

As another example, the American Watch Association testified that air cargo losses for 1 year exceeded $2½ million, comparable to a company like General Motors losing some $300 million per year in automobile thefts. Shippers lost more than $1 million in 1 week last year at New York City's Kennedy International Airport.

Another hard-hit transport mode is in truck thefts and hijacking whose losses reached over $600 million for 1969, according to figures provided to the committee by the American Insurance Association. Babaco, a private alarm company serving trucking companies, estimates 1969 losses were $702 million, 17 percent above 1968.

What the exact dimensions of thievery are in the waterfront dock category are not accurately known. For one reason, no loss-reporting system is in use. We are aware of the Treasury Department's plans to submit proposed legislation to the Congress seeking to deal with this problem. We do hope it will not provide for a Federal police force on the docks and thereby add another layer of a Federal bureaucracy.

As demonstrated preliminarily by our hearings, present Federal agencies with authority over maritime shipping unquestionably require stronger powers. And equally important, more effective and closer cooperation by all Federal, State, and local law enforcement and regulatory agencies, plus more realistic and affirmative cooperation by private industry, business and labor areas involved would assist.

But, Mr. President, most of all, the cargo theft problem must be attacked on all its fronts within the entire transport chain—truck, air, water, and rail.

My bill, for which I invite cosponsors who are disturbed by the skyrocketing cargo thievery, seeks to take a business-like, hard look, with a government, industry, labor, and shipper partnership involved.

As a summary, my bill would establish a Commission on Security and Safety of Cargo, with nine members drawn from air, truck, water, and rail carriers, cargo labor unions, terminal-warehouse operators, the Attorney General, the Secretary of Transportation and the Secretary of Commerce. Ex-officio members would include Federal transportation regulatory agencies and the insurance industry.

Briefly, the Commission's duties would be:

First. To define the causes, scope, and value of cargo losses and their disposal methods.

Second. To evaluate cargo theft deterrents including packaging, containerization, personnel security, physical security, law enforcement liaison.

Third. To establish a uniform, centralized loss-reporting system for all cargo.

Fourth. To examine insurance liability limitations.

Fifth. To encourage development of crime prevention technology.

Sixth. To recommend appropriate legislation to Congress.

Mr. President, hearings by the Small Business Committee to date have demonstrated that too little attention has been paid to fundamental efforts to achieve security and safety of cargo. Testimony showed that unless conditions are improved in the transport of air and maritime cargo, some major shippers and importers would begin to consider Montreal, Canada, as a port of entry for the purpose of assuring safe delivery of cargo by circumventing the congestion, theft, and pilferage at the New York waterfront docks and airports.

That losses, thefts, and pilferages have produced inestimable damage in cargo is no longer a matter of dispute. The question is: What shall we do to bring about some remedial reforms? Some attempts have been made by some segments of the transportation industry to promote voluntary improvements to increase the safety and security of cargo. But, it is convincingly clear that despite sound motives, the solution is not solely there. Insurance payments can no longer be substituted for good security. Cargo loss reimbursements have brought insurance companies to their knees, bringing policy cancellations.

The need for safekeeping, protection, safe, and secure delivery of cargo is a matter of community interest within the transportation industry. One segment of the industry, whether it be air, truck, rail, or ship, cannot succeed without continuity of protection and security of its cargo.

Notwithstanding the competitive character and different modes of transportation, cargo in many instances will run the entire gamut from point of origin to point of delivery, involving every form of transportation. Protection of cargo must be uniform, continuous, and uninterrupted.

The instability and lack of uniform protective procedures for safe and secure delivery of cargo demand establishment of a body consisting of representatives of both government and private industry which would function as a coordinated unit.

The Commission on Security and Safety of Cargo which I propose, will form a partnership to amass all resources available through research, assessments, and intelligence data of the private sector and of government. This sharing of responsibility can produce an effective impact.

There are those who believe the transportation industry, faced with the economic demands of a burgeoning population and the complexities of the economic-social changes of the 1970's, needs a new burst of innovative enthusiasm. Since transporting cargo is its business, possibly it requires new ideas, new variations, new dimensions, and new answers, lest the theft problem becomes uncontrollable.

Our primary focus must always be what will be beneficial to the American businessman and the consumer. A reduction in cargo theft will produce beneficial economic effect upon both because they will be relieved of some of the undue and unfair burdens of additional costs which transporters and shippers have imposed upon them to make up for the major increases they have suffered through losses, thefts, and pilferages of all commodities, including those which are necessities of life.

The time to try is here and now. Delay will only accentuate the problem.

Mr. President, I ask unanimous consent that a summary of what I believe are the purposes and goals of the proposed Commission on Security and Safety of Cargo, be printed in the RECORD at the conclusion of my remarks together with the full text of the bill.

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

The bill (S. 3595) to establish a Commission on Security and Safety of Cargo, introduced by Mr. BIBLE, was received, read twice by its title, referred to the Committee on Commerce, and ordered to be printed in the RECORD, as follows:

S. 3595

FINDINGS OF FACT AND DECLARATION OF POLICY

SECTION 1. (a) The Congress finds that one of the fundamental bases for the development and growth of commerce and trade on an interstate and international basis is the security and safety of movement of such goods and cargo. The Congress has become aware that there is an alarming growth of criminal activity which results in loss of and damage to goods moving in interstate and international commerce. Such loss and theft are increasing to the degree that it represents a clear and present danger to the national economy, especially American business and particularly the small business community, which bears the greatest portion of such losses. The Congress further finds that the Constitution places the control, regulation, and stimulation of interstate and international commerce and trade within the purview of the Federal Government. Prevention of larcenies and malfeasances in connection with goods in interstate and international transit is an inherently difficult phase of crime control; goods in motion or in large-scale storage are hard to watch closely; the multijurisdictional nature of thefts facilitates criminal evasion; and protection arrangements impose unwelcome and often disastrous expenses in terms of operational delays, added paperwork, and increased costs for insurance and protection. The Congress finds that common carriers in cargo transportation by air, truck, rail and water, manifest a serious deficiency in the level of coordination and effort needed to establish deterrents and preventive measures and utilize resources to combat criminal activity. These criminal activities and attend-

ant losses pose an especially serious threat to the economic stability of small business. The apparent magnitude of the resultant costs suggests that the Federal Government make a further detailed and continuing inquiry to determine whether remedial measures can and should be implemented by cargo carriers, their agents and assigns, possibly supported by Federal assistance, to minimize criminally inspired losses of cargo during storage and transit.

(b) The Congress further finds that State and local governments, through exercise of their regulatory powers, have an equal responsibility in stimulating measures to enhance the safety and security of cargo storage and transport. Accordingly, attempts by the Federal Government to deter and curb such losses, thefts and pilferages should be coordinated at various levels of government.

(c) It is the purpose of this Act to establish a Commission which shall conduct an inquiry and research into matters of cargo security for the purpose of designing programs to achieve maximum security and safety for such cargo when in storage and in transit in interstate and foreign commerce. It is a further purpose to create an organization which will administer this Act and implement its purposes by establishing liaison and coordination with, by and between the common carriers, their agents and assigns, as well as supporting organizations such as private terminal operators, port authorities, and others, engaged in all modes of transportation, distribution, and storage of good and cargo in transit, and by fostering consultation and coordination with appropriate governmental and private agencies and concerns.

ESTABLISHMENT OF COMMISSION

SEC. 2. (a) For the purpose of carrying out the intent of Congress as expressed in this Act, there is hereby created a commission to be known as the Commission on Security and Safety of Cargo (hereinafter referred to as the Commission).

(b) The Commission shall be composed of individuals who, by virtue of their education and experience demonstrate an ability to discover causes, develop solutions, and implement strategies to solve the problem of cargo loss and theft. Members shall include one representative from each mode of the cargo transportation industry, air, truck, rail, and water; one representative from the cargo handlers labor organizations; one representative from terminal operators and independent warehouse and storage concerns; and three representatives of the Federal Government, consisting of the Attorney General of the United States, the Secretary of Transportation, and the Secretary of Commerce.

(c) The members of the Commission, other than those designated to represent the Federal Government, shall be appointed by the President. Not more than four of such appointed members shall be members of the same political party.

(d) The Chairman of the Commission shall be elected annually from among the members of the Commission.

(e) The following shall be ex-officio members of the Commission: the chairmen of the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission; the Commissioner of Customs; one representative having expertise in providing security for the storage and movement of Federal cargo appointed by each of the following: the Secretary of Defense, the Atomic Energy Commission, and the National Aeronautics and Space Administration; one representative of the National Bureau of Standards appointed by the Secretary of Commerce; one representative from the Law Enforcement Assistance Administration appointed by the Attorney General; and one representative from the cargo underwriters insurance industry. Ex-officio members of the Commission shall not participate except in an advisory capacity to the Commission in the formulation of its findings and recommendations.

(f) Vacancies on the Commission shall be filled in the same manner as initial appointments.

(g) A quorum of the Commission shall consist of 5 members, but 2 members shall be sufficient for the purpose of taking testimony, or conducting any hearings on a matter within the purview of the Commission's jurisdiction.

COMPENSATION OF COMMISSION MEMBERS

SEC. 3. (a) Members of the Commission who are officers or full time employees of the Government shall serve without compensation in addition to that received for their services as such officers or employees; but they shall be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code for persons in government service employed intermittently.

(b) Other members of the Commission who are not officers or officials in the employ of the United States shall be compensated at the rate of $50.00 per day when engaged in the actual business and duties vested in the Commission, and in addition be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code.

STAFF OF THE COMMISSION

SEC. 4. (a) The Commission may appoint such personnel as it deems necessary without regard to the provisions of title 5 of the United States Code concerning appointments in the competitive services and such personnel may be paid without regard to the provisions of chapter 51 and subtitle 3 of chapter 53 of such title, relating to classification and general schedule pay rates.

(b) The staff of the Commission shall be composed of, but not limited to, individuals having expertise determined to be pertinent to the conduct of a systematic operations research study of the problem of cargo theft, such as persons qualified in statistical mathematics, applied mathematics, human factors engineering, security engineering, cargo operations and movement, police and law enforcement, social psychology, criminology, business management, traffic engineering, security architecture, and deterrence, detection, and apprehension technology and methodology.

POWERS OF THE COMMISSION

SEC. 5. (a) The Commission, or any two members thereof as authorized by the Commission, may conduct hearings anywhere in the United States or otherwise secure data and expressions of opinions pertinent to the study. The Commission shall publish notice of any proposed hearing in the Federal Register and shall afford a reasonable opportunity for interested persons to present relevant testimony and data. In connection therewith the Commission is authorized by the majority vote—

(1) to require, by special or general orders, corporations, business firms, and individuals to submit in writing such reports and answers to questions as the Commission may prescribe; such submission shall be made within such reasonable period and under oath or otherwise as the Commission may determine;

(2) to administer oaths;

(3) to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in the case of disobedience to a subpoena or order issued under this subsection, to invoke the aid of any district court of the United States in requiring compliance with such subpoena or order;

(5) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Commission and has the power to administer oaths, and in such instances to compel testimony and the production of evidence in the same manner as authorized under clauses (3) and (4) of this subsection; and

(6) to pay witnesses the same fees and mileage as are paid in like circumstances in the courts of the United States.

(b) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in case of refusal to obey a subpoena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information it deems necessary to carry out its functions under this Act; and each such department, agency, or independent instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information to the Commission upon request made by the Chairman or the Vice Chairman when acting as Chairman.

(d) The Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

(e)(1) When the Commission finds that publication of any information obtained by it is in the public interest and would not give an unfair competitive advantage to any person, it is authorized to publish such information in the form and manner deemed best adapted for public use, except that data and information which would separately disclose the business transactions of any person, trade secrets, or names of customers shall be held confidential and shall not be disclosed by the Commission or its staff: *Provided, however,* That the Commission shall permit business firms or individuals reasonable access to documents furnished by them for the purpose of obtaining or copying such documents as need may arise.

(f) The Commission is authorized to delegate any of its functions to individual members of the Commission or to designate individuals on its staff and to make such rules and regulations as are necessary for the conduct of its business, except as herein otherwise provided.

DUTIES OF THE COMMISSION

SEC. 6. It shall be the duty of the Commission to undertake and compile inquiries and studies to determine the causes, and practical and effective measures for the prevention and deterrence of loss, theft, and pilferage of cargo in interstate and international commerce. It shall be a further duty of the Commission to encourage the use of existing preventive technology and to promote the development of new techniques, procedures, and methods to enhance the safety and security of cargo storage and transportation. Such duties shall include, but not be limited to:

(1) definition and description of the causes, scope, and value of losses due to cargo theft;

(2) evaluation of methods to deter cargo theft, including analysis of labor-management practices; packaging and labeling of cargo; containerization; personnel security; prevention, detection and apprehension systems and devices; physical security protection, including lighting, fencing, gate placement, and other similar means; sociological and psychological deterrents and remedies; liaison of cargo security programs between law enforcement agencies and cargo terminal operators, forwarders, and transporters;

(3) design, implementation, and analysis of pilot experimental programs to demonstrate the effectiveness of different security systems;

(4) establishment and maintenance of liaison with the various modes of transportation of cargo to exchange and disseminate data to promote safety and security of cargo;

(5) periodic consultations with appropriate governmental and private agencies to discuss problems and investigate solutions;

(6) complementing programs and activities of different modes of cargo transport to produce an effective and low-cost program of safety and security;

(7) Development of a system of comprehensive, continuous and uniform loss and damage reporting by the different modes of transportation;

(8) study and evaluation of present carrier liability limits for losses incurred in the transport of cargo by the different modes of transportation, and evaluation of the adequacy of such limits of liability;

(9) development of physical facility security standards and encouragement of voluntary implementation by the various industries involved;

(10) continuous reassessment of programs, plans and operations to determine necessary revisions; and

(11) recommendations for legislative, administrative, or other actions deemed necessary to promote the safety of cargo transport.

REPORTS

SEC. 7. The Commission shall report to the President and to the Congress its findings and recommendations as deemed desirable and necessary, but in no event less often than annually.

AUTHORIZATION

SEC. 8. There is authorized to be appropriated for the purpose of this Act not to exceed $250,000 for each fiscal year.

TERMINATION DATE

SEC. 9. The Commission shall continue in existence until December 30, 1975, at which time it shall cease to exist. Prior to such date, it shall provide the Congress with a complete report on its activities pursuant to this Act, and its final recommendations.

The summary, presented by Mr. BIBLE, is as follows:

FUNCTIONAL OPERATIONS

I. SCOPE AND PURPOSE

The Commission would be a coordinate body of the private and government sectors exercising jurisdiction over the safety and security of cargo transported in interstate commerce, whether by air, truck, rail or marine carrier. It would function to promulgate policies and procedures for regulatory control to assure maximum safety and security of cargo through advisory powers. The primary mandate of the Commission would be to curb and deter losses, thefts, and pilferages, and various forms of criminal activity inflicted upon cargo, and to promote operational measures for implementation by carriers, while serving as a clearing house for research and expert technology to enhance the security of cargo transport.

Due to inherent and intrinsic operations of cargo movements in the different modes of transportation, the bill recognizes that there is an imperative need in the transport industry:

(a) To establish and promote continuing liaison among the various carriers transporting cargo.

(b) To confer periodically with the cargo transportation media, to exchange information and cause dissemination of the same which is of mutual interest for cargo security.

(c) To complement the various security activities of cargo transport to achieve optimum effectiveness and efficiency at minimum costs and maximum economy to small business and the consumer.

(d) To serve as a catalytic agent to improve cargo safety and security among cargo carriers, and

(e) To encourage private industry in cargo transport to serve as an adjunct to the law enforcement community, where responsibility is vested for investigation and prosecution of such criminal activities.

The Commission would serve to provide unity of direction and purpose in the promotion of cargo transport security by combining and correlating the collective efforts of the cargo transporters.

II. IMPLEMENTATION OF POLICIES AND PURPOSES

The Commission would achieve its mandate in a gradual and methodical approach by a preliminary analysis of the current activities, operations and procedures currently utilized for the security of cargo transport and defining of this must be accomplished within a broad perspective by ascertaining the policies and functions of the various transport carriers relative to those areas involving:

(a) Personnel security.

(b) Physical facilities security for cargo.

(c) Liaison and coordination of cargo security programs.

(d) Uniform and centralized reporting procedures for cargo losses, thefts, and pilferages.

(e) Training of cargo transport personnel security.

The implementation process would be accomplished through five steps progressively by:

(a) Analysis through research, surveys and inspections.

(b) Evaluation of the findings made.

(c) Recommendations for voluntary compliance by the carriers and wherever appropriate recommended legislative remedies.

(d) Implementation of recommendations by the carriers.

(e) Revisions as appropriate to assure continuing maximum security and minimum economic impact upon all concerned.

Guides, standards and procedures would be promulgated and requests made for voluntary compliance by the industries. Where deemed necessary, or appropriate, specific recommendations for corrective activities and procedures would be made to the Federal regulatory agencies having jurisdiction or to the Executive or Legislative branches of the Federal government. In essence, the programs sponsored by the Commission would be designed to fill the void existing among the law enforcement agencies as a result of manpower shortage.

S. 3596—INTRODUCTION OF THE HUMANE SEAL PROTECTION ACT OF 1970

Mr. GOODELL. Mr. President, hundreds of letters sent to me over the last few months have expressed my constituents' shock at discovering the brutality with which seals are killed in the Pribilof Islands in the northern Pacific, with the authorization of the Department of the Interior.

Native hunters in the Pribilofs complain bitterly, according to a memorandum by the Director of Field Services of the Humane Society of the United States, that the U.S. Government is making them take female seals in order to make up quotas. The hunters firmly contend that for every female seal taken, three seals die: The mother, the embryo which she nearly always carries, and the pup which she has left alone on the beach.

After a public furor sparked by several lurid magazine articles on the killing of seals under 1 year of age, the Canadian Government has now prohibited this practice. The Department of the Interior, which has jurisdiction over the taking of seal skins in the Pribilofs, has not seen fit to follow suit. Consequently, there is now no U.S. Government regulation preventing the killing of pups.

The only reason why this practice is not presently engaged in on the Pribilofs is that the skin tanning process used in our country makes the processing of pups' skins unprofitable. Industrial processes change, and should the tanning of pup skins ever become profitable, nothing stands in the way of those who would begin to kill seal pups. An Interior Department regulation ought long since to have foreclosed this possibility.

After a long and wearing drive from the beaches to the killing grounds, a drive during which seals become so heated and exhausted that their skin begins to steam in 38-degree weather, seals are now killed by clubbing of their heads. Many times an animal receives a second or even a third blow to insure that he will not recover, and that the men who will dispose of him after the clubbing will not be harmed.

According to a report given credibility by the Humane Society, 13.6 percent of the animals clubbed undergo multiple blows. These subsequent blows are justified on the basis that they are a safety factor, but we must consider that if the clubbers believe that those blows are necessary for safety—and the clubbers, you will remember, are the native experts—then they must believe that there is still a possibility of recovery. It is quite probable, then, that a healthy proportion of clubbed seals continue to feel pain even after their brain waves had supposedly been terminated.

The seal hunt is presently governed by an international convention which limits the number of seals which any one country may take from the Pribilofs. The Humane Society emphasized that if this country were to unilaterally move to terminate its participation in the hunt, we would free the other signatories of the convention to kill as many seals as they can. Since the result of that would be the decimation of the species, we cannot unilaterally terminate sealing in the Pribilofs. We can, however, make the process of sealing more humane.

To end the brutality which is attendant upon the killing of seals in the Pribilofs, I am introducing today the Humane Seal Protection Act of 1970. That act will prohibit the killing of seal pups and of female seals, and will mandate the Interior Department to promulgate a humane killing procedure which is to replace clubbing by July 1, 1972.

Mr. President, I request unanimous consent to have the bill and a summary and analysis thereof printed in the RECORD.

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

The bill (S. 3596) to amend the Fur

Seal Act of 1966 by prohibiting the clubbing of seals after July 1, 1972, the taking of seal pups, and the taking of female seals on the Pribilof Islands or on any other land and water under the jurisdiction of the United States, introduced by Mr. GOODELL, was received, read twice by its title, referred to the Committee on Commerce and ordered to be printed in the RECORD, as follows:

S. 3596

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act shall be known as the "Humane Seal Protection Act of 1970."

SEC. 1. Section 104 of the Fur Seal Act of 1966 is amended by adding at the end of subsection (a) thereof the following new subsections:

"(b) The killing of seals by clubbing shall be prohibited after July 1, 1972."

"(c) The taking of the skin of any seal under one year of age, and of any female seal, shall be prohibited."

Subsection (b) of the Act shall be redesignated subsection (d).

SEC. 2. Section 109(d) of the Act is amended by adding at the end thereof the following:

"by any means, except after July 1, 1972 by clubbing,"

SEC. 3. Section 404 of the Act is amended by adding at the end thereof the following:

"Whoever knowingly transports in interstate commerce, or knowingly sells subsequent to such transportation, any package containing any seal skin, or any product manufactured, made or processed, in whole or in part, from such seal skin, which has been taken in violation of any provision of this Act shall be fined not more than $2000, or imprisoned not more than one year, or both, and the gross revenue derived from any such sale of any such illegally taken skin shall be confiscated by the Secretary of the Interior and deposited into the Pribilof Island Fund in the Treasury." SEC. 4. Section 405 of the Act is amended by adding at the end thereof the following:

"The Secretary shall initiate or contract for research on alternative means of killing seals, with the end of replacing the currently used method of clubbing. On the basis of such research, he shall determine which killing technique is maximally painless to the seals, and shall, not later than April 1, 1972, adopt regulations requiring that after July 1, 1972, such technique be the only permissible method of killing seals.

"The Secretary shall, moreover, initiate or contract for research on shortening the seal drive from rookery to hauling ground, and on minimizing the stress upon seals during that drive."

The material presented by Mr. GOODELL is as follows:

SUMMARY AND ANALYSIS OF THE HUMANE SEAL PROTECTION ACT OF 1970

SECTION 1. It is quite clear, from the healthy proportion of clubbed seals which must undergo multiple clubbings to ensure their unconsciousness, that clubbing can be a slow and painful killing process. Equally is it clear that the taking of seal pups—which in fact does not presently occur on the Pribilof Islands, but which is not presently prohibited by United States law or Interior Department regulation—is inhumane and unnecessary to meet hunting quotas. It is undisputed, moreover, that the taking of female seals always entails the death of an embryo and nearly always of a pup as well.

Electroencephalograms recorded immediately after clubbing have, according to scientists from a Virginia Mason Research Center medical team which conducted tests on the Pribilofs in July, 1969, shown gross electrical activity in the seal's brain for three minutes following the blow, indicating a distinct ability to feel pain during that period. Animals frequently recover in American slaughterhouses, after having been stunned by humane slaughter devices, but the proportion of animals recovering is quite a bit less than 13.6%. Since 13.6% of seals clubbed must be given multiple blows to ensure their unconsciousness, seal clubbing is without question less humane than mainland slaughter processes.

Humane Society tests have demonstrated that more humane killing options are available: the use of carbon dioxide chambers, of electricity, of exposure to a flooded nitrogen atmosphere. Experiments conducted in 1969 by doctors at the Virginia Mason Research Center, in collaboration with the Interior Department's Bureau of Commercial Fisheries, have the nitrogen technique as a particularly painless alternative to clubbing.

I concur with the Humane Society in its belief that no painless alternative to clubbing has yet been developed. Section 1 therefore sets a deadline, July 1, 1972, after which clubbing may not be utilized. Surely two years is more than sufficient for the Department of the Interior to come up with a recommendation on a more humane option.

Section 1(c) prohibits the taking of seal pups. Moreover, it protects the size of the Pribilof herd, in accordance with the beliefs of the native hunters, by prohibiting the taking of female seals.

SEC. 2. Section 2 amends the definition of the term "sealing" so as to exclude clubbing, after July 1, 1972, as a permissible killing device.

SEC. 3. Section 3 prohibits the transmission in interstate commerce, and the sale subsequent to such transmission, of any illegally taken seal skin or product made therefrom, and imposes criminal penalties for the violation of that prohibition.

SEC. 4. Section 4 mandates the Secretary of the Interior to conduct research to develop a more humane killing method which is to replace clubbing and to initiate research which will lead to making the seal drive to the killing ground more humane. The Secretary is required, on the basis of such research, to determine which killing method is least painful to seals, and to adopt regulations requiring that such technique be the only permissible one after July 1, 1972.

ADDITIONAL COSPONSORS OF BILLS

S. 3388

Mr. BROOKE. Mr. President, at the request of the Senator from Pennsylvania (Mr. SCOTT), I ask unanimous consent that, at the next printing, the name of the Senator from Iowa (Mr. MILLER) be added as a cosponsor of S. 3388, to establish an Environmental Quality Administration.

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

S. 3388

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Pennsylvania (Mr. SCOTT), I ask unanimous consent that, at the next printing, the name of the Senator from Hawaii (Mr. FONG) be added as a cosponsor of S. 3388, to establish an Environmental Quality Administration.

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

S. 3566

Mr. BROOKE. Mr. President, at the request of the Senator from Pennsylvania (Mr. SCOTT), I ask unanimous consent that, at the next printing, the names of the Senator from Wisconsin (Mr. NELSON) and the Senator from California (Mr. MURPHY) be added as cosponsors of S. 3566, to establish, within the National Foundation on the Arts and Humanities, a National Council on American Minority History and Culture.

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

S. 3566

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Pennsylvania (Mr. SCOTT), I ask unanimous consent that, at the next printing, the name of the Senator from New Jersey (Mr. WILLIAMS) be added as a cosponsor of S. 3566, to establish, within the National Foundation on the Arts and Humanities, a National Council on American Minority History and Culture.

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

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, March 16, 1970, he presented to the President of the United States the enrolled bill (S. 495) for the relief of Marie-Louise—Mary Louise—Pierce.

NOTICE CONCERNING NOMINATIONS BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. EASTLAND. Mr. President, the following nominations have been referred to and are now pending before the Committee on the Judiciary.

Robert E. Hauberg, of Mississippi, to be U.S. attorney, southern district of Mississippi for the term of 4 years, reappointment.

Joseph W. Keene, of Louisiana, to be U.S. marshal, western district of Louisiana for the term of 4 years, reappointment.

On behalf of the Committee on the Judiciary, notice is hereby given to all persons interested in these nominations to file with the committee, in writing, on or before Monday, March 23, 1970, any representations or objections they may wish to present concerning the above nominations, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

ORDER OF BUSINESS

Mr. EASTLAND. Mr. President, I ask unanimous consent that I be permitted to address the Senate for a period of 15 minutes.

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

THE VENCEREMOS BRIGADE—AGRARIANS OR ANARCHISTS?

Mr. EASTLAND. Mr. President, American citizens are being indoctrinated and trained to attack and destroy our institutions and our Government. This activity is underway on our doorstep at this hour.

Fidel Castro's Cuba is the enemy base for the operation. Only yesterday—in the span of time—this despot sought to aim offensive missiles at our people. Today he is exporting revolution in another effort to drag this democracy down.

The Internal Security Subcommittee is determined to expose this assault upon America and we know the Congress will be in the forefront of the fight to smash it.

Since the very early 1960's individuals and groups of varying sizes have traveled to communism's outpost in this hemisphere and returned to the United States. In the recent past a comparative trickle threatens to become a flood—and this rising tide represents a clear and present danger to the fabric of our society.

We want to direct attention to some of these visitors to Castro's domain—and to their violent, destructive, and revolutionary actions in this country.

We intend to light the shadows that surround this vicious operation—to drive from those shadows the missiles—in human form—which have been fashioned on that Communist island and fired at America. We want our people to be aware of the direct chain which reaches from Cuba into our cities, our campuses, our conventions, our lives—and which threatens the life of this Republic.

Mr. President, three of the "Chicago 7"—Jerry Rubin, David Dellinger, and Tom Hayden—are veterans of Cuba and veterans of attempts to disrupt a national convention and to destroy our judicial system.

Mark Rudd made his journey to Havana—returned—and led the riots which rocked—and almost wrecked—Columbia University.

Following his all-out assault on Columbia, Rudd moved on to the leadership of the dangerous Weatherman faction of Students for a Democratic Society.

In October of 1969 the Weathermen launched their four days of rage campaign against the city of Chicago. It can only be described as a war on lawful authority—an act of open insurrection.

In the phalanx of 70 female Weathermen who battled police at Grant Park were Kathy Boudin and Cathryn Wilkerson who escaped from the bomb blasted residence in New York City which belonged to the Wilkerson woman's family—and which was being used as an assembly plant for explosive devices.

Again, Mr. President, we confront the chilling fact that both of these women were among American visitors to Cuba—as was Theodore Gold—another Weatherman—whose body was found in the ruins of the bomb manufacturing facility. One of the bodies recovered from the wreckage showed unmistakable evidence of the nails which were being attached to the explosive to produce shrapnel.

Kathy Boudin—this traveler to Castro's island—wrote:

> We need to attack the legal system of the United States—courts, grand juries, legislative committees, the ideology itself—just as we attacked its fraternal institutions, the university and the selective service system.

I think it would be well for us to note the ominous repetition of the term "attack" by this woman as well as her reference to the ideology itself.

She says—in part:

> Just as we attacked the university.

Now, Mr. President, let us listen to a broadcast from Havana on the day after the riots at Berkeley. Here is the Communist commentary:

> It can be observed that the incidents take place in a chain reaction. One day it is the youths who travel to Cuba contrary to the restrictions of the State Department, and who then bravely challenge the inquisitions of the Senate Committee. This is a dramatic sign of the growing awareness in the United States universities. Today it is the turn of the Berkeley students who are fighting to break the straightjackets of the "American way of life" in a restless effort to face the realities of the surrounding world.
>
> This is not much or definitive, but you have to start somewhere.

A start has been made somewhere, Mr. President and that somewhere is Cuba. Every American is fully aware of Fidel Castro's concept of what the end of this effort should be and that is of course the end of the United States of America.

One of the leaders of the Berkely riots was Yvonne Bond, yet another traveler to Cuba.

The convicted mastermind of a plot to blow up the Statue of Liberty, Robert Collier, is a visitor to Havana. He has also been indicted for conspiring to bomb the Bronx Botanical Gardens, police stations, subway switching rooms, and railroad tracks. Additionally, he is accused of possessing and carrying dangerous weapons, including guns, rifles, pistols, bombs, and explosive substances. I must observe that these sojourners to Cuba have a real affinity for explosive substances.

Ralph Featherstone, who recently lost his life in an explosion in nearby Maryland, attended a conference in Havana in January of 1968, along with David Dellinger, Tom Hayden, and others of this type.

Rubin, Dellinger, Hayden, Rudd, Collier—what a whirlwind we reaped from their visits to Cuba. Of course, these are but a few of the examples we could cite to establish firmly the direct and definite link between the hierarchy in Havana and the chaos and confusion—the anarchy and terror—which these travelers have inflicted on this Nation.

I ask Senators and Americans now to ponder the dark and bloody results which could flow from 1,000 of these people spread like a stain across our land.

Mr. President, we face that grim prospect at this very hour.

The first contingent of that peculiar organization of Americans which styles itself "the Venceremos Brigade" has returned from Communist Cuba to this country and a second group of these strange "cane cutters" has arrived on that sad island which exists in poverty, misery, and bondage under the iron rule of Fidel Castro.

I submit to the Senate and to the people of this Nation that the organizers of the brigade are dedicated enemies of the United States and of free men everywhere. I assert that the membership of this band are persons who are preparing to engage in activities dangerous to democracy and those who are dupes and pawns of people who hate this Government and who are striving ceaselessly to destroy it.

Why does this conglomeration of revolutionaries and the misguided constitute a menace to America? We shall answer that vitally important question.

Let us begin with the name of this outfit—the Venceremos Brigade.

Venceremos is the Spanish translation of Benito Mussolini's slogan which the Italian dictator employed to exhort his legions to kill American soldiers during World War II. Thousands of our veterans saw the term painted under the helmeted head of Il Duce while they were winning freedom for the Italian people.

It is fitting, of course, that Dictator Castro would adopt Dictator Mussolini's slogan; but it is ironic that a Communist would use the words of a fascist, of one of the arch enemies of communism. However, since the governmental concepts of Fidel and Benito are identical, it is understandable that one dictator would approve the slogan of another.

Venceremos means "we shall win." Now, who, exactly, is "we"—and what, exactly, could canecutters be seeking to win? Are we expected to believe that winning for the brigade means a successful battle against a stand of sugarcane? We believe that winning for those who created this organization means the destruction of this country—and the "canecutters" are being trained to hack away at the foundations of America.

We must face the disgusting and disquieting fact that these young American citizens who are chanting—by Communist direction—"we shall win" are, in fact, screaming for the death of their native land.

Examine with us the use of the term "brigade" in connection with an agricultural activity. "Brigade" has a clear and precise military connotation; it suggests, and indeed it is, a military unit. What are harvesters to attack—shall the Venceremos Brigade launch a strategic assault on a field of cane? What battle cry will the brigade commanders shout to the troops? We all know that one of their favorites is "Ho—Ho—Ho Chi Minh—the NLF is gonna win." But, then, the NLF cuts down young Americans—not stalks of cane—and the NLF certainly would not want to defeat their comrades in the Venceremos Brigade in the "battle of the sugarcane." So, Mr. President, I presume that these ridiculous soldiers will be obliged to produce a new slogan to better fit their fight against the cane, and against their country.

Another parallel of their choice of the term "brigade" occurs to me. I refer to the Lincoln Brigade—an aggregation dedicated just as deeply to the protection and promotion of communism as is the Venceremos crew. However, the Lincoln Brigade engaged openly in military operations in Spain and did not seek to mask their mission on behalf of the Communist cause, as is the case with the "we shall win" canecutters.

During the so-called Spanish Civil War, a number of Americans went to Spain to fight with the Abraham Lincoln Brigade, proclaiming motives of high idealism. Almost without exception, they came back as hardened revolutionaries. The men of the brigade not only fought openly in battle for the Communist side, but for 30 years and more, as a gradually diminishing group in this country, they have constituted the most dependable hard-core Communists in the Nation.

Now, let us take a closeup look at the leadership of this traveling circus and weigh their interest in agriculture against their real purposes for the creation and deployment of the Venceremos Brigade.

In the vanguard of the movement, serving as a principal spokesman and prime organizer, we find that 54-year-old youth leader, David Dellinger. He has not been in farming much of late. As I observed, he has been engaged in a serious effort to wreck the judicial structure of this Nation. We find it difficult to believe that he is deeply devoted to the Cuban sugarcane harvest—especially in view of the fact that no one is more aware than Dellinger that most of the cane Castro can grow already belongs to the Soviet Union.

Also on this list of "agricultural specialists" and of committed enemies of our country and our people we discover Julie Nichamin. She is, of course, a veteran Cuban visitor and a veteran in the war against America.

She traveled to Castro's domain last year as the beneficiary of a $1,500 grant from tax-exempt funds of the Wennergren Foundation. At the time, she was a fellow of the Henry L. and Grace Doherty Foundation—as well as one of the best-known members of Students for a Democratic Society. I must observe, in passing, that SDS's interest in Agrarian matters has not been as well publicized as its activities in other areas—disrupting conventions, attacking police officers, attempting to destroy universities, and the like.

I am thoroughly familiar with the wailing and whining of Dellinger, Nichamin, et al., for the full protection of the rights afforded them by this free Government—even as they seek to rend it to pieces. I shall not, therefore, state what I know Julie Nichamin's plans and hopes for the Venceremos Brigade are. I will let her speak for herself, as follows:

In a joint statement in which North Vietnamese and Vietcong delegations participated, she wrote for the Cuban armed forces:

> And we know that we will leave here with a new dedication to bring back to our brothers and sisters a dedication to destroy the imperialist monster from within just as the rest of the peoples of the world are destroying imperialism from without.

She signed this declaration of war against America, "Julie Nichamin, National Committee of the Venceremos Brigade."

Information available to us indicates that this woman had a direct contact with a Cuban diplomat at the United Nations for the purpose of coordinating the affairs of the brigade in the United States with the Cuban Government. Incidentally, this Cuban representative has been denied reentry into this country because he had engaged in activities outside the scope of his official duties as an accredited representative of a foreign government.

Julie Nichamin then transmitted the directives of the Cuban Communist Party to her associates here and arranged a contact at the U.N. for them to facilitate their mission against their country.

Now, Mr. President, we have left the realm of cane harvesting and arrived at the single reason for the existence of the brigade. Let me repeat Julie Nichamin's pledge to "bring back to our brothers and sisters a dedication to destroy the imperialist monster from within."

Here it is, spelled out concisely and clearly. Here is the announcement of who the "we" in the slogan is, and the Senate and every American is told, bluntly, precisely what the Venceremos Brigade seeks to win.

This Nation has been divided into eight regions for the purpose of brigade recruitment. Proposed trainees are required to prepare applications which are carefully screened before successful candidates for brigade membership are selected.

Leaders are chosen, those who display dedication and potential as revolutionaries to the satisfaction of the national executive committee, whose membership includes, in addition to Dellinger and Nichamin, Arlene Eisen Bergman, Karen Ashley, and Gerald Long, among others. At this point in this grim recital of action against America, it seems almost unnecessary to advise that the Nichamin woman and Long are both members of Weathermen.

The remaining members are followers, who by their own choice or their own stupidity will be used by the brigade commanders to "destroy the monster from within," to overthrow this Government.

We can quickly, as well as fully and finally, dispose of any foolish claim concerning the worth of the Venceremos crew to the cane harvest. The average Cuban cane cutter, not the best producers, but the average worker, cuts 25,000 pounds per day. Brigade members contributed 3,925 pounds per day, or less than 16 percent of an average day's work. When part of the cost of round-trip transportation and maintenance of these people is added to their pitiful production of cane, it becomes apparent that participation in the cane harvest was at the bottom of the priority list of activities planned for the brigade by its Communist patrons.

Let me say that those who are presently in Cuba are averaging only around 3,900 pounds of cane a day, when the cost of bus transportation to take one group costs the Cubans in excess of $40,000, as well as the cost of transportation to Cuba, and expenses while in Cuba and boat back to Canada.

Additionally, and as further proof, we can state that each of these "workers" contributed a total of $83 worth of production during their entire stay on the island. This is a farce—even by Communist standards.

Having determined that this band of comrades did not journey to Cuba to cut cane, we shall proceed to check their associates during their stay on the island.

The brigade was moved by bus to their camp and went immediately to "work" on their real project. They were addressed by the camp director who is the chief of the international relations section of the Young Communist League of Cuba.

The director informed the crew that "the sugar harvest was dedicated to the heroic Vietnamese people." He assured the group that they were "helping to fight American aggression in Vietnam." This strikes me as a most unusual greeting to extend to a band of loyal Americans.

However, the members of the Venceremos circus were equal to the greeting. They paraded before television cameras and matched and surpassed the director. In fact, as difficult as this is to believe, they referred to their own country as the "imperialist aggressors of Cuba and Vietnam."

Having begun their agricultural activities by applauding the vilification of their native land and attacking her themselves, the harvesters moved into new fields.

It seems that two other foreign delegations had arrived in Havana, one from the Soviet Union and one composed of representatives of North Vietnam and of the Vietcong.

The Vietnamese visited the Venceremos Brigade and were saluted by the American cane cutters with shouts of "Vietnam will conquer."

The formal spokesman for the brigade in the welcoming ceremonies for those who are at war with our Nation today was Julie Nichamin, who urged her comrades to "pay homage" to the Vietnamese.

Responding to this brand of Nichamin oratory, a Vietcong captain spoke to the gathering. He described the importance of the struggle against what he called "the Yankee aggressor" and expressed the gratitude of the Vietcong to the Venceremos Brigade.

Melba Hernandes, president of the Cuban Committee of Solidarity With South Vietnam, also addressed the meeting. Comrade Melba concluded her speech by telling the members of the Venceremos Brigade that "Cuba, Vietnam, and you shall conquer." Frankly, Mr. President, that is an awful lot of conquering to expect from a gathering of "harmless harvesters."

Finally, as a token of their regard for their comrades in the brigade, the Vietnamese presented the Americans with rings allegedly made of aluminum taken from U.S. aircraft shot down in Vietnam. Imagine, if you will, American citizens accepting "trophies" fashioned from planes which carried young Americans to their deaths from the hands of those who killed their countrymen. While American fliers fight for freedom, American "can cutters" mock the memories of our dead.

I am not aware of the souvenirs presented to the Venceremos outfit by the Soviet delegation but I would hope that the presents accepted by live Americans from the Russians were not connected with Americans who have given their

lives to prevent Communist domination of the world.

Mr. President, for the benefit of any citizen of this country who may think I am attaching too much significance to this matter—to the presence of young U.S. citizens in Cuba, to their meetings with Communists from several different countries, and to their indoctrination in the ways of those who hate America—let me point out that 216 members of the Venceremos Brigade have already returned from Cuba and that approximately 687 more are there today for another session of "cane cutting"—or training. Remember, Rubin, Dellinger, Hayden, Rudd, and the rest. Consider the tragic consequences of losing 1,000 "cane cutters" on our campuses, in the streets of our great cities and from end to end of our land.

Looking at the record of past performance, it does not take a trained imagination to envision the trouble which can be expected when young revolutionary activists—already committed to aiding an adversary of their own country—return to the United States after weeks of instruction, training, and indoctrination by hand-picked Cuban Communists, Vietcong, North Vietnamese, and a delegation from the Soviet Union.

It is not only a likelihood, but—to repeat—a very clear and present danger, that these militant revolutionaries will return to the United States to implement the Communist purpose of causing chaos, confusion, and outright revolution in our institutions of higher learning, in the streets of our cities, and all across our Nation.

These young people have volunteered, not to serve their country in the American tradition, but to be active enemies of their homeland; not to defend America, but to bring her down.

Of all the nations in the Western Hemisphere—this hemisphere where freedom and progress walked hand-in-hand under the protection of the Monroe Doctrine—why would loyal Americans choose to support Castro's Cuba? Why would loyal Americans rush to the aid of a dangerous dictator, who was preparing to position offensive missiles—on the soil they are supposed to be harvesting—aimed at the members of their own families in this, their homeland?

If they are willing to travel to Cuba and to conspire with Communists to seek training in terror tactics and revolutionary actions, we submit that they are prepared to employ what they have been taught against the people and the institutions of this country.

We believe that our citizenry deserves to know who these fake farmers are. We have been able to obtain—and have in our possession—the passenger manifest, signed by the captain of the Cuban vessel which transported 213 members of the brigade from Cuba to Canada. The manifest contains the names, ages, martial status, passport numbers, and addresses of these revolutionary trainees.

Mr. President, I ask unanimous consent to have printed in the RECORD following my remarks the manifest from this boat, signed by its Cuban captain, which lists the passengers transported to this country from Cuba.

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

Mr. EASTLAND. The purpose of this address is to focus attention on these "canecutters" in advance of the hearings we shall schedule to thoroughly explore every aspect of the Venceremos Brigade.

Among the many pieces of information we shall develop is the means by which Castro intends to show his gratitude to these "harvesters" in addition to a ride home on a cattle boat and 1½ cubic feet of anti-American propaganda which he generously provided each member of the aggregation, some of which, Mr. President, is now in possession of the Subcommittee on Internal Security.

In those hearings we shall examine, closely and carefully, the leadership and the membership of the organization and delve into the past and present of the brigade. I say past and present because, in my judgment, the future of this outfit is going to be limited.

The Venceremos Brigade may echo Mussolini and Castro with their empty slogan "We shall win." However, Mr. President, they will not win.

This great, generous, and powerful country—the pride of every free man and the dream of every man who hopes to be free—victor over all the brigades sent against her in almost two centuries—will turn back this band of anarchists who pose as agrarians.

We shall, as always, protect our Nation from all enemies foreign and domestic—from Castro, and from his canecutters as well.

EXHIBIT 1

PASSENGER MANIFEST

[Name, age, passenger number, and address]

Tarmel, Abbott, 16, G–93668, 2001 Tunnel Road, Oakland, Calif.

Natalie Patterson Adams, 24, K–1654642, 431 S. Main St., Fall River, Mass.

Elisa Adler, 16, K–1579145, 460 Cascade Mill, Marin, Col.

Arcadio Alleenas, Jr., 25, K–16–218–, 289 W. 12th St., New York, N.Y.

Chari Anang, 16, K–1——10, Apt. 5, 2576 Washington St., San Francisco, Cal.

Anna Maria Seal Anderson, 22, K–189266–, 20 Meadow Rd., Baltimore, Md.

Merrian Stearns Ansara, 25, K–16—50—, 519 Commercial St., Provincetown, Mass.

Ronald Auerbach, 23, K–1—9—, 8034 Daytona Drive, St. Louis, Mo.

David Auer, 19, K–573—, RFD 1, Slatington, Pa.

Ellen Susan Baker, 19, K–1662—0, 2900 18th. St., N.W., Washington, D.C.

Kathryn Flo Barrett, 25, G–9–7723, 1000 Vogler St., S.E., Albuquerque, N.M.

Barry M. Harris, 25, K–1599617, 534½ Pacific St., Brooklyn, N.Y.

P. Joseph Barthel, 24, K–1599921, 87 Clairmont Ave., Buffalo 22, Dist. 267 E. 188th St., N.Y.

William George Baxter, 22, K–1662888, 4911 Davenport St., N.W., Washington, D.C.

Alice Berger Simo, 22, J–482895, 4900 Davenport St., N.W., Washington, D.C.

Sha-n Victor Bayer, 21, J–2CA1–7, 790 Grand Concourse, Bronx, N.Y.

Denis Roland Berger, 23, –15—630, 30th. 5th. Ave., New York, N.Y.

Jerry Wayne Blined, 27, K——4463, 5 Cooney St., Somerville, Mass.

Neal Birnbaum, 24, K–1–55236, 344 Putnam Ave., Cambridge, Mass.

Ronald Gary Bitten, 24, K–1—4054, 491 S. Main St., Fall River, Mass.

James Douglas Bliesner, 24, K–1–56342, 40 Boswell St., Boston, Mass.

Rosa Borenstein, 23, K–1598264, 366 Oarward Ave., Essex, N.J.

Edward Bouchard, 22, K–1639753, 5206 S. Emerald Rd., Chicago, Ill.

Gregory Bruce Bostick, 21, K–1641604, 358 Emerald Rd., Columbus, Ohio.

Douglas Roy Braasch, 26, K–1651447, Island Farm, Paradox, N.Y.

Dale Frederick Brandt, 21, K–1640370, 7863 Rogers St., Chicago, Ill.

Alison Broege, 24, K–1599–24, 22 Hillyer St., Orange, N.J.

Keith Michael Brook, 21, J–529111, 217 Avenue R, New York, N.Y.

Ellen Amelia Brotsky, 17, K–1590413, 46 Davidson St., San Francisco, Cal.

Mert Ernest Boelter, 19, K–1637881, 7 S. Loomis St., Chicago, Ill.

Comsielo M. Butler, 25, H–806117, 2198 Blake St., Berkerly, Cal.

Leslie Sue Cagan, 22, H–1321357, 960 Grand Concourse, Bronx, N.Y.

Christina Camarino, 23, K–1604172, 318 W. 104 St., NYC, N.Y.

Marianne Camp, 19, K–1593289, 22509 Mission Blvd., Hayward, Cal.

Betty Margaret Carey, 23, H–940862, 552 62nd St., Oakland, Calif.

Judith Anne Cashin, 24, K–1654950, 229 W. 109th St., N.Y.C., N.Y.

Marian Ching, 18, K–1592907, 383 63rd St., Oakland, Cal.

Richard B. Cluster, 22, K–1651477, 6 Caldwell Ave., Somerville, Mass.

George Michael Cohen, 28, J–1428657, 132 E. 17th., N.Y.C., N.Y.

Linda Treme Corbett, 22, H–171068, 11 Pleasant Valley Rd., Westwood, Mass.

Richard White Cornish, 18, K–1660622, 110 Minden St., Jamaica Plains, Mass.

Deter Jon Countryman, 27, K–1683727, 401 W. Stafford St., Philadelphia, Pa.

Stephen Danis Courtney, 21, K–1577473, 197 Cleveland Dr., Croten-on-Hudson, N.Y.

Robert Ashworth Cowan, 21, H–1337533, 618 S. Madison, LaGrange, Ill.

Stephen Ingersoll Craine, 23, Z–686309, 39 Shelter St., New Haven, Conn.

Howard Lee Cunningham, 27, Z–877257, 156 5th Ave., N.Y.C., N.Y.

Peggy Ann Darm, 20, K–1640543, 15740 Wood Acres Road, Los Goyos, Cal.

Sonia Helen Deepmann, 27, K–1655693, 66 Rutland St., Boston, Mass.

Lisa Diamond, 20, J–117896, P.O. Box 518, Ross, Calif., 94957 (Armsby Circle).

Mark Dimandstein, 19, H–651059, 434 W. Mifflin St., Madison, Wisc.

Charles Leonard Draper, 19, J–503520, 3706 Perishing St., Alberquerque, N.M.

Gail Bari Dolgin, 24, G–424203, 34 Bayside Terrace, Great Neck, N.Y.

Dorothy Jane Dube, 21, J–1044795, 415 S. Ashland, Green Bay, Wis.

Karen Elizabeth Duncan, 24, K–1593000, 2020 Fell St., San Francisco, Calif.

Deborah Ann Dunfield, 19, K–137893, 217 Pine St., South Dayton, N.J.

June Carolyn Erlick, 22, K–1069619, 70 West 107th St., N.Y.C., N.Y.

Linda June Evans, 18, K–4683464, 412 W. Stafford St., Philadelphia, Pa.

Nancy Wale, 34, J–373819, 11 Blackwood Street, Boston, Mass.

John Alexander Field, 22, H–380932, West Street, Harrison, N.Y. 10528.

Rebecca Ann Foulk, 18, H–188084, 606 Grace Lane, Flourtown, Pa.

Francesca Freedman, 20, H–703129, 345 E. 47th, Paterson, N.J.

John Edward Fritz, 18, K–1683611, 2107 Rockingham Dr., Wilmington, Del.

Daniel Joseph Fuller, 20, K–1639351, Pembina, Wisconsin.

Carol N. Finnegan, 19, K–1683811, 90 E. Main St., Newark, Delaware.

Lijar Gaut Jr., 25, K–1692499, 5943 Seminole, Detroit, Mich.,

Dorothy Devine Gilberg, 22, K–1655575, 466 Locust St., Fall River, Mass.
Carol Ann Gilbert, 24, K–459588, Apt. 5B, 210 Sullivan St., N.Y.C., N.Y.
David Ethan Gilden, 19, K–1652131, 18 Mt. Auburn St., Cambridge, Mass.
Linda Jane Gleich, 22, K–1603731, 71 Barnes St., Long Beach, N.Y.
Howard Michael Goldman, 20, K–1599176, 448 E. 22nd St., Brooklyn, N.Y.
James Alexander Goodhill, 22, K–1694780, 2420 K-Street, N.W., Washington, D.C.
Betty Ann Graphreed, 19, K–1706394, 1479 Virginia Park, Detroit, Mich.
Robert Gregg Wilfong, 23, K–1655056, 57 Lawton Road, Needham, Mass.
Gay Steere Guetzkow, 21, J–244601, 4600 Connecticut Ave., N.W., Washington, D.C.
David Allen Guinard, 21, K–1683612, 106 Cherry Lane, Newcastle, Del.
Linda Sue Haile, 24, H–1066032, 236 Lily St., San Francisco, Calif.
Eo Jun Hamaji, 17, K–014352, 968 Regal Road, Berkeley, Calif.
Jay Robert Hauben, 28, K–042720, 83 Chestnut Hill Ave., Brighton, Mass.
Joseph Charles Harris, 16, K–1600918, 208 Delancy St., New York, N.Y.
Arcc Sholom Harris, 17, K–011973, 1721 Francisco St., Berkeley, Calif.
Annie Hipshman, 18, K–687511, 624 Vanessa Dr., San Mateo, Calif.
Phillip Alan Huff, 19, K–1603096, 18145 Alta Vista, Southfield, Mich.
Jonathan Lee Hoffman, 21, K–1604739, 865 West End Ave., New York City, N.Y.
Antony Hurst, 18, K–1608359, 208 Telance St., N.Y.C., N.Y.
Arturo Nieves Huertas, 23, K–1601471, 208 E. 1st Ave., Apt. 4, N.Y.C., N.Y.
Larry S. Israel, 29, K–1678555, 552–62nd, Oakland, Calif.
Ronald Eugene Jones, 24, K–1641420, 1548 Culhessee, Columbus, Ohio.
Trudy Maxine Kahn, 18, K–1593026, 3915 B. Cerrito Ave., Oakland, Calif.
Bonnie Sue Kanter, 24, G–496913, 252 West 76th St., N.Y.C., N.Y.
Michael Kazin, 22, G–526416, 199 Prospect St., Cambridge, Mass.
Thomas George Kelley, 21, K–1599702, 28 Philips Lane, Doirion, Conn.
Joanne Theresa Kelly, 16, K–1602746, 87–70, 109 St. Richmond Hill, New York City, N.Y.
Patrick Doyle Kelly, 23, K–1600685, 610 E. 13th St., N.Y.C., N.Y.
Noreen Ann Kirk, 16, K–1603112, 127 E. 15th, N.Y.C., N.Y.
Ronald Jerald Kleinbandler, 20, J–332860, 621 Avenue Z. Brooklyn, N.Y. (356 Terrassee St. Denis Monyra.)
Joseph Calvin Donley, 23, K–1593134, 1934–24 Ave., Oakland, Cal.
Gene Heth Cluster, 22, G–288842, 6 Caldwell Ave., Somerville, Mass.
Martin Alexander Henderson, 22, K–1640236, 437 Hawthorn St., Dayton, Ohio.
Richard Timothy Koor, 23, Z–761110, Ioha, Minnesota.
Elena Irene Koplowicz, 23, H–1065107, 81702 Freeland Ave., Detroit, Mich.
Steve N. Kraner, 26, K–1600070, 895 West End Ave., N.Y.C.
Larry Lamar Vapes, 19, K–1707241, 6821 Felix St., McLean, Va., U.S.A.
Michael Norman Landis, 27, G–700205, 5107 Prospect St., Cambridge, Mass.
Michael Lasley, 21, K–1705749, 60 South Docker, Apt. 5, Dayton, Ohio.
Joseph Lawrence Boyd, 20, K–1716533, 10 One Knoll Dr., Trenton, N.J.
Burnetta Kenavlani Lee, 19, K–1569577, 2255 Tantalus Dr., Honolulu, Hawaii.
Thomas Stearns Lee, 19, K–163974, 901 Edgewood, Ann Arbor, Mich.
Richard Gale Lessoff, 38, K–1652525, 27 Hurd Road, Brookline, Mass.
Kathleen Lipscomb, 29, K–160117, 535 E. 78th St., New York, N.Y.
Marvin Lewis Vinik, 24, J–302120, 145 Winthrop Rd., Brookline, Mass.
Rodney David Lincoln Bain, 24, K–1662794, 33 Jordan Ave., San Francisco, Cal.
Forrest Rich London, 21, K–1530149, 29800 Pickford St., Livonia, Mich.
Gerald William Long, 33, K–1604032, 4297 5th St., Detroit, Mich.
Lanyuen Belvin Louis, 19, K–1592853, 473 Market St., Salines, Cal.
Samuel Holden Lovejoy, 23, H–194824, 147 Satlett Ave., Wiberham, Mass.
Wayne Robert Lovermark, 27, K–913127, 6460 45th Ave. N., Minneapolis, Minn.
Karen Mae Towsend, 23, J–533472, RFD 1, Woodland, Michigan.
Erica May Manfred, 26, H–384471, 255 W. 93rd St., N.Y.C., N.Y.
Linda Jean Martin, 22, K–364386, 329 East 12th St., New York City, N.Y.
Susan Connell Magon, 22, K–821593, 216 W. 102 #2A., N.Y.C., N.Y.
Lisa Dale May, 19, K–1122891, 86 Washington Ave., Cedarhurst, N.Y.
Lindsay McDonald, 19, K–1602691, 90 Sylvian Ave., New Haven, Conn.
Patricia McCauley Bouchard, 21, K–1–397–4, 5206 S. Emerald Ave., Chicago, Ill.
Cathleen Claire McGhee, 21, K–1641809, 6621 Brookside Rd., Cleveland, Ohio.
Robert George McKenzie, 21, KE–294803, 6244 Carvell Rd., Brigton, Mich.
Linda Meyers, 21, K–5–0029, 331 S. 116th, Phila., Pa.
Paul Theodore Meyers, 21, K–1692512, 285 E. Ferry St., Detroit, Mich.
Cythia Roberta Michel, 21, J–1268–24, 33 W. Helen St., Hamden, Mich.
Anne Edith Miller, 18, K–1602692, 42½ Ferry St., New Haven, Conn.
John Richard Mitchell, 25, K–620301, 17 Clinton St., Woburn, Mass.
Timothy Michael Morearty, 24, K–1651507, 791 Tremont St., Boston, Mass.
Michelle Paula Mouton, 16, K–1592420, 485, 17th, San Francisco, Cal.
Randall Murray, 19, K–1640182, 6920 Crandon St., Chicago, Ill.
Jay Guy Nassberg, 29, K–1602748, 560 Howard Ave., New Haven, Conn.
David Lawrence Neustadt, 23, K–803110, 34 Bancroft Rd., Poughkeepsie, N.Y.
Laura Anne Obert, 20, K–1678304, 2557 E. Camamillo St., Col. Springs, Col.
Bruce Nicolas Occena, 22, J–300031, 71 May Ave., Keansburg, N.J.
Daniel Miche O'Donnell, 20, K–645074, 20 Brinton St., Buffalo, N.Y.
Constance Ann Olsen, 22, K–1678976, 5 Deer Park Lane, San Anselmo, Cal.
Dennis Adams O'Neill, 19, K–1601—4, 1889 Sedgwick, Apt. 14C, Bronx, N.Y.
Richard Alan Ostrow, 20, K–1601920, 1424 Hawthorne St., Pittsburgh, Pa.
Susan Dabney Pennybacker, 16, J–871739, 3307 Warrington Rd., Cuyahoga, Ohio.
Terry De Verne Phillips, 19, K–1590757, 519 W. 8th., Denver, Col.
Robert Jessee Pilisuk, 25, K–1177752, 91–59 191 St., Halis, N.Y.
Alexander Pollack, 23, K–9685–0, 250 W. 85th. St., New York, N.Y.—5631–175th. St., Fresh Meadows, N.Y.
Barbara Pottgen, 21, K–15—57, 2306 Dwightway St., Berkeley, Cal.
Sharon Lee Post, 20, K–1705756, 1807 Chestnut Blvd., Cuyahoga Falls, Ohio.
Jeffrey Lee Pressman, 21, K–1602858, 1033 N. Broad, Allentown, Pa.
Antony Paul Prince, 19, X–036408, Lake Forest College, Lake Forest, N.Y.
Charles Emerson Ragland Jr., 23, H–396311, 2001 Main St., Newberry, So. Carolina.
Leo Raineri, 54, K–1588529, 1371 64th Ave., Oakland, Calif.
Margaret E. W. Raymond, 22, J–627360, Duhk Rock Road, Guilford, Conn.
Thomas Lloyd Reitzner, 21, K–1640316, 112½ E. College Ave., Appleton, Wis.
Jeffrey Harris Richards, 24, G–49–709, 211 Chester Ave., Massapequa Park, N.Y.
Nicholas Britt Riddle, 16, J–683–31, Rt. 2, Moravian Falls, N.C.
Jon Taylor Robertson, 17, K–160811, 2820 Clark St., Boise, Idaho.
William Walter Robinson, 17, K–16–4730, 2928 S. Carlisle St., Philadelphia, Pa.
Nicholas Earl Rulich, 21, K–16–364, 236 Ohio St., Racine, Wis. 401 East 100th St., New York, N.Y.
Joe Luis Rodriguez, 32, K–1600002.
Luis Roman, 19, K–1684875, 708 Duley St., Philadelphia, Pa.
Patricia Mariane Rourke, 20, K–1599990, 325 E. 194 St., Bronx, N.Y.
Nina Rutmaker, 17, K–1593027, 6385 Hillegas Ave., Oakland, Cal.
Antony Bourke Ryan, 21, K–012410, 519 Humphrey Road, Santa Barbara, Calif.
Sheila Mario Rayn, 24, K–1573857, 517 E. 5th St., New York City, N.Y.
Adrianne Aron Schaar, 29, K–1592761, 449 Ocean View Ave., Berkeley, Calif.
Ronald George Scharns, 22, K–16–5585, Blank Drive RFD #1, Baden, Pa.
Barry Martin Schreibman, 23, K–1–019–0, 348 E. 15th St., New York City, N.Y.
James Curtis Scott, 17, K–164–00–6, 1614 Orchard St., Chicago, Ill.
Leslie Scott, 19, K–1654777, 26 Myrtle St., Apt. 2, Boston, Mass.
Thomas Oliver Scott, 31, J–125445, 519 W. 8th St., Denver, Colo.
Louis Daniel Segal, 20, K–5168–6, 2927 Dieakin St., Berkeley, Calif.
Henry Gilbert Shonerd, 26, K–1420783, 8257 Renssalaer, Sacramento, Calif.
Clarence Frank Sills, Jr., 22, K–1601750, 399 Fairview Ave., Orange, N.J.
Gerald Majella Sino, 20, K–1644773, 17404 Birch Crescent, Detroit, Mich.
George Ernest Singh, 25, K–1590157, 960 Stannage Ave., Albany, Cal.
Waynes Leonard Smith, 19, K–1592543, 3361 Madera Ave., Oakland, Cal.
Todd M. Smith, 23, K–368342, 33 Bon Aire Circle, Suffern, N.Y.
Jeffrey David Sokolow, 21, K–1599992, 200 W. 106 St., New York City, N.Y. 10025.
Ruben, Solorzand, 21, K–1593211, 1150 S. Drake St., Stockton, Calif.
Earlon Sterling, 20, K–1638414, 206 W. Lincoln, McCleane, Illinois.
Carol Ann Stern, 18, K–1602247, 326 20th, Brooklyn, N.Y.
Judith Reva Stern, 23, J–713714, 80 Spencer Dr., San Francisco, Calif.
John Kemp Stuckey, 20, G–588967, 16, Douglas St., Brunswick, Maine.
Carol Jane Strickler, 23, K–1597536, 1245 West 10th St., N.Y.C., N.Y.
William Dening Strong, 39, G–861739, 1410 Walnut St., Newton, Mass.
Marshall S. Tack, 21, K–1641605, 375 Lincoln, Lexington, Mass. (c/o Wm. Safier, University of Cincinnati, Cincinnati, Ohio.)
Janet Tenney, 21, K–1639278, Wood Road, Port Washington, D.C.
Patricia Todd Glowa, 19, K–1599740, 356 Terrace Street, St. Denis, Montreal, P.Q.
Malorie Tolles, 23, K–1686304, 520 Crestview Road, Wayne, Pa.
Ellen Shaffer, 20, K–1652250, 31 Forest St., Somerville, Mass.
Patrick Andrew Valdes, 17, K–1562373, 3316 W. St. Ohio, Denver, Colo.
Morton Morris Vicker, 53, K–1590887, 225 B 9th St., San Francisco, Cal.
Joanne Carol Wallace, 19, K–1642217, 1227 Broadway, Apt. B, North Chicago, Ill.
Frank Robert Ward, 24, K–1601526, 3926 Bell Blvd., Bayside, N.Y.
Susan Constance Wender, 23, K–1692520, 18400 Pennington, Detroit, Mich.
Roy Harrison Whang, 28, K–1643500, 17083 Magnolia St., Southfield, Mich.
Katharine Elizabeth White, 22, J–1274614, 173 Benvenue St., Wellsley, Mass.
Penelope L. Wickersham, 20, K–164130, 3208 West 2nd St., Wilmington, Delaware.
Jean Irene Wilburn, 36, K–1638276, 9128 Stewart St., Chicago, Ill.
Andrew Mitchell Willis, 21, K–1641220, RD 2 Dutch Road, Fairview, Penn.

Donna Jean Willmott, 20, K–1640837, 1232 Greenwood Ave., Akron, Ohio.
John Farrell Wilson, 18, K–1602870, Box 832, 5 W. 63rd St., N.Y., N.Y.
Dennis Blair Wood, 27, J–313693, 2418 Blake St., Berkeley, Calif.
Charles Earl Woodson, 29, K–015904, 2719 Pacific Ave., San Francisco, Calif.
Candece Elisabeth Wright, 24, K–1592675, 2531 Grove St., Berkeley, Cal.
Betty Wright, 28, K–1601810, 193 Berkeley Place, Brooklyn, N.Y.
Carol Wright, 25, K–1592674, 474 55th St., Oakland, Cal.
John Paine Wright, 25, K–1602683, 183 Berkley Place, Brooklyn, N.Y.
Morris J. Wright, 61, F–604401, 2531 Grove St., Berkeley, Cal.
Ethan Jeremy Young, 17, K–1636895, 49–23 Greenwood Ave., Chicago, Ill.
Laurie Susan Zoloth, 19, K–1683875, 1219 South Camden Dr., Los Angeles, Cal.
Daniel Walter Scott, 21, K–1654778, 120 Fitz Randolph Road, Princeton, N.J.
Humberto Valdes Diaz, 47, 002762.
Orlando Martinez Masueira, 27, 02766.
Roberto Yepe Menedez, 32, 002701.
Rodolfo Garcia Hechevarria, 30, 002765.
Juana Rosario Carraseo Martin, 28, 002758.
Orlando O'Reilly y Arango, 40, 002771.
Alberto Gabriel Landa Garcia, 33, 002686.

APPOINTMENTS BY THE VICE PRESIDENT

The ACTING PRESIDENT pro tempore (Mr. ALLEN). As in legislative session, the Chair, on behalf of the Vice President, pursuant to Public Law 84–372, appoints the Senator from New York (Mr. GOODELL) to the Franklin Delano Roosevelt Memorial Commission in lieu of the Senator from Massachusetts (Mr. BROOKE) resigned.

CONFIRMATION OF NOMINATIONS

Mr. MANSFIELD. Mr. President, I understand that the Senate is in executive session; and I ask unanimous consent the Senate turn to the consideration of the nominations on the executive calendar beginning with "New Reports."

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

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

AMBASSADORS

The bill clerk proceeded to read sundry nominations of Ambassadors.

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

The ACTING PRESIDENT pro tempore. Without objection, the nominations will be considered en bloc; and, without objection, they are confirmed en bloc.

OFFICE OF ECONOMIC OPPORTUNITY

The bill clerk read the nomination of Albert E. Abrahams, of Maryland, to be an Assistant Director of the Office of Economic Opportunity.

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, the President will be notified forthwith.

ADDITIONAL STATEMENTS OF SENATORS AS IN LEGISLATIVE SESSION

LOCKHEED AIRCRAFT CORP.'S NEGOTIATIONS WITH THE AIR FORCE

Mr. PROXMIRE. Mr. President, during the debate over the C–5A last August, I predicted that Congress was voting for funds to bail out Lockheed Aircraft on its contract for the C–5A plane, and that according to the best estimates I could make, their deficits would amount to over $500 million. I said then:

> Next year we will be faced with bailing out Lockheed again on this same C–5A.

Three weeks ago I became aware of the fact that Lockheed, in its negotiations with the Air Force, was pressing for the Government to bail it out, otherwise, the company said, it would suffer enormous and perhaps irreparable financial difficulties. As a result, I wrote to Assistant Secretary Whittaker, asking about that fact and urging him not to waive any more rights than the Air Force had already waived during its negotiations.

I ask unanimous consent that my letter of February 26 to Secretary Whittaker be printed at this point in the RECORD.

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

FEBRUARY 26, 1970.

Hon. PHILIP N. WHITTAKER,
Assistant Secretary of the Air Force (Installation and Logistics) The Pentagon, Washington, D.C.

DEAR MR. WHITTAKER: I am informed that in the current negotiations between the Air Force and Lockheed over the C–5A cost overruns and other matters relating to the C–5A contract, that the possibility of Lockheed's declaring bankruptcy has been raised. It is my understanding that Lockheed is using this possibility as a way to induce the Air Force to bail it out of the enormous financial difficulty it has gotten into over the C–5.

I would hope that the Air Force will enforce the terms of the contract and not waive any more rights than it has already waived during these negotiations. As you know, there is a provision of the law which permits the Government to bail out a contractor if it is in the national interest to do so. I urge you to follow these procedures if it is necessary to bail out the contractor, and to do it openly and with full public disclosure. In my judgment, the public interest would be seriously damaged if the Air Force submits to any threats by this contractor, express or implied, to go out of business.

In addition, I would like to know the status of the technical difficulties in the C–5A and the latest estimate of schedule slippages.

May I please hear from you on these matters?

Sincerely,

WILLIAM PROXMIRE,
Chairman, Subcommittee on Economy in Government.

Mr. PROXMIRE. Mr. President, on March 5, I received a reply dated March 4. Mr. Whittaker said that he was not aware of any action on the part of Lockheed that it was threatening to declare bankruptcy as a means of inducing the Air Force to bail it out of its C–5A difficulties.

He claimed that any actions taken would be determined solely in the light of the best interests of the Government. I ask unanimous consent that the text of Secretary Whittaker's letter to me be printed at this point in the RECORD.

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

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., March 4, 1970.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Economy in Government, Joint Economic Committee, U.S. Senate.

DEAR MR. CHAIRMAN: I very much appreciated your thoughtful letter of February 27, 1970, which, incidentally, was received by me late yesterday.

You comment on information you have received concerning the possibility of Lockheed declaring bankruptcy as a means of inducing the Air Force to bail it out of its C–5A difficulties. I am not aware of any such action being threatened or contemplated by Lockheed.

We are working diligently to reach a resolution of the contractual and financial issues and to bring the C–5A program along as successfully as possible throughout the rest of its performance period. We are, of course, aware of Public Law 85–804 and want to assure you that, should any use of this statute appear appropriate, we would employ this approach openly and with full disclosure. I would also like to emphasize that the courses of action we take will be determined solely in the light of the best interests of the Government.

As you requested, I will be providing you with the technical status, the latest schedule information program cost estimates within the next several days.

Sincerely,

PHILIP N. WHITTAKER.

Mr. PROXMIRE. Mr. President, on March 5, however, the Pentagon released a letter dated March 2, 1970, from Mr. D. J. Haughton, chairman of the board of Lockheed, to the Honorable David Packard, Deputy Secretary of Defense.

In that letter, Lockheed states that it is now financially impossible for them to complete performance on a number of its military production programs unless it receives further financing from the Department of Defense.

It states that its problems stem largely from drastic innovations in procurement procedures used by the military services.

It claims there has been a breakdown in the procurement process. In particular, it condemns the "total package procurement" method of contracting involved in several of its contracts. It claims that method is virtually unworkable.

It states that while it was assumed that state-of-the-art advances were not required in these programs, it is generally admitted that these assumptions were incorrect.

With respect to the C–5A it states that an additional $435 million to $500 million "will be required to cover production expenditures." This is almost precisely the amount I said in my arguments last September would be needed.

I ask unanimous consent that the let-

ter from Mr. Haughton to Secretary Packard be printed at this point in the RECORD.

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

LOCKHEED AIRCRAFT CORP.,
Burbank, Calif., March 2, 1970.

HON. DAVID PACKARD,
Deputy Secretary of Defense, the Pentagon, Washington, D.C.

DEAR MR. SECRETARY: We have completed a review of the current status of a number of our major Department of Defense programs in connection with which our corporation has filed claims or has been compelled into contractual disputes with the military services. It has become abundantly clear to us that the unprecedented dollar magnitude of the differences to be resolved between Lockheed and the military services make it financially impossible for Lockheed to complete performance of these programs if we must await the outcome of litigation before receiving further financing from the Department of Defense. We consider it imperative that some alternate method of resolution of these differences be immediately and seriously pursued in order to avert impairment of the continued performance of programs essential to the national defense.

We realize that the military services normally expect their contractors to continue performance, including financing, pending administrative review and resolution of any disputable matter. In the present instances, however, the cumulative impact of the disagreements on four programs creates a critical financial problem which cannot be supported out of our current and projected assets and income. We have intensified our cost reduction efforts, have eliminated dividends to our stockholders, have reduced drastically our planned expenditures for fixed assets, and intend to reduce our overhead costs and cut discretionary outlays in all other possible areas. We also intend to continue pursuit of all possibilities of financing from the private sector. Despite these efforts, we must state that we cannot maintain uninterrupted performance on these programs without receiving significant financing assistance from the Department of Defense. Also, in absolute candor, we do not consider that Lockheed, even if it were capable of so doing, should be expected alone to sustain for an indefinite period the financial burden while awaiting the outcome of litigation resulting largely from drastic innovations in procurement procedures utilized by the military services.

However, if absolutely necessary the parties may be forced to have their major disagreements involved in these programs settled through litigation. Indeed our obligations to our stockholders will require us to take this course of action if the only settlement proposals which can be evolved would ruinously deplete our corporate resources. Moreover, it should be recognized that contractual disagreements of such enormous magnitude represent a breakdown in the procurement processes.

Without disregarding our own deficiencies, the common ingredient in three of the four programs which cause our present difficulty, namely, the C–5A, the SRAM, and the AH–56, is the fact that under the Total Package Procurement procedure development was required to be undertaken under a fixed price type contract with concurrent production commitments with respect to price, schedule, and performance. Although it was assumed that state-of-the-art advances were not required in these programs, it is generally admitted that these assumptions were incorrect. Although industry generally, including our company, perhaps erred in competing for contracts under this system, the system itself and its use were the responsibility of the military departments.

We believe that the hindsight of today shows us that the procurement procedure utilized for these programs was imprudent and adverse to our respective interests. We did not contemplate, nor do we believe anyone in the Department of Defense ever contemplated, that these contracts could generate differences of opinion involving such vast monetary amounts as, for example, exist on the C–5A program. Nor did either party appreciate the major hazards involved in undertaking production on the Cheyenne program before technical problems on the development program had been solved. Considering that these problems were known to the Army at the time the letter contract for production was issued in January 1968, and that the parties subsequently had been unable to reach agreement on a definitive contract, the unprecedented action of terminating this letter contract under a fixed price default clause is difficult to understand.

Despite the growing awareness that the total package method utilized in these programs is virtually unworkable, there seems to be little disposition to correct existing contracts on terms which most contractors can accept or to recognize that litigation is a seriously inadequate avenue. Even on the shipyard contracts where the total package concept was not involved, the fact the bulk of the shipbuilding industry has encountered grave trouble as indicated by the more than a billion dollars in contract claims suggests that the system, rather than solely individual deficiencies, was a major contributor to the problem.

Apart from the disastrous potential for our own company and its effect on Department of Defense programs, litigation of these problems may well have grave consequences on the Department of Defense's ability to secure the industrial support which it traditionally has required, regardless of who ultimately wins. With this in mind, whatever steps may be taken to alleviate our immediate financial problems I wish to urge that the way be left open to negotiate settlements which are within the ability of the corporation to absorb.

Although I know you are generally familiar with the aforementioned programs, I would like briefly to recapitulate the critical financial problems they cause and to urge interim financing actions which should be taken immediately to avoid impairment of continued performance.

C–5A

On January 19, 1970, our appeal from the Contracting Officer's decision concerning the C–5A contract dispute was docketed by the ASBCA and our complaint has been filed. All parties are cooperating toward the earliest possible resolution of these issues by the Board, but most optimistically it would appear this cannot be accomplished before late 1971.

In addition, there is a distinct possibility that the decision of the Board may be appealed to the Court of Claims, and consequently a final decision may not be made until 1973 or 1974. The Air Force has indicated it will not provide funds for this contract which will exceed the estimated contract price as the Air Force interprets this contract. Under these conditions, the Air Force has indicated it will not provide funds for this contract which will exceed the estimated contract price as the Air Force interprets this contract. Under these conditions, the Air Force funding would at best be adequate only until near the end of this year. However, in order to complete the delivery of 81 aircraft and related items during 1971 and 1972 an additional $435 million to $500 million will be required to cover production expenditures. Lockheed cannot provide such funding and believes the Air Force should advance the necessary funds pending the outcome of the litigation. This could be accomplished by an amendment to the current contract which could contain appropriate safeguards for both parties with respect to preserving their rights in litigation.

SHIPYARD CLAIMS

At the present time, the Lockheed Shipbuilding and Construction Company has performed, or is performing, on 9 contracts for several classes of new ships. More than $175 million of contractual adjustment claims have been presented to the Navy to date. As of December 29, 1969, amounts expended by Lockheed on these claims exceed $100 million and are expected to continue at a rate of $3 to $4 million per month. These claims have been under consideration for many months with provisional payments of only $14 million made to date.

We believe the solution to this problem lies in an immediate increase in provisional payments to an aggregate of $85 million. We understand the Department of the Navy plans to settle the majority of these claims during the last three months of 1970 which should permit the payment of the balance of the amounts due Lockheed Shipbuilding and Construction Company by the end of this year. Should there be any delay in the Navy's present schedule an additional amount of provisional payments would be required. Immediately increasing provisional payments to $85 million would substantially ease the financial burden at the Shipbuilding Company and permit continued work toward the completion of the DE 1052 and LPD class ships now in process. In addition, arrangements can be made which will not impair the rights of either Lockheed Shipbuilding and Construction Company or the Navy with respect to negotiation and final settlement of these claims.

AH–56A, PHASE III

On May 19, 1969, the Army Contracting Officer issued a final decision terminating this letter contract for default. Lockheed's appeal from this decision was made to the ASBCA on May 22, 1969, and both Lockheed and the Army are proceeding in accordance with the rules of the Board. It is unlikely that the Board will hear this case before midyear and that a final decision can be made before the first quarter of 1971. As of the end of 1969, total costs incurred by Lockheed (both prior and subsequent to the Contracting Officer's decision) amount to approximately $89 million. Prior to the Contracting Officer's decision the Army had made progress payments amounting to $53.8 million. We have reached an agreement with the Army under which these progress payments may be retained by us pending a decision by the ASBCA. However, during the early part of 1970, costs incurred may reach a total of some $110 million requiring a total cost participation by Lockheed of some $60 to $65 million which may be increased by the necessity of payment by Lockheed to subcontractors of additional amounts. We suggest that the Army increase the amount of progress payments to a minimum of 90% of the costs incurred, and continue such payments until resolution of this case by the Board of Contract Appeals or the Court of Claims. The same agreement under which Lockheed is currently retaining the $53.8 million or progress payments could apply to these additional provisional payments.

SRAM

The Lockheed Propulsion Company is the propulsion system subcontractor to the Boeing Company under its prime contract with the Air Force for DDT&E of the Short Range Attack Missile (AGM–69A). On December 29, 1969, Lockheed Propulsion Company and the Boeing Company presented a Contract Adjustment Claim to the Air Force under Contract AF 33(657)–16584 in the amount of $50 million. At the present time, Lockheed

Propulsion Company is continuing its performance of its subcontract and has incurred costs approximating $30 million in excess of the $16.9 million received to date. Continued performance during 1970 is expected to add more than $15 million. Negotiations of the issues involved in our claim are currently being sought jointly by Lockheed Propulsion Company and Boeing with the Air Force. It is possible that most or all of the issues will become the subject of an ASBCA case in the next few months. We believe that a provisional payment to Lockheed Propulsion Company of $25 million should be authorized under the Boeing prime contract pending final resolution of the issues. As is the case with the AH–56A and the C–5 programs, suitable arrangements protecting the rights of both parties could be arranged.

In summary, in the absence of prompt negotiated settlements there is a critical need for interim financing to avert impairment of continued performance. We urgently solicit the assistance of the Department of Defense in providing such financing.

Very truly yours,

D. J. HAUGHTON,
Chairman of the Board.

Mr. PROXMIRE. Mr. President, on March 5, I issued a statement on this matter. I ask unanimous consent that it be printed at this point in the RECORD.

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

STATEMENT OF SENATOR PROXMIRE

"The Lockheed request for about $600 million in bailout money symbolizes the breakdown in military procurement. It comes as no surprise to those of us who have concerned over mismanaged and unnecessary military purchases."

"Last September, during the debate over my amendment to delete out of the military authorization bill $500 million for the C–5A, I warned that the money would be used for the 3 squadrons that had already been paid for, and that next year Lockheed would be back asking for additional funds to pay for all 4 squardrons. I stated then that Lockheed's losses, according to the official figures, would amount to over $500 million and that "next year we will be faced with bailing out Lockheed again on this same C–5A."

"Next year is here. And so is Lockheed, asking for that $500 million and more.

"The fact is that Lockheed has been milking the Pentagon for years on this and other programs and that Government agency has been standing still like a contented cow giving milk.

"The question now is whose interests are to be considered in this matter, the public's or Lockheed's.

"A week ago I wrote to the Air Force urging them not to waive any of its contractual rights in the current negotiations and not to submit to any threat by this contractor, express or implied, to go out of business.

"I submit that the issue of whether to provide a subsidy of $600 million to the Lockheed Corporation is one for the Congress to decide, and not the Air Force or the Pentagon.

"In addition, the present crisis presents a rare opportunity to review all of Lockheed's military contracts, to discover how many times they have been bailed out on other programs up to now, and to re-examine the military necessity for these weapons systems.

"The tragedy is that much more than the fate of a single corporation has been placed in jeopardy by the colossal failures of the Department of Defense. Lockheed and practically every other aerospace contractor is seriously undercapitalized, with net assets far below the level of its military business. It has been a mistake to concentrate so much of our defense program in the hands of the few giant contractors for the very reason that is being dramatized today. A continuation of present polices and practices could bring about a collapse of the industry with serious damage to our military security.

"The Lockheed fiasco symbolizes the breakdown of the military procurement system. If our defense program is not to be damaged beyond repair military procurement needs to be totally overhauled, and now."

Mr. PROXMIRE. Mr. President, one thing must be done. This matter must not be settled privately between Lockheed and the Air Force. It should receive a public airing, and that should be done by Congress. Any funds paid out to Lockheed in this matter should come only after full hearings have been held and proper authorization and appropriations have been made. That is essential.

What is most important about the Lockheed request is the statement that the company needs $435 to $500 million more for the C–5A. The company has received progress payments covering almost the entire costs of their outlays on the plane. They are paid for "costs incurred," not for "work finished." As a result, what appears to have happened is that Lockheed needs the funds to cover its losses, some of which may be in its commercial business. Payments, at least in the case of the C–5A, are almost up to date for costs incurred.

Because of the real possibility that the company is in trouble on its military projects—or at least on the C–5A—because of general inefficiencies and the use of military funds to pay for some of its commercial business, we must not let the taxpayer be forced into a bail-out to protect the company's commercial business.

For many months—since November 1968—I have said that "total package procurement" was a flop. This was denied by the Air Force and Lockheed. Now it is admitted.

We developed in hearings that great technical difficulties were involved in the development of the plane. The Air Force and the company said we were dead wrong. Now that is admitted.

We predicted that if we went ahead with the C–5A beyond the first 58 planes, Lockheed would be back, asking us to bail them out. I said they would ask for $500 million.

Now Lockheed is back. Now it is asking for almost precisely that amount.

It is always nice to be able to say, "I told you so." But the tragedy is that the taxpayers of the United States have been taken for a ride by a breakdown in the procurement system.

The defense of the United States is weakened by this fiasco.

I urge Congress not to act hastily on this matter. We must not be rushed off our feet. We should act only after all the facts are in, after public hearings have been held, and after we have examined all the possible means of dealing with this problem, including that of receivership and a court-appointed trustee to run the company so that the orders for military weapons can be fulfilled timely and economically.

Finally, on Thursday, March 12, I released a letter to Comptroller General Elmer Staats, calling for a full-scale review of Lockheed's financial condition and its ability to continue performance of its military contracts.

I also released a companion letter to Secretary of Defense Melvin Laird urging that the Pentagon withhold action on Lockheed's request for $641 million in bailout money until the General Accounting Office and Congress complete their review.

The Government should not permit itself to be pressured into impulsive action. As Secretary Packard has said, there is time for full consideration. Congress and the administration must have all the facts before any action is taken.

I ask unanimous consent that the letters I sent to Comptroller General Staats and Secretary Laird be printed at this point in the RECORD.

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

MARCH 10, 1970.

Hon. ELMER STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR ELMER: This letter is a formal request for the General Accounting Office to immediately undertake an investigation of the financial condition of the Lockheed Aircraft Corporation and its ability to continue performance of its military contracts.

You will recall that the Subcommittee on Economy in Government of the Joint Economic Committee has conducted a continuing inquiry into military procurement for many years and, since 1968, has paid particular attention to several of the major weapons systems for which Lockheed is the prime contractor.

As you know, Lockheed has recently informed the Department of Defense that unless it receives "further financing" from DOD, it will be "impossible for Lockheed to complete performance of these programs." Lockheed refers to four of the larger programs it is working on, the C–5A, the Cheyenne helicopter, the SRAM missile, and nine shipbuilding contracts, and requests approximately $641 million from the Government for what it terms "interim financing."

Although this action has been termed unprecedented by some officials, there is a question as to whether we are witnessing only a variation of one of the oldest military procurement themes: buy-in-now, get-well-later. Is it possible that the contractor is attempting to develop a new way to pay for massive cost overruns?

Because of the magnitude of the sum requested, the uncertainties that exist, and the incompleteness of the information that has been made public so far, I believe it is imperative that GAO make a comprehensive review of all of Lockheed's military space, and related contracts at the earliest possible time.

Your report should include the following:

1. A list of all Lockheed military, space, and related contracts, their dollar amounts, the funds authorized and appropriated so far, and the sums paid to Lockheed as reimbursement to date for each of those programs;

2. The amount expended to date by Lockheed on its commercial version of the C–5A, and the L–1011;

3. The value of Lockheed's net assets;

4. The total amount of government-owned property held by Lockheed;

5. The amount of progress payments paid to Lockheed on its contracts in calendar year 1969;

6. The cash requirements for all major

Lockheed Aircraft programs over the next two years, including the L–1011;

7. The cash deficits and surpluses for all major Lockheed programs, including the L–1011, on Lockheed premises and customer premises;

8. A copy of the full Arthur Young and Company audit report on Lockheed;

9. A summary of DOD military needs justifications for each of Lockheed's major military procurements;

10. An estimate of the effects on Lockheed's cash picture if the C–5A program were terminated at 58 aircraft;

11. GAO's response to Lockheed's criticism of Total Package Procurement;

12. The details of possible solutions to the Lockheed crisis considered by DOD, including bankruptcy, break-up of the Lockheed Corporation, and substitution of new tenants for the Government's Marietta, Georgia, and Sunnyvale, California, plants.

I urge you to complete this report within ten days from the date of this letter. As you can see, we are not asking your office to make any analyses or evaluation of the facts, but rather to gather them together for transmission to Congress.

In view of the urgency of the situation and the impact that a decision could have on the Federal budget and the national economy, time is of the essence.

Sincerely,

WILLIAM PROXMIRE,
Chairman, Subcommittee on Economy in Government.

MARCH 10, 1970.

Hon. MELVIN R. LAIRD,
Secretary of Defense,
Washington, D.C.

DEAR MEL: On this date I have requested from the General Accounting Office a comprehensive review of the Lockheed Aircraft Corporation's military, space, and related contracts. A copy of my letter to the Comptroller General, Elmer Staats, is enclosed. I have asked Mr. Staats to complete his review within ten days from the date of my request.

As you know, Lockheed has made a most extraordinary request to the Department of Defense. As I understand this request, its approval could entail an outright subsidy or a loan to this contractor in the amount of approximately $640 million.

It is essential, in my judgment, that an application for funds of this magnitude be passed upon by the Legislative Branch. The review I have asked the General Accounting Office is intended to develop some of the facts upon which an intelligent decision can be reached by the Congress.

Although some of the Information has been made known by the Department of Defense to the press and, to a limited extent to the Congress in executive closed-door sessions, it is important for the Congress as a whole to be fully informed.

I am further requesting that no administrative actions be taken to approve the Lockheed application for funds prior to the completion of the General Accounting Office review and prior to the consideration of this review by the Congress. Any actions taken before this can be done will, in my judgment, be premature and could have serious and harmful effects on the defense industry, the defense program, and the national economy.

Sincerely,

WILLIAM PROXMIRE,
Chairman, Subcommittee on Economy in Government.

THE ANTIOIL LOBBY

Mr. DOLE. Mr. President, the New York Times Sunday Magazine of March 8 contains an article entitled "The Oil Lobby Is Not Depleted," written by Erwin Knoll. I called several of the article's most inaccurate statements to the Senate's attention on March 12, 1970. Mr. Frank Ikard, president of American Petroleum Institute, in a letter to the editor of the New York Times Sunday Magazine, further discusses the deficiencies and distortions of this same article.

I commend Mr. Ikard's comments to the serious attention of Senators, lest they become swept up in the currently popular but widely misrepresented anti-oil hysteria.

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

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

AMERICAN PETROLEUM INSTITUTE,
New York, N.Y., March 9, 1970.

Mr. LEWIS BERGMAN,
Editor, New York Times Sunday Magaine,
New York, N.Y.

DEAR SIR: Your March 8 issue carried an article attacking the so-called "oil lobby", written by Erwin Knoll, Washington editor of *The Progressive*. Effusions such as this, which are actually propaganda thinly disguised as reporting, tend to foster public skepticism as to the objectivity of the press.

It would take a reply fully as long as the original to do justice to the superficialities, misrepresentations, and artful omissions in the article. I would like to cite a few examples however, which clearly indicate how far Mr. Knoll's piece departs from balanced and responsible reporting:

1. A great deal is made in the article 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 U.S. Interior Department, for example, estimates that the real cost of the program—after taking all factors into account—is only about one-fifth of the figure cited in Mr. Knoll's article, and points out that such a cost represents very inexpensive insurance for the national military and economic security provided by the program. A study by the Stanford Research Institute found that there is no net cost of the program to consumers, because of offsetting factors. Unless your readers had followed the debate on this question very closely, they would certainly be misled by the article into thinking that the figure cited was universally accepted.

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. Moreover, the author of the article seems to be disturbed at prospects that committees in both the House and the Senate plan further hearings on oil imports this year. Are we to infer from this that Mr. Knoll not only avoids presenting both sides of the issue himself, but objects to having both sides presented before Congress?

3. The article suggests that there is something unusual about a group of state governors undertaking to inform the White House that a proposed change in the import program would bring about severe economic loss, curtailed revenues and widespread unemployment in their states. Yet no mention is made whatever of White House visits on the part of other governors and state officials who were seeking to abolish or drastically modify the program.

4. 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, for example, argue forcefully for controls over dairy imports, while others favor tight import restrictions on shoes and textiles. Apparently, however, Mr. Knoll sees nothing inconsistent in this.

5. The article carves a quotation out of context to give a misleading and distorted impression of a telegram sent by 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 by Rep. Mills in response to an inquiry from the task force staff as to his views.

6. Mr. Knoll quotes liberally the arguments and statistics cited by opponents of import controls. One would think that a reporter seeking to present a balanced view of his subject would feel obligated to take note of what was said by some of the prominent supporters of the program. Submissions to the Task Force by the governmental departments and agencies most concerned—Interior, Commerce, Defense and the Federal Power Commission—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 grounds that such action would jeopardize national security. None of these submissions is even mentioned in the article. One might be pardoned for speculating as to whether they would have been similarly ignored had they opposed the program and contained extravagant estimates of its cost.

7. In treating the subject of taxes, Mr. Knoll conveniently confines his statistics exclusively to the area of federal income taxes, where oil companies admittedly pay at a lower rate than most other industries. But he might, in fairness, have recognized that when total direct taxes paid to all levels of government are taken into account, oil companies pay heavier than average taxes, even with gasoline excise levies excluded from the comparison.

8. An interesting example of the selective use of figures occurs in the section of the article dealing with oil company profits. 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 to those of other industries. Ironically, the very same bank tabulation cited by Mr. Knoll, shows that the petroleum industry's rate of return on net worth—the true measure of profits—was 12.9 percent in 1968, as compared with an all-manfacturing average of 13.1 percent. In fact, for the last ten years, fifteen years, or 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 where this comparison of profits would have been shown.) These data scarcely support the article's depiction of oil as a "fat cat" industry, and this may account for the failure to provide them to your readers.

9. 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

that it is reflected in such actions as the allocation of more than $3,000,000 annually in Institute funds to air and water pollution research. API's research program includes dozens of scientific projects conducted at universities and research laboratories, many of them with participation by government agencies. This being the case, we deeply resent the innuendo that there is something spurious about our research program, especially since the author made no effort whatever to get the facts, which are readily available.

It is ironic that writers such as Mr. Knoll, who profess to be liberal and progressive, are so intolerant of the ideas and views of those who disagree with them that they are unwilling to present those views fairly and objectively. We believe the readers of *The New York Times Magazine* are entitled to a more responsible and better balanced brand of journalism than is reflected in this article.

Sincerely,

FRANK N. IKARD.

THE OIL QUOTA CONUNDRUM

Mr. McINTYRE. Mr. President, the recent announcement by President Nixon regarding Canadian oil imports has raised eyebrows across the Nation. Those who have followed the oil import question are dumfounded by the rationale given for this action.

The Boston Globe, in an editorial entitled "The Oil Quota Conundrum," has admitted that it, a newspaper very familiar with the oil import issue, is puzzled by this latest protectionist act.

The Globe recognized the double talk in the announcement. It recognized that once again the administration has attempted to justify another gift to the oil industry in the guise of a measure reportedly designed to protect our national security. It recognized that the administration has again ignored the interests of the consumers for the coffers of the oil companies.

I ask unanimous consent that the Boston Globe editorial of March 12, 1970, be printed in the RECORD.

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

THE OIL QUOTA CONUNDRUM

President Nixon's order clamping a limitation on oil imports from Canada is a puzzler in more ways than one.

Item: The White House first described the order as "a temporary formal limitation" for the remainder of the year only. But a few hours later administration spokesmen indicated it will continue in effect indefinitely.

Item: The President said his order will permit "a substantially higher level" of imports than the 322,000 barrels permitted each day under a voluntary U.S.-Canadian agreement negotiated in 1967. But, as Rep. Silvio O. Conte (R-Mass.) has pointed out, American Petroleum Institute figures show that this is not quite so either. Imports have been averaging 559,999 barrels a day.

Item: Assistant Secretary of State for Economic Affairs, Philip Trezise, asserts that, if imports were to continue at their current rate, Canadian oil reserves would be depleted and American national defense needs would suffer. But this quarrels not only with Mr. Nixon's assertion that imports now will be "substantially higher" than formerly, thus presumably hastening Canadian depletion by executive order. It quarrels also with the seemingly sound assumption that imports enable the United States to husband its own reserves for defense purposes.

Item: Finally, the President's clampdown order flies in the face of his earlier expression of support for "a freer exchange of energy sources" between the U.S. and Canada. It makes mincement, also, of his task force's recommendation for "an integrated North American energy market" within which all energy products would move without restriction.

Where there is such confusion, the Toronto head of a Canadian Oil Co. is not alone in his not-for-attribution reaction, "I'm mystified." Nor should there be any wonder that the official Canadian reaction is one of "suspicion, annoyance and puzzlement."

"Apparently," comments Sen. William Proxmire (D-Wis.), "the consumer once again is being sacrificed to the oil industry."

This may (or may not) be rougher than the senator intended. But a member of the President's task force, Labor Secretary George P. Shultz, earlier had himself put it on the record in congressional testimony: "Import quotas are costing consumers $5 billion a year."

Plainly, it is the consumer, not the oil industry, that needs protection. Just as plainly, he is not getting it.

RETIREMENT OF KAY RANDALL

Mr. MOSS. Mr. President, I wish to take note of the retirement from public life of a fellow Utahan, Kenneth A. Randall, who has served with distinction as Director and then Chairman of the Federal Deposit Insurance Corporation.

Kay Randall, as he is known by all of us, was appointed by President Johnson in March 1964, to the Board of Directors of the Corporation. He had my full support for the position. A little over a year after his appointment—in April of 1965—he was elected Chairman by the members of the Board, and has served in that position until his retirement.

Mr. Randall began his banking career in the State Bank at Provo, Utah, rising from part-time clerk, while he was in school at Brigham Young University, to assistant cashier, cashier, vice president and cashier, and then president. He also served a period in the senior training program at the Citizens National Bank in Los Angeles. He therefore brought with him to the Federal Deposit Insurance Corporation a knowledgeable insight into the dual banking system of the country.

At the FDIC he dedicated himself to raising the quality of bank supervision. He understood the need for a progressive banking industry to meet the changing requirements of the American economy and to provide better services for the public. His achievements at the FDIC have been applauded in the Congress and in the financial community.

As Kay Randall returns to private life I wish him much success and extend my congratulations on a job well done.

WAGE-HOUR CARES

Mr. BROOKE. Mr. President, it is a pleasure to draw to the attention of Senators a most remarkable address given last month by the Administrator of the Labor Department's Wage and Hour Division, Mr. Robert D. Moran.

In his speech, Bob Moran demonstrates a warmth and human understanding which are not generally associated with Washington bureaucracy. He tells what the Wage and Hour Division does, how it does it, and why. Basically, he says, the Division cares about people, and his speech makes that very clear.

I am proud of the fact that Administrator Moran is from Massachusetts. I commend him for his concern. I recommend his statement as coming from a fine public servant who is clearly doirg very well the task of translating the cold language of the law into humane action.

I ask unanimous consent that his speech be printed in the RECORD.

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

SPEECH OF ROBERT D. MORAN, ADMINISTRATOR OF THE DEPARTMENT OF LABOR'S WAGE AND HOUR DIVISION BEFORE THE FOURTH ANNUAL LABOR-MANAGEMENT WORKSHOP OF THE AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION AND THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C., FEBRUARY 26, 1970

I'd like to paint with a rather broad brush today—telling you what we do and who we are—and maybe a little on what we think about ourselves and our work.

Many people know what the Wage and Hour Division does: it annoys businessmen by auditing their books and bothering their employees in order to see if they are getting paid the minimum wage and time and one-half for overtime.

OK, I'll admit to that.

Making sure employees were paid properly was virtually *all* we did for the first 25 years of our existence. But times change. People do too. And, surprisingly as it may seem to some, Government agencies also change.

Would you believe, for example, that the Wage and Hour Division, which was created by Section 4(a) of the Fair Labor Standards Act, to administer and enforce the unprecedented and far-reaching social and economic changes included in that landmark legislation, now has enforcement responsibility not only for that law—but for more than 50 other laws?

Let me mention a few of these laws to indicate the type of thing we sometimes get involved in:

The National Foundation of the Arts and Humanities Act of 1965;

The National Technical Institute for the Deaf Act;

The National Housing Act;

The Research and Development in High-Speed Ground Transportation Act of 1965;

The Demonstration Cities and Metropolitan Development Act of 1966;

The Federal Airport Act; and

The Consumer Credit Protection Act of 1968.

I could name many more. But I want to tell you some of the things the Wage and Hour Division does under these and other laws:

We certify and oversee sheltered workshops for the handicapped to insure that these people receive wages commensurate with their productivity, and that the goods they produce do not compete unfairly in the market place with goods produced in the profit-making sector of the economy.

We assure that there are equal employment opportunities for persons between the ages of 40 and 65 pursuant to the Age Discrimination in Employment Act.

We are interested in sex. Yes, that's part of our job, because we are responsible for insuring that men and women doing equal work in the same establishment are paid on an equal basis.

In order to do this, we must analyze and evaluate jobs of all kinds.

We help keep kids in school, and out of hazardous occupations, by enforcing prohibitions against employment of child labor.

We will soon be in the small claims arena, preventing unreasonable wage garnishments—and in the personnel offices, trying to correct illegal job dismissals caused by wage garnishments.

On Government financed construction projects, we not only make sure that employees are paid properly, but we see to it that no one works outside his job category without proper pay—such as an apprentice working as an electrician or a laborer doing carpenter's work.

We schedule surveys and establish prevailing wage rates on an area by area and job by job basis for service employees working on Government service contracts. In such cases we tell contractors what they must pay in both salary and fringe benefits for sheetmetal workers on Kwajalein Atoll, janitors in San Diego, or window washers in Lewiston, Maine or Tulsa, Oklahoma. Then we follow up to see that they do it.

We do research. Lots of it. On the socio-economic characteristics of people working for less than the minimum wage, on what constitutes a seasonal industry, on how to tell who is a bona fide executive, administrative or professional employee, and on many other things.

We hold hearings.

We testify in court.

We write bulletins and publish documents of all kinds—9 million of them in 1969 alone.

We answer questions and inquiries. Over 800,000 of them in fiscal 1969.

We also make speeches. About 5,000 of them will be made this year.

And what does all this mean? How do these seemingly diverse laws, heterogeneous activities, and ubiquitous presence fit together? In short, do we make sense?

Well, I, for one, think that we do.

Each and every thing I have mentioned, and the hundreds of things I've left unsaid, all add up to fulfilling our overall goal—preventing the exploitation of human resources in the work place.

I've chosen those words carefully because I don't want to leave you with the impression that we only help working people—and those who would like to be working people.

We help employers by making sure they are not undercut by unscrupulous competitors who would save labor costs by paying people less than the law provides.

If we do our job properly, we can even keep welfare costs down in many ways—one of which would be to make sure people aren't wrongfully fired because of wage garnishments.

We help the handicapped so that employers can afford to hire them—and that no one will pay them less than their productivity justifies.

We even—believe it or not—have helped to make that delightful pastime of shrimp-eating more sanitary. The impact of the Wage-Hour law on this industry helped speed the introduction of a shrimp-heading machine which not only cuts labor costs but makes the shrimp delivered to the consumer a great deal cleaner.

A number of people have told me the Wage and Hour Division, to us a currently popular phrase, maintains too low a profile—that nobody knows us. Someone else suggested that we ought to adopt a slogan—so we can be more readily identified in peoples minds.

The slogan suggested was a simple one: "Wage-Hour Cares". It's short, but it says a lot—for we do care. We care about older workers. We care about children. We care about women who work. We care about migrant workers. We care about retail merchants, and schools, and hospitals and farmers. In short, we care about people—whether they are employers or employees or people who want to be employers or employees.

And we are people, too. There are about 1700 of us at the present time. We are smaller than we used to be and not big enough to do all the nice things we would like to do. But we are all kinds of people in all kinds of places.

Often people like those here present look at us. And many are not reluctant to tell us what they think about us.

But we look at ourselves, too. I thought you might be interested in some of the comments made anonymously during a survey of our employees in the Chicago region of the Wage and Hour Division.

I was personally quite intrigued to read what our own people had to say. The survey contained both good news and bad news.

First the good news:

"One reason I like my job as much as I do is that it's interesting, varied and presents a new challenge every week."

"I like the fact that Wage-Hour can reach and help so many of the poverty-stricken citizens of this country. If our job is done properly, we can help these citizens through enforcement of the Wage and Hour Law. The full enforcement of the law would insure many low paid employees and an almost liveable wage."

"I like the pioneer spirit required and the results accomplished."

"Working in an enforcement agency trying to achieve compliance with needed remedial legislation is the thought that keeps me in this job."

"I like best setting up my own programs and working with people, particularly in the educating of employers."

"The best part of my job is the work itself."

"I like the variety and challenge of my work, and meeting the public, and the feeling of accomplishment."

"I like best the high caliber of almost all the people I work with in the Department of Labor."

"Personally, I think the Department in which I work is needed by industry, labor and management. The self-satisfaction and the accomplishments perceived can be beyond comprehension."

"The feeling here is that we are helping employers and employees, and always take the extra step to be of assistance in any possible way."

"I think Wage-Hour is one of the best Departments, allowing initiative, chance for experience and promotion, while doing a good job for people subject to the laws enforced."

"I like especially about my work the competence, decency, and congeniality of associates and superiors, by and large."

"I like best—helping others."

And now, for some of the bad news:

"The least appealing aspect of my work is the finite time one has to accomplish his myriad priorities. There are too many requests for assistance, and a lack of individuals to assist. To be frank, the bureau of which I am an employee should ameliorate its services through expanded employment."

"I like least the excessive amount of time that I am required to be away from my family because of the large geographic area served."

"I like least the false accusations employers will write to Congressmen when they are caught in violation of federal laws."

"What I dislike is the serious shortage of personnel."

"Letters which I get from certain . . . officials are in legalese instead of plain English."

"There is not enough positive praise to offset the constant criticism of employers, employees and the area director. Even intelligent people need an occasional pat on the back because days and days pass by, and if negative items appear repeatedly, it becomes difficult to be enthusiastic about your job. We are paid professionals, but if money were the only pertinent reward I am afraid many Government employees would be toiling in private industry."

"We are not being kept informed."

"Additional field personnel are needed to properly service employees and employers."

"Since automobiles must be used by us in our everyday work, there should be parking facilities for us at or near the office."

"Our particular agency is satisfied to give the field men 'cast off' equipment (WPA desks yet) and third class office space with no ventilation, while we see newer agencies well equipped with new furniture and offices and proper tools to do their work."

"I don't like the fact that no attempt is made to effectively promote our organization."

"I like least the fact that people on the national level divorce themselves from the problems on the local level."

Well there it is—unexpurgated and direct from the heart of the Wage-Hour men and women in the field. I am sure that many people here have heard similar comments in their own organizations. As personnel people, I think you'll agree that a survey of this kind is very helpful for a person in a position like mine. I won't deny that I enjoyed reading the favorable comments but I shall not allow satisfaction therewith to get in the way of effectively handling the adverse comments.

These comments, of course, are individual observations and we can't always be sure that they are representative. There are, however, two indicators I would like to cite to show the extent of public service interest in the Wage and Hour Division.

First, in the most recent Government-wide U.S. Saving Bond drive, there was 92% participation nationally by Wage-Hour employees—by far the highest percentage within the Department of Labor and one of the best showings among any organization its size in the country, Incidentally, I like to think that this is why I have been named to head this year's Saving Bond Drive in the Department. One of my associates—who claims to be in the know—assures me that this was not the reason. It's simply because I am the most expendable of the top officials.

Secondly, in the most recent Combined Federal Campaign of the Washington, D.C. United Givers Fund, the contributions of Wage-Hour employees amounted to better than two hundred and eight percent of the established goal. That figure bears repeating: 208%.

Yes, our people do care—not only about their jobs and the goals of the agency—but about our Government, and the underprivileged members of their community. And they show their concern demonstrably—with money from their own pockets.

Now that you know a little more about us, perhaps you can appreciate us better as fellow human beings and some of you might agree that we are not your antagonists, but are, in fact, kindred spirits with you.

We certainly have no monopoly on caring—or on helping others. It's emphasized here because we have no other reason to exist. We manufacture no product. We sell no merchandise. And, contrary to what some think, we don't even wear horns. We are simply people helping other people.

I doubt if this has been the kind of a speech you came to hear at a Labor-Management Workshop. But the invitation I received specified "A wage and hour topic of your choice." And that's what I've talked about—a topic very close to my heart. I have certainly enjoyed it. I hope it has not been too much of a disappointment to you.

THE ADMINISTRATION'S MILITARY PROGRAMS

Mr. PROXMIRE. Mr. President, today's New York Times carries an edito-

rial charging, quite correctly, in my view, that the administration's "comprehensive and far-reaching reconsideration" of military programs seems to have resulted in a fiscal 1971 budget little different from that of the current year.

The Times points out the huge sums of money going for new weapons systems—for ABM, MIRVing the missiles, AMSA, AWACS, ULMS, and the shift from Polaris to Poseidon submarine attack force.

They quite rightly point out that the Armed Forces have come out of the Southeast Asian war "in better shape than when they went in," and specifically mention the new Air Force tactical aircraft, the new helicopter capability of the Army, and the $2.5 billion Navy shipbuilding program which would never have been authorized in peacetime.

Almost daily the Pentagon announces some new "savings"—the closing of bases, the cutback in troops, the reduction in contracts. But these cuts do not show up in an equivalent reduction in the Pentagon budget. The reason is quite simply that the military has usurped the peace dividend and is spending it for alternative Pentagon purposes.

I want to emphasize the major point of the editorial. This is the crucial year. As it states:

The Congress now has a chance to call a halt before passing the point of no return on a whole new series of weapons programs—most of which call for small initial expenditures as (former Budget Director) Schultze has emphasized but cast long, wedge-shaped shadows spreading out into the financial future.

Mr. President, this year is the time to act.

I ask unanimous consent that the editorial, entitled "Preparedness for What?" be printed in the RECORD.

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

PREPAREDNESS FOR WHAT?

Speedy demobilization after a war is an old American tradition. Vietnam has initiated a new phenomenon: demobilization before a war is over. To defuse antiwar sentiment, the Administration has been trimming military manpower and defense spending and even hinting at elimination of the draft. But it has still not succeeded in heading off a coordinated drive in Congress to cut the new $71.8 billion defense budget further, particularly the non-Vietnam expenditures that make up more than 80 per cent of the total.

President Nixon himself has helped fuel this drive by arousing—and then disappointing—expectations of a re-ordering of national priorities from military to peaceful pursuits. In his State of the World message, he asserted that elaborate new National Security Council review machinery had enabled him to choose "defense strategy and budget guidelines for the next five years that are consistent not only with our national security in the maintenance of our commitments but with our national priorities as well." Yet there is no indication of a five-year plan in the one-year budget. Nor is there much reflection of the "significant modification" Mr. Nixon said he had made in the nation's strategy, reducing requirements for general purpose forces from a 2½ to a 1½-war capability.

On the contrary, the Administration's comprehensive and far-reaching reconsideration of military programs seems to have resulted in a fiscal 1971 budget little different from that of the current year. Spending cuts are almost entirely a function of the de-escalation in Vietnam. The list of weapons systems on order or under development for strategic and conventional forces shows little change. The "rational and coherent formulation" of requirements by a high-powered review board has ended with the Army, Navy and Air Force each getting an almost identical sum—about $22 billion—which is suggestive of traditional log-rolling decisions within the Joint Chiefs of Staff.

Mr. Nixon claimed a "significant intellectual advance" had been achieved in framing "four specific criteria for strategic sufficiency." But these undisclosed new criteria, curiously, seem to require a continuation at much of the same pace of all the programs currently under way. Deployment of defensive anti-ballistic missiles (ABM) and offensive MIRV multiple warhead missiles—pressing forward the new round in the strategic arms race that Mr. Nixon asserts Russia alone is pursuing—gets $3.2 billion. Development continues on a new strategic bomber, a new air defense system, a new underwater long-range missile system (ULMS) and more accurate MIRV warheads for counterforce purposes.

Congressional critics are likely to look particularly closely at the Navy's $7-billion-a-year force of fifteen attack carriers and the new F-14 fighters they are to carry—a $25 billion project over the next decade. Some analysts believe ten or twelve carriers with existing F-4 fighters could meet all the requirements by more efficient deployment. Former Budget Director Charles Schultze recently explained the origin of the magic number fifteen as follows:

"In Washington Naval Disarmament Treaty of 1921, the United States Navy was allotted fifteen capital ships. All during the 1920's and 1930's, the Navy had 15 battleships. Since 1951 . . . it has had fifteen attack carriers, the 'modern' capital ship. Missions and 'contingencies' have changed sharply over the last 48 years. But this particular force level has not."

The armed forces, despite their claims that Vietnam has delayed modernization, come out the Southeast Asian war in better shape than when they went in. The Air Force has large numbers of new tactical aircraft. The Army has a huge new helicopter capability. The Navy has a shipbuilding program under way that would never have been authorized in peacetime.

The Congress now has a chance to call a halt before passing the point of no return on a whole new series of weapons programs—most of which call for small initial expenditures, as Mr. Schultze has emphasized, but cast long, wedge-shaped shadows spreading out into the financial future.

CANADIAN OIL IMPORTS

Mr. DOLE. Mr. President, in few cases has distortion been so evident as in some of the political reaction to the President's March 10 proclamation on Canadian oil imports. The facts underlying the President's action make out a clear case of a neighboring country abusing a special privilege accorded it by the United States.

INCREASE OF CANADIAN OIL EXPORTS

Under a formal understanding promulgated in September 1967, the Canadian Government agreed that its imports into the area east of the Rockies—districts I–IV—would be held to 280,000 barrels per day in 1968 and that daily imports would not be increased by more than 26,000 barrels through 1971. Under this agreement, in other words, Canadian oil exports to the U.S. upper Midwest would not reach 358,000 barrels daily until next year. Throughout the entire period of this formal understanding, Canadian exports have exceeded the agreed-upon levels. Since the mandatory oil import program was begun, Canadian oil exports into the United States have risen from 161,000 barrels daily in 1959 to 585,000 barrels a day in 1969. In the past 90 days, these exports have surged to levels of about 550,000 barrels a day east of the Rockies. Canadian imports, accommodated under our import program, were estimated to be 332,000 barrels daily for 1970. Actual imports in recent months have exceeded this estimate by more than 200,000 barrels a day.

PRESIDENT HAD TO ACT

Canadian oil exporters, who have been accorded special treatment, simply abused that treatment. The President did what had to be done. Other importing countries do not receive exemption permitting them to increase imports at will. Venezuela, for example, has been forced to move over for ever-rising Canadian imports for the past 10 years. Canada, meanwhile, has done nothing to justify its special treatment; it has, in fact, constantly increased its own imports which fill more than half its needs, while exporting most of its increased crude oil production to the United States. In effect, the United States is expected to buy their crude oil, and at the same time, hold a protective umbrella for Eastern Canada in any oil supply crisis. If foreign oil sources were cut off, U.S. supplies would have to be diverted to the Canadian maritime provinces. This arrangement works no net improvement or help for U.S. or continental oil security.

Perhaps the President's action will cause the Ottawa government to reassess its policies. Hopefully we can reach agreement, based on continental security requirements, to permit an early and permanent end to any limitation on Canadian-United States oil movements. Such an agreement should involve efforts by Canada to limit its own imports on some rational basis that would support continental security.

I regret the unfounded accusations which have come from some Senators in the other party about this matter.

UNWARRANTED CRITICISM

The rationale of the senior Senator from Wisconsin (Mr. PROXMIRE) that this action would cost consumers a penny a gallon on petroleum products is without foundation.

Likewise, the Senator's accusation that the President ignored his Task Force on Oil Import Control only shows that he has not read the report of that task force. I quote from that report:

Preference for Canadian oil is difficult to justify while Eastern Canada continues to import all of its requirements from potentially insecure sources. Some provision for limiting or offsetting Canadian vulnerability to an interruption of its own oil imports would therefore be made a precondition to unrestricted entry of Canadian oil into our markets.

Contrary to the Senator from Wisconsin's assertions, the President has acted in accord with, rather than con-

trary to, the findings of the Cabinet task force.

The junior Senator from New Hampshire (Mr. McINTYRE) has mistakenly blamed the President's action on something he calls the oil industry's "secret government." Contrary to the Senator's statement, there is not a scintilla of evidence that the oil industry was responsible for this action. It was an action necessitated by Canada's excesses, which had to be corrected if administration of the oil import program was not to become an impossibility.

Also contrary to the assertions of some Senators, this action will not penalize consumers. There is no evidence that a quadrupling of Canadian imports into the U.S. Midwest has brought any appreciable consumer benefits. There certainly is no evidence that the President's action will adversely affect the consumer public. The President can hardly undo a "benefit" which never existed.

THE 18-YEAR-OLD VOTING AMENDMENT

Mr. ALLEN. Mr. President, last week's debate in the Senate concerned with the constitutionality of the 18-year-old voting amendment to the Voting Rights Act has resulted in considerable editorial comment throughout the Nation.

Because of this interest, and because of the contrast shown by editors in dealing with the subject, I ask unanimous consent that editorials from the Saturday, March 14, 1970, editions of the Washington Post and the Birmingham News be printed in the RECORD.

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

[From the Washington Post, Mar. 14, 1970]

THE 18-YEAR-OLD VOTE: STATUTE OR AMENDMENT?

The Senate's 64–17 vote to lower the voting age to 18 reflects a widespread demand for greater youth participation in the processes of government. It is a salutary trend. This newspaper is fully sympathetic with the objective, but the attempt to attain it by means of a statute instead of a constitutional amendment seems to us highly dubious.

The reasoning that a statute alone will suffice is based largely on the Supreme Court's opinion in *Katzenbach* v. *Morgan* and the subsequent projection of the reasoning in that opinion to voting-age requirements by former Solicitor General Archibald Cox. The court, in that case, upset a New York law which made ability to read English prerequisite for voting. The state requirement was in conflict with the Voting Rights Act of 1965 which provided that no person may be denied the right to vote because of inability to read or write English if he had successfully completed the sixth grade in a Puerto Rican school where the instruction was in Spanish. The Supreme Court gave preference to the federal statute because it could "perceive a basis" on which Congress might view the denial of the vote to Spanish-speaking Puerto Ricans "an invidious discrimination in violation of the equal protection clause" of the Fourteenth Amendment.

Mr. Cox and some other constitutional authorities have concluded that Congress is now free to say that the denial of the vote to citizens between 18 and 21, on the ground that they lack the maturity to vote, is also invidious discrimination. It is a long leap, however, from striking down a discriminatory language requirement to fixing an age limit at which voting may begin. In the New York case there was actual discrimination against Puerto Ricans seeking to vote in that state despite the seeming general applicability of the statutory language. But where is the denial of equal protection in a voting-age requirement that is applied without discrimination to citizens of all nationalities, races and so forth? If it is invidious discrimination to deny the vote to 18-, 19-, and 20-year-olds, would it not be equally unconstitutional to deny it to 17-year-olds?

The founding fathers unquestionably intended to leave voting-age requirements to the states. This is evident in the provision that voters in congressional elections "shall have the qualifications requisite for electors of the most numerous branch of the state legislature." The effect of the Senate's 18-year-old voting amendment to the voting rights bill would be to transfer to Congress this authority to fix voting requirements, in state as well as federal elections. We agree that the voting age should be lowered, but there are powerful arguments on grounds of policy as well as constitutional law for using the amendment process.

Sponsors of the change by statute, Senators Mansfield, Kennedy and Magnuson, think they have adequately guarded against inconclusive elections under the bill by expediting a test of its constitutionality. Certainly that is a wise precaution. But when basic changes of this kind are to be made (46 states now impose the 21-year-old voting requirement) the proper procedure is a constitutional amendment. Now that senators have had an opportunity to vote for a popular measure, they could logically agree to rest the reform on more secure ground.

[From the Birmingham (Ala.) News, Mar. 14, 1970]

LOWER VOTING AGE

We believe that the Senate acted properly Thursday in approving a provision to lower voting age from 21 to 18 in all states, although we hate to see such an important piece of legislation tacked on as an amendment to the Voting Rights Act which, if renewed, will continue to discriminate against a geographical region (the South) even as the amendment removes restrictions for an age group (18 to 21).

Sen. James B. Allen of Alabama led an effort to defeat or amend the proposal on the grounds that such legislation is of questionable constitutionality and could throw the 1972 presidential election into chaos.

We see Sen. Allen's point clearly enough—it could be catastrophic if several million young people under 21 were to vote in the presidential election and then a court were to declare the legislation under which they voted invalid. However, we believe that the constitutionality of the measure would be tested and ruled upon before that time, precisely to avoid such an obvious hazard.

It seems to us that the application of the Senate measure to local and state elections is of more doubtful validity than its application to federal elections. That is a point on which challenge is certain to come.

It would establish the lowered voting age's legitimacy beyond challenge if it were effected by constitutional amendment rather than by statute. But an overwhelming majority of the Senate (64–17 on the final vote) clearly believes that Congress has the authority to act. If they are wrong, the courts will say so—assuming that the House of Representatives goes along with the Senate.

On the question itself, there seems to be little argument against lowering the voting age. Surely there must be merit in a proposal when Sens. Edward Kennedy and Barry Goldwater can join in its sponsorship. If all of the people whose views fall somewhere between those two agree, support will be nearly unanimous.

This newspaper has supported lowering the voting age in the belief that it makes sense from a number of angles. Not least, in our opinion, is the fact that it would responsibly involve college-age Americans in the political process, thereby removing one of the sources of frustration which makes too many of them susceptible to the rantings of the nihilists who seek to destroy that political process and the government which it serves.

As Sen. Goldwater pointed out, it is the responsible youth, not the crazies, who make up the majority of their age group, and it's not fair to judge them all by the actions of the misfits who get most of the attention.

IRON HORSE AND BUFFALO

Mr. BROOKE. Mr. President, within the past 10 days much of the eastern seaboard has been threatened with nothing less than geographic isolation from the rest of the Nation. This has resulted from the proposals of the Penn Central to end westbound railroad passenger service and to terminate through service between Springfield, Mass., and New York City.

At the very time we are beginning to question the validity of our past decisions to solve all transportation problems by simply building more and more roads, displacing homes by highways, paving over the countryside, this is not the moment to stand idly by and permit a major alternate form of transportation to atrophy and die.

A perceptive article on this subject, written by columnist Tom Wicker, of the New York Times, has been published in a number of newspapers. I ask unanimous consent that the article be printed in the RECORD.

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

IRON HORSE AND BUFFALO

NEW YORK.—Now that the Penn Central has asked to abandon passenger service in what is almost the heart of America—the area between Chicago and Harrisburg—the scheme the railroads have been pushing for decades is nearing completion. With the collusion of the Interstate Commerce Commission, which is supposed to protect the interests of the public, railroad passenger service has been all but sacrificed to profits.

This is not because passenger trains are inherently unprofitable in the era of the jet plane and the superhighway, or because there is no railroad riding public to be cultivated and served. It is because the railroads sought to make maximum profits by concentrating on freight-hauling and defaulting their obligations as passenger carriers.

At least since World War II, therefore, most lines have been deliberately discouraging passenger traffic through poor service, ill-kept schedules, filthy trains, insolent crewmen, archaic ticketing and reservation systems, outmoded station facilities, ancient rolling stock and the steadily declining frequency and availability of trains even between major cities. To this catalogue of public horrors, the railroads added outrageously contrived financial "losses" on passenger trains for the sympathetic consideration of the I.C.C.

An article in The New York Times by Christopher Lydon has detailed how accounting gimmickery made it appear that passenger trains had been losing huge sums since 1945—when in fact passenger traffic

was profitable, despite the decline in service, at least until the early sixties, and in the east until 1966. It was, of course, on the basis of the hiked-up figures that the I.C.C. permitted the discontinuance of so many trains in the fifties and sixties.

And while it is true that throughout this period the government in one way or another was heavily subsidizing air and highway travel, Lydon pointed out that it was the railroads themselves who took the lead in asking the government to discontinue a major form of passenger-train revenue—federal payments for carrying the mail.

Thus, the railroads' disinterest in serving passengers, the compliance of the I.C.C., and the lack of a coherent federal transportation policy, have combined to deprive the American public of what citizens of every other western industrial nation take for granted—adequate railroad service. And this has happened at a time when the automobile has become the worst polluter of the air, when airports and the air traffic lanes around important centers are dangerously overcrowded, when technology is exploding, and when the American people are the richest in history.

The Penn Central's Metroliner has proved between New York and Washington the need for and the potential convenient, comfortable, fast rail service in metropolitan corridors, of which there are many. The Seaboard Coast Line's Florida Special on the New York-Miami run demonstrates every winter that there is still a demand and need for first-rate long-haul service over particular routes.

But the California Zephyr, which through some of the most spectacular scenery anywhere in the world, is apparently to be abandoned like so many other things of value in America. Its worth is not recognized by a careless people tragically exploited by those designated to serve them and to protect their interest. Property operated and offered to the public, the route of the Zephyr should be a priceless asset to American tourism, to say nothing of American transportation.

The problem is not just to retain the spavined bones of an ancient and staggering passenger network as a sort of curiosity, like the few buffalo one can now see penned sadly in corners of the great range they once roamed in their vast and splendid herds. What is needed is a national transportation *system*, providing safe and speedy air service everywhere needed, maintaining the great interstate highway grid, extending into similar corridors the kind of fast intercity service the Metroliner provides, maintaining and improving a serviceable minimum of long-haul rail routes to supplement air and auto travel and tourism.

That kind of integrated national transportation network is beyond the scope of a last-gasp bill that the Senate commerce committee is developing. But that measure would at least preserve, like buffalo, a last few passenger trains, placing them beyond the power of the railroads to subvert, providing some operating and equipment subsidies, and keeping alive the dim hope of better, safer, more convenient travel in America.

ABA'S STANDING COMMITTEE ON WORLD ORDER THROUGH LAW EXAMINES THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, earlier in the month, I discussed the broad conceptions of the Genocide Convention as presented by the American Bar Association's standing committee on World Order Through Law. Today it would be useful to set out the committee's somewhat more detailed analysis of existing U.S. treaty commitments, the relationship between treaties and the constitution, and the subject of existing treaties.

Discussing such matters the committee observed:

THE EXISTING U.S. COMMITMENT

The United States, by an almost unanimous vote of the Senate, ratified the United Nations Charter and thereby assumed the obligation to further its objectives. One of these (Article I) was to achieve universal respect for, and observance of, human rights and fundamental freedoms for all. Articles XIII, LV, LVI, LXII and LXVII of the Charter spell out the commitments in greater detail.

As Phillip C. Jessup, now a member of the International Court of Justice, said in his *Modern Law of Nations* (p. 91):

"It is already law at least for members of the United Nations, that respect for human dignity and fundamental human rights is obligatory. The duty is imposed by the Charter, a treaty to which they are parties."

TREATIES AND THE CONSTITUTION

The opposition to the Genocide treaty has long asserted that the whole subject matter of human rights is not a proper one for international agreements (treaties) and therefore Genocide must fall with all the rest.

The treaty-making power under our Constitution (Article II, Section 21 is very broad. Article II, Section 2 of the Constitution provides:

"He (the President) shall have the power by and with the advice and consent of the Senate to make treaties, provided two thirds of the Senators present concur;"

The power does not, of course, rise above the Constitution. But, subject to that limitation, it is extensive. As the Supreme Court said in Geofrey v. Riggs, 133 U.S. 258, 267 (1890):

"It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of and portion of the territory of the latter without its consent. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching on any matter which is properly the subject of negotiations with a foreign country."

The question of the treaty-making power in this area is thus answered in the Clark committee report (p. 1):

"It may seem almost anachronistic that this question continues to be raised. It is nearly a quarter of a century since this country used the treaty power to become a party to the U.N. Charter one of whose basic purposes is the promotion of human rights for all. The list of parties to the various human rights treaties proposed by the U.N. has become longer each year. In each of the last 2 years the U.S. Senate has approved a human rights treaty without a single dissenting vote. In December 1968, the Chief Justice of the United States noted that "We as a nation should have been the first to ratify the Genocide Convention and the Race Discrimination Convention." And yet the suggestion persists that this Nation is constitutionally impotent to do what we and the rest of the world have, in fact, been doing."

SUBJECT MATTER MAY BE BOTH INTERNATIONAL AND DOMESTIC

It has been said in opposition to ratification that the subject matter of a treaty must be exclusively or essentially of foreign or international concern. But our history is to the contrary. We have repeatedly entered into treaties held to be valid covering matters usually considered domstic and left to local state regulation. These deal with such matters as debts, land titles, escheat, statutes of limitation, administration of alien estates. It may be an oversimplification to suggest that if this country has the power to enter into a treaty to save the lives of birds, as was sustained in Missouri v. Holland, 252 U.S. 416, (1920), the same power must exist to save the lives of human beings.

It is interesting to recall that the United States has long accepted the view that the denial of human rights and other anti-Social conduct are proper subjects of treaties. Thus, the United States has entered into treaties prohibiting white slave traffic, traffic in arms, in narcotic drugs, and in slaves. The two human rights treaties recently ratified by the United States, after unanimous votes in the Senate, included the Supplementary Convention on Slavery (1967) and the Supplementary Convention on Refugees (1968).

Special note should be taken of the 1967 Slavery treaty because its ratification was specifically endorsed by the American Bar Association. It obligated the U.S., inter alia, to abolish practices whereby, 'a woman, without the right to refuse, is promised in marriage on payment of a consideration of money or in kind to parents, guardian, family or any other person . . .' and to abolish any institution whereby 'a woman on the death of her husband is liable to be inherited by another.' It is hard to conceive of something more likely to be an exclusive municipal subject than that of the right of inheritance.

THE COST OF IMPROVING THE ENVIRONMENT

Mr. ALLOTT. Mr. President, everyone is talking about the environment. Everyone wants to improve it. I wonder, though, how many are willing to pay for it.

Without any intent of dampening public enthusiasm for environmental measures, I want to offer some general thoughts on the money problems involved. These problems must be faced eventually. We should face them squarely, and the sooner we do so the better.

Mr. President, there is a new step to the political dance nowadays and it deserves to be called the Apollo leap. It consists of systematic and sustained non sequiturs, all of which are designed to help people leap to the conclusion that there is no problem we cannot solve right now, if not sooner.

You know the Apollo leap is underway when you hear someone begin a sentence with these words: "If we can land a man on the moon then there is no reason why we cannot." That is the predictable beginning. People improvise the end according to their preferences for large Government exertions.

Today the most popular version of the Apollo leap goes something like this: "Any nation that can land a man on the moon can clean up its own environment." To which the proper but unpopular answer is: It is not that simple.

In fact, it is going to be a lot harder and very much more expensive to clean the earth than it was to reach the moon.

As one White House aide put it recently:

> One generation of taxpayers is being asked to pay for 200 years of pollution sins.

Of course no single generation can do that, and this generation is patently unwilling to try.

A recent nationwide poll found that

85 percent of those interviewed declared that they were concerned about the environment. But when these same people were asked to indicate how much they would be willing to pay each year to improve the environment, 51 percent said $10 or less, 18 percent said $50, 4 percent said $100, 9 percent said they would not pay anything, and 18 percent said they did not know. Extrapolating from this one poll, it would seem that the American people are willing to spend about $1.4 billion for environmental improvement.

To get some idea of how little this is, consider two facts:

New York City's Environmental Protection Administration recently asked for $1.043 billion to "start solving the crisis" in that one city.

There is a kit which, when installed on American automobiles, virtually eliminates pollution emissions. It costs approximately $300 to install these kits. If the owners of the 11 million privately owned cars in California each equipped their cars with this kit, the total bill would be $3.3 billion. If all the 104 million cars in America were similarly equipped, the cost would be $31.2 billion.

Perhaps one way to encourage people to spend money to cure environment problems is to explain what it costs not to cure them.

We will never put a price on the human health and life that is endangered by air pollution. But we can and should compute the price of air pollution damage to material things.

For example, it is not always realized that air pollution can damage or destroy a wide variety of agricultural produce.

In New Jersey, which takes pride in its name as "The Garden State," pollution damages at least 36 commercial crops. Florida oranges and California orchids have also suffered. According to Government figures, agricultural losses from air pollution, including damage to livestock, crops, and other plants and trees may exceed $500 million a year.

Further, the Nation is paying an enormous maintenance and replacement bill for metals, rubber, leather, fabrics, paper, stone, paint, and other materials that are made brittle, weakened, discolored or in other ways damaged by air pollution.

This bill mounts in many hidden ways. For example, air pollution often makes it necessary to use gold for electrical contacts because it is highly resistant to pollution damage. If silver could be used instead, the saving would be nearly $15 million per year.

Again, to protect the precision instruments of modern industry, companies frequently must go to great expense to clean pollutants from all air admitted to their buildings—the same air we admit uncleansed to our lungs.

Further, sulfur pollutants contribute to runs in women's stockings: When sulfur in the air accumulates on outdoor stone statues, and then combines with moisture, the result is a diluted form of sulfuric acid, which can do more damage to sculpture in a decade than the normal weather will do in centuries. In fact since the famous piece of Egyptian statuary called "Cleopatra's needle" arrived in New York in 1881, it has deteriorated more than it did in 3,000 years exposure to the wind and sand and sun of Egypt.

These examples of air pollution damage could be multiplied many times. Although it is impossible to compute exactly the total cost of air pollution to property, a widely used estimate is that the cost to the Nation is over $12 billion a year. This is $65 per person, and remember that this is only damage to property, and only damage from air pollution.

Now even if these damage estimates make it psychologically easier to pay for environmental improvement, it still will not make this painless. We will still be faced with a task of creative policymaking. This task is to spread the burden judiciously and equitably.

Business must spend money. Government must spend money. Business cannot change its profit structure. Government cannot spend if it does not tax. Thus we will all pay as consumers and taxpayers.

First, consider what business will have to pay.

Fortune magazine is correct in saying that the new concern about environment is "the most important current change in the surroundings of U.S. business."

Edwin A. Locke, Jr., president of the American Paper Institute, has put this point well:

> The freedom of industry to operate without onerous governmental regulation depends largely on the soundness of its policies with respect to public requirements. But sound governmental relations is not the only reason for driving ahead with programs in the environmental field. Looking at the issue in strictly economic terms, the money we spend on programs in this area can properly be regarded as a form of insurance for future earnings.

The business community seems to have taken this to heart.

The National Industrial Conference Board estimates that investment in air and water pollution control was 4 percent of capital outlays in 1968, double the total of the year before. Fortune magazine reports that "a good number" of companies recently polled indicated that they would be spending 10 percent of their capital budget on pollution control.

Industry's expenditures on water pollution control have shot up from $45 million in 1952 to $600 million in 1969.

The paper industry has currently earmarked $100 million a year for forest conservation, $100 million a year for additional water treatment facilities, and $25 million a year for air pollution abatement.

The Bethlehem Steel Corporation plans to spend 11 percent of its capital outlay on environment control over the next 5 years.

In one Indiana plant, Bethlehem installed $37 million worth of water cleaning equipment to protect Lake Michigan from pollution discharges.

Kaiser Steel spent $17 million on air pollution control equipment at its Fontana, Calif., plant with spectacularly successful results.

Republic Steel is completing a $18 million treatment plant for its used water.

U.S. Steel has $235 million invested in pollution control equipment.

Armco Steel spent $74 million in 3 years on air and water pollution control equipment and its yearly maintenance budget for this equipment comes to $8.5 million.

DuPont has $125 million in pollution control equipment, and annual operating costs of that equipment are $25 million. DuPont is building a plant on the Cape Fear River in North Carolina, 10 percent of the cost of which will be in pollution control measures.

The Boise Cascade Corp. has allotted $7 million to air and water pollution research for its pulp and paper mills.

A new Humble Oil refining plant on the West Coast has $10 million worth of antipollution equipment.

The Standard Oil Corp. as a whole spends $5 million a year on pollution research alone.

These examples could be multiplied many times over. They teach one lesson: The times are changing for American businesses.

There was a time when some industries thought of pollution control as an optional public service activity which they could undertake if their profit structure made it convenient. Given the current state of public opinion and government determination, this relaxed attitude is no longer acceptable. Increasingly, industries must factor the cost of pollution control into their normal accounting of production costs.

As the President has said:

> To the extent possible, the price of goods should be made to include the costs of producing and disposing of them without damage to the environment.

In many cases this will be inevitable. And in all cases where the price of goods reflects their cost to the environment, that cost will eventually reach the consumer. This will do nothing to slow the rise in the cost of living. And, as always, increases in the cost of living will be most painful for those whose low incomes leave them little margin for added costs.

Thus the war on pollution will complicate the war on poverty. Again the lessons are clear. There are no gains without pains. And in a complicated society, everything is related to everything else.

But we must not be deterred by these complex interrelations. As the President says in his message to Congress on the environment:

> Quite inadvertently, by ignoring costs we have given an economic advantage to the careless pollutor over his more conscientious rival.

There are those who argue that stringent environment protection laws will upset pricing policies in a haphazard manner and put some firms at a competitive disadvantage with other firms in the same industry. We can minimize this risk by doing everything possible to in-

sure that such measures do not apply haphazardly. In some cases this can be done by insisting on industrywide regulations, so that all competitors come under the same edict simultaneously. In other cases it will be necessary to adopt national standards or encourage uniform State statutes. This will also limit the temptation for States to put economic development above environment concern by luring industry with the promise of lax antipollution enforcement. Such a policy would penalize conscientious States and damage the national environment effort.

There is another difficult aspect of making environment concern compatible with fair competition. This is the international problem.

Stringent antipollution measures can raise production costs and damage an American firm's ability to compete with foreign producers who are under less stringent environmental requirements.

Thus the encouragement of good environmental policies should be a part of our trade policies. Fortunately Mr. Russel Train, new Chairman of the Council on Environmental Quality, is well aware of this problem. In testimony before the Senate Interior Committee Mr. Train said that his Council planned to have "early discussions with the Department of Commerce and the State Department, to explore the possibility of international bilateral and multilateral negotiations" on this problem. He noted that "environmental problems are being faced by all nations, particularly our largest commercial competitors Japan and Western Europe." Thus we can expect an active and coordinated effort on the part of Federal agencies to protect American industry from predatory pricing and unfair competition resulting from mandatory environment policies.

These are some of the problems involved in getting business to help with environmental improvement. There are also problems associated with governmental help.

An estimated 70 percent of every American tax dollar goes to pay for past or present wars, or for the prevention of future wars. In contrast, until recently less than 2 cents from every tax dollar has been spent on environment problems. The Nixon administration is beginning to redress the balance.

The percentage of the budget that is devoted to military spending is down, and spending on environment control is up.

The big problem is that the money and the problems are in two different places. The money is concentrated in Washington; the problems are widely scattered.

This is unfortunate because it is almost axiomatic that you reduce governmental efficiency when you increase the distance between the point where a dollar is collected and the point where it is spent.

This may be especially true when it comes to spending for environmental improvement. Pollution is not evenly distributed across the Nation. It is the result of myriad local conditions, and solutions must be tailored to those conditions.

But the fiscal facts of life in America right now force Washington to play a lead role in the environment effort. In this regard I am reminded of the time an exasperated judge asked bank robber Willie Sutton why he was constantly robbing banks. Sutton's answer:

> Because, your honor, that's where the money is.

Similarly, Washington must take the lead in this effort because Washington is where the money is.

If the administration gets its way with a program of revenue sharing with the States, this deplorable condition may be alleviated. Then local governments will be better able to take the lead in environmental matters.

But until that policy is a reality, Washington must continue to make an environment effort that is proportionate to the revenues it receives.

Having examined some of the problems facing business and government as a result of the environment problems, it would be nice to have an overview of the total cost to the community. Unfortunately this is hard to predict.

The most optimistic assessment I have seen comes from Sanford Rose, an associate editor of Fortune. His reasoning is explained in his article in the special environment issue of Fortune, February 1970. His article deserves citing at length:

> It is conceivable that industrial costs will not rise at all in the medium or longer term. Pollution control not only provides for more efficient operation through re-cycling, but also makes cities more liveable. And people who work in more liveable places don't have to be paid quite so much as those who work in less liveable places. If wage rates in the future are just slightly lower than they would have been if the cities had remained polluted, the difference might quickly offset industry's increased pollution-control costs.
>
> Over the long term, pollution abatement seems likely to *increase* real G.N.P. A significant decrease in air pollution, for example, can be expected to reduce absenteeism and turnover and improve productivity. Some industries, perhaps many industries, might have to pay out less in sickness and death benefits. With turnover reduced, they might also have lower training costs. If these longer range savings were put into a thorough benefit-cost analysis, many corporations might discover that pollution control yields a profit, entirely apart from any altruistic considerations.
>
> In a broader sense it is a mistake to put any great emphasis on the G.N.P. aspect. Although the costs of environmental improvement are reflected in national product, many benefits are not. For example, when property values rise because of a decline in air pollution, the community's real wealth or capital stock increases; but this shows up in the G.N.P. only to the extent that actual or imputed rents go up or real-estate salesmen's commissions get bigger. Similarly, although environmental improvements may enrich leisure and so increase satisfactions (or reduce dissatisfactions), these benefits could not be reflected in G.N.P. at all, as G.N.P. is presently reckoned.

A less soothing—and probably more accurate—assessment comes from Henry C. Wallich, a distinguished commentator on economic matters. He recently offered this anticipation of some financial problems of the environmental effort—in Newsweek, January 26, 1970:

> What will it cost? An old budgeting principle says that if you figure on twice as much as you think, you will probably not have underestimated by more than one half. The Harvard Center for Population Studies calculates annual costs for a full job on air and water pollution and solid waste disposal at $5.1 billion for capital investment and $8.4 billion for current operation. Relative to an annual GNP gain of $40 billion in real terms this is not overwhelming. It is clearly, however, beyond what the Federal Government could take on with its annual revenue gain or fiscal dividend of perhaps $10 billion in real terms. The burden would have to be spread, and the program probably pared down.
>
> Critical would be the financing of the capital investment part. If this is thrown upon the private capital market, by selling government, corporate, or municipal bonds, it will add to the congestion already threatening that long-suffering market. Interest rates will be pushed up. Housing would suffer most, according to recent experience. If we consider housing as an important part of the environment, we would be improving one part of the environment at the expense of another. If something is done to help housing, the burden might fall upon business investment, which is now running at a little more than $100 billion per year. The economy's rate of growth would be affected, although only minutely. If this is to be avoided, an increase in taxes, or a cut in spending, with the resulting surplus flowing into the bond market, would be needed.

As Mr. Wallich concludes:

> The program is probably manageable though not cheap.

Mr. President, I began my remarks today by giving a jaundiced view of some current analogies between the space program and the emerging environment program.

I want to close on another note. There is something relevant to be learned from our experience with space exploration. It has to do with our national character.

Our national character is curently being tested by environment problems—and by the need to meet them with mature and realistic responses. Fortunately, our space program has told us something important about our national character.

We spent $24 billion to land a man on the moon and it was worth it in part because it came when it did, and because it demonstrated what it did.

It came at the end of a dispiriting decade, when Americans were ragged in spirit and were doubting their ability to accomplish large tasks. It demonstrated that we possess that ability as much as we ever did.

Perhaps we do need a kind of Apollo program for our inner space here on earth. Certainly we can approach our environment problems with the proven methods of the space program.

We can fix a budget commensurate with the task.

We can divide the undertaking into manageable units, taking advantage of the division of labor and specializations which make American management the wonder of the world.

Finally, we can set ourselves a deadline.

At the beginning of the last decade President Kennedy pledged that we would go to the moon. President Nixon has dedicated this decade to replenishing the American earth, cleansing our lakes

and rivers and seashores, and purifying our air.

This is an awesome task. But ever since the pilgrims landed on the cold and rocky shores of Massachusetts Bay, and began to push inland, there has been one conviction uniting Americans. It is the conviction that we can rise to difficult occasions: There is no reason to begin doubting that conviction now.

We have or can develop the techniques to cope with our many environment problems. We can work patiently and reasonably. And we had better get started.

As Astronaut Walter Shirra says:

The moon is not hospitable. Mars is not hospitable. We'd better do what we can to clean up Earth, because this is where we're going to be.

AMERICAN POLICY ON THE MIDEAST

Mr. GOODELL. Mr. President, I ask unanimous consent to include in the RECORD a speech on American policy toward Israel and the Middle East which I delivered yesterday to the American Jewish Committee in New York.

There being no objection, the speech was ordered reprinted in the RECORD, as follows:

THE MIDDLE EAST—ILLUSION AND REALITY

(By Senator CHARLES E. GOODELL)

I should like to speak to you today about American relations with Israel and the Middle East.

Let me begin by clearing away some of the illusions that the survival of Israel is the sole concern of this or that section or ethnic group in our nation.

Israel's survival is, rather, the profound concern of all Americans who cherish the tradition of pioneering, who support the ideals of democracy and human development and who are committed to the cause of peace.

It is illusion to fear that a commitment to the security of Israel will somehow lead us into a new and more fearful Vietnam in the Middle East.

Israel is not asking, nor is she about to ask, for the assistance of American military advisors or American troops. She is asking only for diplomatic support and for the arms and planes needed to deter future Arab incursions or invasions. She fully recognizes that the task of self-defense is her own—and, if properly supplied, she is fully capable of that self-defense. There is no question of direct American military involvement in the area.

It is illusion to suppose that the United States can have a workable "evenhanded" policy in the Mideast.

The concept of "evenhandedness" presupposes that the United States is the only great power capable of exercising influence in the Middle East—and that it therefore can reduce tensions by adopting an attitude of "benign neglect", to borrow a phrase from Dr. Moynihan. This obviously is not the case.

The Soviet Union has wholly identified herself with Arab intransigence. In hopes of establishing a permanent foothold in the area, she has during the last fifteen years armed the militant Arab states for war against Israel in three huge waves of arms shipments. She has added to the tensions in the area by deliberately playing upon the frustrations and hatreds of the Arab people and the short-sighted ambitions of their leaders.

France has now joined in the deadly game of Russian roulette in the Mideast by undertaking to deliver over 100 supersonic jets to the militarist regime in Libya. The French now are firmly embarked on a policy of trading arms for Arab oil at the expense of peace.

Britain, also fearful of her oil supplies, has discontinued her former shipments of tanks and other arms to Israel and now stands fearfully aside.

In this situation, an American policy of "evenhandedness" is equivalent to a policy of isolating Israel at a time when her enemies have the fullest diplomatic and arms support of two of the other great powers.

It is illusion to hope that peace can be achieved by placating Arab "moderates."

Some of the seemingly "moderate" Arab governments, such as those of Jordan and Lebanon, are scarcely masters in their own house—and have become virtual captives of the most immoderate forces of guerrilla warfare and sabotage.

Moreover, given the perpetual internal bickering among Arabs, any advantage we might gain from currying favor with this or that Arab faction is sure to be short-lived. The United States cannot build any rational policy upon the shifting sands of Arab politics.

It is illusion to fear Arab threats to our oil supplies.

Past experience has shown that the Arab oil-producing countries, notwithstanding repeated warnings that they might terminate oil shipments, have recognized their own clear economic interests in continued oil production.

At present, only about 5% of the U.S. oil demand is met from Mid-East sources—and new discoveries in Alaska and various offshore locations will make the United States still less dependent upon the Arab oil-producing countries in future.

Finally, it is illusion to imagine that peace in the Middle East can be imposed or guaranteed from the outside. It can only be brought about through direct negotiations between Israel and her Arab neighbors.

In its sincere but ill-conceived proposals of last December, the State Department made a futile attempt to "draw maps" and suggest border changes that could only impede the chances for direct negotiations.

A unilateral Israeli withdrawal, such as that suggested by the State Department, would force Israel to abandon the most secure lines that the region affords—along the Suez Canal and the Jordan River—without any effective guarantees in return. Such a withdrawal would once again bring Tel Aviv, Jerusalem and other Israeli population centers under the direct range of Jordanian artillery. It would enable Egyptian guns to block the straits of Tiran. It would permit Egyptian planes to strike across the Sinai Peninsula, without precious extra minutes of warning time. It would expose the border along the West Bank and Gaza strip to ever more frequent raids by Arab terrorists.

To require Israel to absorb unspecified numbers of Arab refugees, as the State Department has also proposed, would compound the threat to Israel's security. It would only create within Israel a fifth column of unfortunate Palestinian refugees who for two decades have been kept by their host Arab governments in squalid camps to be taught hatred of Israel and to become volunteers for terrorism.

The December State Department proposals envisaged, in short, a strange form of give and take—that would have been all Israeli "give" and all Arab "take". Far from encouraging moderation in the Arab world, they would have had just the opposite effect—of encouraging extremism and whetting the aggressive appetites of Arab militants.

If these are illusions, what then are the realities on which the United States must build its policies?

It is reality that Israel has no desire for, and no conceivable interest in, the territorial destruction of its Arab neighbors—whereas militant Arab governments have time and again clamored for the complete annihilation of Israel.

It is reality that the continued technical superiority of Israeli forces remains, in absence of effective arms control agreement, the only stabilizing influence that now exists in the Mideast. The present military balance serves to deter Arab aggression, without creating an incentive for further Israeli territorial expansion. Were the balance to shift in favor of the Arab states, Arab hopes for a reconquest of Israel would rise, and a fourth round of war would become imminent.

It is reality that Israel has no other source than the United States for the arms she needs to preserve her own security, whereas the Arab states have two competing sources of arms supply, the Soviet Union and France.

It is reality that Israel's needs for self-defense are placing a heavy and mounting burden on her economy—and that her precious foreign reserves are being exhausted in the purchase of planes and other essential military equipment. Israel has had to buy all of her arms supplies whereas her Arab antagonists have received massive financial assistance in the form of grants and low-cost loans for building their arsenals.

If these are the realities, what are the requirements of a Middle East policy that is in the true interests of the United States?

Our policy must be based on a firm commitment to the survival of the State of Israel. It must clearly recognize the dangers of Arab intransigence and Soviet and French efforts to exploit Arab hatreds. It must, in short, recognize that peace in the Middle East is blocked not by Israel but by Arab extremist governments and by shortsighted men in Moscow and in Paris.

Our policy must be consistent. It cannot shift—as it recently has seemed to do—in contradictory announcements from month to month. It cannot appear to be "pro-Israel" at one moment, "pro-Arab" at another, and "evenhanded" at another. It cannot seem the plaything of conflicting economic and ethnic groups within the United States. Only a consistency of purpose will win the respect of all segments of American opinion, of the governments of the Middle East and of the other major powers.

Our policy must clearly recognize that any readjustment of present borders or settlement of other disputes can take place only as a result of direct negotiations between Israel and her Arab neighbors. The State Department should abandon its present futile attempt to "draw maps" and suggest specific border changes.

I attempted to make this clear in a resolution I introduced in the Senate in February, which was co-sponsored by Senators Ribicoff and McCarthy and eight other Senate colleagues. The resolution, S. Con. Res. 54, expresses the sense of Congress that:

Any readjustment of disputed borders or settlement of other Arab-Israeli differences should take place only in the context of direct negotiations between Israel and the Arab states;

The United States should concentrate its diplomatic efforts on encouraging such direct negotiations and promoting arms control agreement among the Big Powers with regard to the Mid-East; and

The United States should henceforth refrain from "proposing or attempting to impose, prior to or outside the context of . . . direct [Arab-Israeli] negotiations, any specific readjustment of disputed borders or any specific settlement of other outstanding differences between Israel and the Arab states."

My resolution also proposes the termination of the Big-Power talks on the Mid-East.

The Big-Power talks have by now become definitely counter-productive, and should be broken off at once.

When these talks were initiated, it was hoped they would be a vehicle for bringing

Arab and Israeli leaders to the conference table and developing a workable plan for the control of the arms traffic into the Mideast.

It has now become apparent that the Soviet Union has not the slightest interest in bringing the Arab leaders to bargain directly with Israel or in promoting any sort of Mideast arms control scheme.

In these circumstances, the continuation of the Big-Four and Big-Two talks is contrary to the interests of peace in the Middle East. The talks merely encourage the Arab world in the belief that somehow the Big Powers will intervene and impose a settlement favorable to the Arabs without direct negotiations by the parties concerned.

The United States can continue to explore the possibility of arms control arrangements with the other Great Powers, by making use of regular, bi-lateral diplomatic channels.

The United States also should exercise the strongest form of diplomatic persuasion—far stronger than that hitherto attempted by the Administration—to dissuade the Government of France from further arming militant Arab states with supersonic jets and other assault weapons.

The United States must continue to meet Israel's future defense needs, taking full account of the lead time that is involved before deliveries are actually made. The Phantom jets that are being made available to Israel under a decision confirmed by the Johnson and Nixon Administrations are now being delivered on a schedule that will take us to 1971. But Israel's future needs must be anticipated so as not to cause any fatal lapse in deliveries. We must commit ourselves to deliver additional aircraft to Israel as they will be needed to maintain the present military balance in the region.

We must also keep a watchful eye on related arms developments in the area, especially to determine whether Egypt intends to use Libya as a rearguard sanctuary to build up a French-delivered airfleet for its own aggressive designs.

The United States must begin to assist Israel to meet the economic burden of her self-defense. We must provide Israel with grants and low-cost credits for the purchase of the arms she needs for her security, rather than continuing to require her to pay for these arms in cash.

When the State Department announced its ill-conceived proposals this December, I was deeply concerned that the United States was weakening its historic commitment to Israel; diminishing the prospects of direct negotiations; and arousing false and dangerous hopes on the part of the hard-line elements in the Arab world.

I was somewhat reassured by more recent While House statements that suggested a greater sense of concern for the security of Israel and reaffirmed the principle of direct negotiations. I refer in particular to the President's statement of January 25th that:

"We are convinced that the prospects for peace are enhanced as the governments in the area are confident that their borders and their people are secure. The United States is prepared to supply military equipment necessary to support the efforts of friendly governments, like Israel's, to defend the safety of their people. We would prefer restraint in the shipment of arms to this area. But we are maintaining a careful watch on the relative strength of the forces there, and we will not hesitate to provide arms to the friendly states as the need arises."

Despite these reassuring statements, however, the Administration's policy remains difficult to discern. The Administration claims, for example, that the December State Department proposals continue to represent its views—although these proposals evidence a wholly different spirit than the President's more recent utterances.

The President has also continued to defer action on the current Israeli request for Phantom jets, although his announced 30-day timetable for a final decision has already passed.

The Administration's real policy will be determined by what it does, not merely what it says.

To preserve her security, Israel needs arms, not assurances.

The acid test of the Administration's intentions will be the President's response to Israel's current request for Phantom jets.

It is absolutely essential—to the credibility of our policy, the security of Israel, and the stability of the Middle East—that his response come swiftly and that his response be affirmative.

JUSTICE DELAYED IS JUSTICE DENIED

Mr. ALLOTT. Mr. President, we are rapidly sliding into a crisis of major proportions, a crisis brought on by a deranged few.

There has been an astonishing increase in the number of bombings in America, and there has been a consequent epidemic of disruptive bomb threats.

Last week, three buildings in New York were bombed.

A townhouse was demolished when some high explosives detonated, evidently by accident, and evidently killing some persons who were insufficiently skillful at the delicate task of storing and working with high explosives. One dead person was a veteran of the Columbia University riots, a member of the Weatherman faction of the SDS, and an outspoken advocate of violence.

Last Thursday three Manhattan skyscrapers were bombed. There followed a rash of bomb threats which caused the evacuation of many buildings in New York. From midnight until 4 p.m. Thursday, the police in New York received 590 bomb threats.

For awhile last Friday the New York City police were receiving a new bomb threat every 6 minutes.

Sanford D. Garelik, president of the New York City Council, has said that the city has become the battleground for as many as four urban guerrilla organizations and a number of smaller terrorist groups.

New York Mayor John Lindsay has called for tighter restrictions on the sale of dynamite.

The New York headquarters of seven industries and banks have been bombed since last Augst.

Nor is New York the only victim of bomb mania.

Campuses have been experiencing bombings for several years.

Bombs have been thrown at the homes of some college professors.

A judge's suburban home has been bombed.

San Francisco police stations have been bombed.

Schoolbuses in Denver have been bombed. The home of a member of the Denver School Board was bombed.

Last Friday explosions ripped a Washington nightclub, a Pittsburgh jewelry store, and two schools in Appleton, Wis. There was also arson at Berkeley last week, but that is nothing unusual.

Schools and shopping centers in the Washington area have been evacuated as a result of telephoned bomb threats.

Mr. President, this rash of violence and threats of violence tells us something about the vulnerability of our institutions in this age of large and vulnerable institutions.

We have seen what a tiny but ruthless group of delinquents can do to a university, and especially to a university in a city, such as Columbia or San Francisco State.

Now we are seeing what a tiny number of ruthless and cowardly and deranged people can do with a few real bombings and a wave of telephone threat of bombings.

These tactics, which are becoming the trademark of the radical left, are effective when used against anything that resembles a city.

A city is a complicated network of independencies. It is a complex system, the functioning of which depends upon thousands of persons performing their particular functions according to expectations.

This sort of "metropolitan" living is the hallmark of the 20th century, for better or for worse.

For better or for worse, this is the age of large institutions.

Today's cities are one kind of city.

The large industrial plant is a kind of city.

The multiversity is another kind of city.

The age of large organizations is neither an unmixed blessing nor an unmixed curse. We benefit in many ways from large organizations. And we lose some deficiencies, and some intangibles—such as community intimacy—from our dependence on large organizations.

But one thing is clear, at least to America's homegrown enemies: Large organizations—be they cities, universities, or industries—are vulnerable to the attack of a tiny but determined minority.

Thus it is imperative that Federal, State, and local law enforcement use every legal measure to root out and destroy the organizations which foster these attacks.

Mr. President, this is vital to the protection of our courts.

A court is another complex and subtle institution. A court cannot work when the people involved with it do not accept the traditions of civility. There is some evidence that some of the recent bombings and bomb threats are related to an attack on the American judicial system.

Mr. President, recent events in nearby Maryland, events relating to the much delayed trial of H. Rap Brown, indicate that some persons may have hit upon a new way of avoiding trial and punishment.

The tactic is stunningly simple: They refuse to come to trial or, failing that, they behave like the defendants in the Chicago conspiracy trial and refuse to allow the trial to proceed.

In Chicago the trick was to hurl insults and obscenities at the judge, and then to turn around and say the judge had betrayed a flicker of hostility.

William Kunstler, who served as ring-

master in the Chicago circus, has surfaced in Maryland to see what damage he can do there as defense attorney for Mr. Brown.

Although it is ancient history by now, Senators may recall what got Mr. Brown in trouble in the first place.

Way back in July 1967, he was charged with incitement to riot and arson after an appearance in Cambridge, Md. At that appearance he gave an incendiary talk, threatening to burn America down. Within a few hours after this speech, Cambridge experienced a serious riot, including considerable damage from arson.

Today, 2 years and 8 months later, our overburdened judicial system is about to consider the case. But there are still some roadblocks in the way.

In recent days the courthouse in Cambridge has been severely damaged by a bomb blast. This blast is hard to explain, because the trial of Mr. Brown is scheduled to open many miles away, in Bel Air, Md.

Earlier, two friends of Mr. Brown were killed when a bomb exploded in a car in which they were riding. Maryland authorities and the FBI have suggested that the bomb was being carried by the two men.

We must assume that if the two men were carrying the bomb, knowingly, the bomb did not explode when and where it was supposed to explode. But we must also assume that if they were knowingly carrying the bomb, they did not have sweet reason in their hearts when they built it and began transporting it to wherever they were going.

Mr. President, all these events are alarming enough taken by themselves. But notice what is now happening.

As always happens in these cases of escalating madness, the nuts are beginning to gather. In recent days there has been a wave of bomb threats in the Baltimore, Washington, and suburban Maryland area.

This has brought forth another predictable response.

Yesterday we began to hear the claim that the turmoil accompanying the approach of Mr. Brown's trial is so great that Mr. Brown cannot be guaranteed a fair trial.

So look where that leaves us. Let us put the best of all possible interpretations on everything.

Let us suppose that the authorities are mistaken concerning the blast that killed Mr. Brown's friends. Let us suppose that the two were not knowingly transporting a bomb.

Let us suppose that the blast in the Cambridge courthouse has no connection whatever with the impending trial of Mr. Brown in Bel Air.

Let us suppose that the wave of bomb threats is an uncoordinated outpouring of sickness from the lunatic fringe that responds to any form of deviant behavior.

Mr. President, even when we make all these assumptions, one thing remains clear. The trial which has been delayed 32 months has not started yet. The American system of justice can hardly be accused of railroading Mr. Brown to jail.

Indeed, it would be hard to railroad Mr. Brown anywhere because no one knows—or will say—where Mr. Brown is. According to Associated Press, Mr. Kunstler himself has not seen Mr. Brown for many days.

Mr. President, all this might seem like an isolated eruption of madness if it did not follow so closely on the heels of the Chicago trial fiasco. But it does follow that fiasco, and it might achieve what the Chicago defendants set out to achieve—the frustration of the judicial process.

Let us hope the violence subsides in Maryland. Let us hope that Mr. Kunstler decides to conduct a trial rather than a circus. Let us hope that the recent events in Maryland are random and in no way part of a plot to disrupt the courts.

But above all, let us hope that the trial gets underway. This is owed to the people of Maryland, and to Mr. Brown. It is a truism that justice delayed is justice denied. Justice has already been delayed for 32 months. There should be no more delay.

PENN CENTRAL'S DISCONTINUANCE OF 34 EAST-WEST PASSENGER LINES

Mr. GOODELL. Mr. President, I must deplore the decision of the Penn Central Co. to discontinue operating 34 of its east-west passenger trains.

Penn Central's announced decision represents the culmination of years of failure by the railroads to meet the needs of the public for adequate intercity rail transit.

With our population growing, and our highways and airways clogged with traffic, railroad passenger transit has more than ever become an essential method of intercity travel.

Yet the railroads have abandoned their responsibility for providing passenger service. Faced with the competition of road and air, they have simply refused to compete.

It has recently been reported that the number of passenger trains in service has dwindled from 20,000 in 1929 to less than 500 at the end of last year. Trains now carry scarcely 1½ percent of all intercity travelers.

The railroads have sought to justify their abandonment of passenger service by citing the losses they have sustained. Even if these claimed losses have been accurately calculated—and many have disputed the accuracy of the railroads' loss calculations—they do not justify a wholesale abrogation of their responsibility to the traveling public.

The railroads' losses in the passenger field have significantly been the product of their own failure to provide adequate service and to develop well-thought-out plans for meeting the competition of other modes of transport. The railroads have permitted themselves to lapse into a vicious circle of patron decline followed by revenue losses; revenue losses followed by deteriorating facilities and eventual discontinuance of trains; and these curtailments of service, in turn, followed by further patron decline.

The solution to the problem does not lie in further indiscriminate discontinuances.

Nor does it lie in letting the existing trains limp on with steadily deteriorating service.

It lies in genuine long-range planning and a real effort to compete with other forms of transportation—something the railroads so far have made little or no attempt to do.

It lies in the creation of a balanced rail passenger transit system that is planned to meet the actual needs of the traveling public.

It lies in the railroads and governments entering into partnership to upgrade the passenger transportation system, not to collaborate in its discontinuance.

The effectiveness of such an approach is dramatically illustated by the success of the New York-Washington Metroliner.

The Federal Government has contracted for $11.5 million and the Penn Central has spent $50 million in the development of high-speed, comfortable, clean, and scheduled train service between the two cities. This experiment has been successful beyond all expectations. The Department of Transportation reported that during the first 6 months of 1969, half of the 228,000 Metroliner passengers had switched from using a plane, bus, or auto. Significantly, the majority of people indicated they would use the train on their next trip between New York and Washington.

The Penn Central now proposes to discontinue 34 east-west passenger trains, including the express New York-to-Chicago runs such as the Broadway Limited, the Manhattan Limited, and the Pennsylvania Limited.

The discontinuances will drastically inconvenience the long-distance travelers. They also will do harm to the economies of the communities through which the trains now run—to communities such as Poughkeepsie, Hudson, Albany, Schenectady, Amsterdam, Utica, Rome, Syracuse, Rochester, and Buffalo.

If the railroad wishes to discontinue the existing east-west runs, why is it not offering the public any substitute? Why has it made no effort to develop plans for a more limited but higher quality service, based on the successful concept of the Metroliner?

I recognize that an improved, high-speed east-west passenger service requires Federal aid. I am convinced that with such aid, an east-west service of this nature would be successful, just as it has been in the New York-to-Washington Metroliner service.

The Commerce Committee, of which I am a member, has reported on a bill to provide Federal operating subsidies for rail carriers operating within a national rail system. This bill marks a major step in bringing our rail passenger service into effective competition with air and road service.

Some action must be taken at this session of Congress if we are to avoid an even worse situation than now exists.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business as in legislative session? If not, morning business is concluded.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment, as in legislative session, until 11 o'clock tomorrow morning.

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

SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore (Mr. ALLEN). The question is, Will the Senate advise and consent to the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States in lieu of Abe Fortas, resigned?

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

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

The bill clerk proceeded to call the roll.

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

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

THE CARSWELL NOMINATION SHOULD BE CONFIRMED

Mr. HRUSKA. Mr. President, the business before this body is the confirmation of the nomination of Judge Harrold Carswell to be an Associate Justice of the U.S. Supreme Court. This nomination should be confirmed. Judge Carswell's nomination is sound, logical, and desirable.

He is well qualified and well suited for the post.

He is learned in the law.

He is experienced.

He is a man of integrity.

He is possessed of proper judicial demeanor which he has displayed and exercised during his years of public service.

He enjoys the approbation and the respect of bench, bar, and community.

All of these attributes appear affirmatively in his personal, professional, and judicial acts and doings.

His elevation to the Supreme Court will serve to better balance the Court philosophically.

He should be confirmed.

KNOWLEDGE AND EXPERIENCE IN JUDICIAL SYSTEM

A Supreme Court Justice can perform his duty more effectively if he has a thorough, varied, and active practical experience, and understanding of the judicial system in all its aspects.

He should have more than an academic knowledge or appreciation of the law. He must be able to visually picture the trial court scene and all that transpires there. It would be well that he, himself, participated at the outset of the litigation—to initiate it or to defend it, as the case may be, thus acquiring experience in all stages of its preparation.

Certainly one is better qualified to sit on the bench if he has helped select a jury, has presented an opening statement before it, has asked for ruling on admissibility of evidence, has cross-examined witnesses, has prepared and submitted jury instructions, and has made a jury argument.

Likewise, a nominee is better qualified for a justiceship if he goes through the anguish of sentencing a man to prison, if he encounters and deals with the many efforts to delay, and to obstruct, the scheduling of a trial, and if he appreciates the complexities of presiding over trials.

And finally, he is much better qualified if he has some appellate experience, and if he has participated in measures to improve the quality of the judicial machinery.

Mr. President, the nominee for the Supreme Court, whose confirmation we are considering at the present time, has lived a career in the past 20 years which has resulted in the thorough, varied, and active practical experience and understanding of the judicial system as that which I have just described.

Judge Carswell spent 16 years in an active official role in the Federal District Court, Northern District of Florida, 5 of those years as district attorney, and 11 years as judge. Since June 1969, he has been a circuit judge.

Those were busy, arduous years, Mr. President. But they were also fruitful years. This is proved, first, by the type and volume of work involved, and, second, by the high esteem and reputation earned by the nominee with bench, bar, and the general public.

TYPE AND VOLUME OF WORK

When asked as to the general nature of the litigation in the northern district, Judge Carswell testified:

> Virtually everything across the board that comes into the Federal Court in the way of criminal law and the civil law—contract cases, antitrust cases. We have had a whole range of cases. It has a rather heavy criminal docket for an area of that size. I have sentenced, unfortunately. The worst aspect of the district judges' job is sentencing. I have had the unfortunate responsibility of sentencing no less than 2,000, perhaps as high as 3,000, individuals. These involve criminal trials ranging across the board, most of them involving young people, most of them involving—not crimes of violence necessarily, but all the multiple problems that come up in the Federal criminal law—Dyer Act cases, some narcotics recently. We have not had any until recently, but we have had a good many of those in the last few years.

Until 1968, there was only one judge in the Northern District and Judge Carswell carried the burdens alone.

The Northern District has four divisions. During his years as district court judge, he handled about 2,000 civil cases and about 2,500 criminal cases, according to a letter from Clerk of the Court Marvin Waits, who was one of the witnesses appearing before the committee. Many of them required multiple orders, memorandum decisions, and hearings. It was estimated that there were at least 7,000 to 8,000 orders and decisions.

It should be clear that both as district attorney and as judge, the nominee was required to work diligently to keep up with the schedule.

But he did not limit his work to the court proceedings alone. He was also very active in the field of judicial administration.

By appointment of Chief Justice Warren, he served on two committees. One was the Committee on Statistics of the Federal Judicial Conference. It concerned itself with all the data compiled by the Administrative Office of the U.S. Courts. It evaluates caseloads, backlogs, and other factors bearing on the needs of judicial manpower.

The second committee was that on supporting personnel, which deals with problems relating to administrative help for the Judiciary.

In April 1969, Judge Carswell was chosen by the other district and circuit judges of the Fifth Circuit, as there representative to the Judicial Conference in Washington in June 1969, which concerned itself with the problems of judicial ethics arising from outside employment of Federal judges. He voted with the majority of the committee at that time to require disclosure of outside employment and activities.

From time to time, while on the district court bench, he responded to invitations to sit on the circuit court in its deliberation and disposition of cases. One witness before the Judiciary Committee recalled a circuit court opinion written by Judge Carswell as early as 1961.

His work to improve judicial machinery included the field of jury selection. A year and a half before Congress enacted the Jury Selection and Service Act of 1968, Judge Carswell took affirmative steps to get jurors—in the heaviest populated area in the Northern District—selected from the voter registration rolls—not from a list of those actually voting, but from the total of the registration rolls, to be sure there was a fair cross-section of jurors. This new arrangement was in operation before the new Federal law—Public Law 90-274—became effective, after it was enacted. To comply with the law, minor modifications were needed, but it was already in operation before the law was effective.

Because of this advance division plan, Judge Carswell was then able to draw a districtwide plan and secure its approval by the fifth circuit reviewing panel 3 full months before the deadline date prescribed by the act.

Critics seek to downgrade this jury selection activity by saying it was instituted when it became "perfectly clear that this was going to have to be done."

The fact is, there was advance action long before enactment of the act. There was accelerated action under the law in the remaining divisions of the district because of the preliminary work he had performed.

Critics also seek to deprive Judge Carswell of fairmindedness and a desire to improve judicial machinery by attempting to show that the plan is defective and not working properly.

It is submitted that the fifth circuit

reviewing panel's judgment of approval is much more to be relied on than any opinion voiced by anyone not directly involved, and particularly when that lack of direct involvement is accompanied by a bias against the candidate and is being voiced for the purpose of trying to advance that bias into the thinking of our colleagues in the Senate.

Judge Carswell was a very active member of a group of lawyers, jurists, and educators, who effected establishment of a law school at Florida State University at Tallahassee.

James William Moore, sterling professor of law at Yale University, has been a student of the Federal judicial system for 35 years and is an eminent author in this field. He served as consultant, without compensation, for the law school founders group approximately 5 years ago.

Professor Moore appeared before our Judiciary Committee at his own request, to testify on Judge Carswell's behalf and on the basis of both personal and professional knowledge. Part of his testimony reads:

I was impressed with his views on legal education and the type of school that he desired to establish; a school free of all racial discrimination—he was very clear about that; one offering both basic and higher legal theoretical training; and one that would attract students of all races and creed and from all walks of life and sections of the country. Judge Carswell and his group succeeded admirably . . .

It is noteworthy that not a single critic of Judge Carswell has seen fit to put into proper perspective this constructive, progressive, and sustained achievement of the nominee. There seems to have been a greater propensity instead for a brief, inactive exposure to incorporation of a golf cart or cosigning with his wife a deed of land "subject to" restrictive—white only—covenants that were contained in a previous deed in the chain of title. Such covenants have been obsolete for a long time. They are unconstitutional and legally unenforceable.

A lurid flurry of criticism arose briefly on this incident, Mr. President (Mr. HART). It was a short-lived flurry. Because it was discovered that such restrictive covenants are found in many deeds, as a remnant of an earlier state of the law.

Even Members and former Members of this august body are among those so afflicted. It became generally known that a Member of the Senate, shortly after being nominated as vice presidential candidate of his party was grantee in a deed similarly subject to such convenants.

Needless to say—the original criticism against Judge Carswell on this ground has been muted. But even a recollection of its being expressed at one time strains somewhat at the minds of the fair-minded.

Judge Carswell has had a thorough, wide, varied, and practical experience, constructive in the fields of judicial administration and legal education.

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

Mr. HRUSKA. I am happy to yield to the chairman of the Judiciary Committee.

Mr. EASTLAND. Mr. President, the Senator speaks of a restrictive covenant. Is the Senator aware that Franklin Delano Roosevelt signed a restrictive covenant?

Mr. HRUSKA. That is my information.

Mr. EASTLAND. Mr. President, I will put a certified copy of that document in the RECORD during the debate on this matter.

Mr. HRUSKA. Mr. President, the chairman of the Judiciary Committee can be assured that if a poll and a little research were performed, the number of high officials in Government over the years who have signed such deeds would be almost legion. Why, except for a feeling of bias, the issue should be brought up in respect to Judge Carswell is difficult to understand.

Mr. EASTLAND. Mr. President, if the Senator will yield further, as I recall it, I have not done so. However, I am not about to call out the name of anyone who has signed such documents because I know that there are many.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. HRUSKA. I yield.

Mr. BYRD of West Virginia. Mr. President, what Senators have not engaged in land transactions in which the deeds have contained such racial covenants?

Mr. HRUSKA. Mr. President, I would venture a guess that virtually all Members of the Senate have. I should not say all, but a substantial number of them certainly have been involved in restrictive covenants in the deeds they have executed.

Mr. BYRD of West Virginia. Mr. President, is it not true that it was a pretty general thing in years past to include such provisions in deeds of conveyance?

Mr. HRUSKA. The Senator is correct.

Mr. BYRD of West Virginia. I, as one Senator, have bought lands with such covenants in the deed. I think it was a pretty general thing. I imagine that if most people will go back and look at the old deeds by means of which they have purchased lands or transmitted those lands to other people, they will find that those deeds carried the same racial covenants.

That was before the courts ruled such covenants to be unenforceable. I think if we are to judge a nominee to the Court by that standard, then we ought to go back and open up our cedar chests and trunks and desks and look at some of the old deeds by which we ourselves have sold or transferred lands.

It was once thought that such covenants were enforceable. In the old days, people who bought and sold land were often probably unaware of the presence in the deeds of such provisions. Nevertheless, the covenants were there.

I think the important point is that these covenants have long since been adjudged to be unenforceable.

Mr. HRUSKA. Mr. President, I thank the Senator from West Virginia for his comment.

I might point out that for a quarter of a century I engaged in the general practice of law in Nebraska. I did quite a little real estate and abstract work. Restrictive covenants like those we are discussing are not to be considered unique to the deeds coming from the southern part of the Nation. They are to be found in the chain of title to property in the prairie States in the Middle West.

Mr. EASTLAND. Mr. President, the charge has been made that Judge Carswell is not big enough to be a Justice of the Supreme Court. Judging from the advertisements I see in the newspapers, that is the principal argument used against him.

Judge Parker was one of the greatest judges this country ever had.

Mr. HRUSKA. He was one of the most brilliant legal minds and one of the best jurists this country ever had.

Mr. EASTLAND. Judge Parker was nominated by President Hoover to be a Justice of the Supreme Court. The Senator knows that that same argument was made against Judge Parker in the newspapers at that time. The New York newspapers said that he was not big enough to be on the Supreme Court.

Mr. HRUSKA. I am aware of that. I read the account in the New York newspapers to which the Senator refers.

I might point out that the covenant was not even in the document that Judge Carswell and Mrs. Carswell signed. It was in the chain of title, and the deed he did sign, of course, referred to the covenant as being of record.

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

Mr. HRUSKA. I yield.

Mr. BAYH. Mr. President, I appreciate it that the Senator has yielded to me. I will be very brief. I shall try to keep this matter in the proper perspective. Inasmuch as our committee chairman has specifically alluded to the covenant, I have asked a staff man to get the deed so that we can examine it.

It is my opinion that that piece of property was purchased by Judge Carswell's brother-in-law from the Federal Government in 1963 and that it did not have a restrictive covenant in it at that particular time. That covenant was added only when the property was later given to Judge Carswell's wife.

It seems to me that the particular sequence of events puts this whole business of a restrictive covenant in a much different perspective.

If this were a covenant dating from either the Revolutionary or the Civil War, I concede that it would be a different matter. However, this covenant was of recent date and 15 years after the Supreme Court had held such covenants unenforceable. That is why I am very concerned that this incident is but another in a long sequence of events that shows that Judge Carswell was not as sensitive to these matters as I personally feel a Supreme Court Justice should be.

Mr. HRUSKA. That is wonderful. But I do believe, Mr. President, that, when a vice presidential candidate and Member of the Senate had such a similar covenant in the deed to his home, no greater effort was made to blackball him from the office of Vice President. I venture to say there was a great deal of support for

his candidacy for Vice President. And he was successful.

We know that this provision is unenforceable and that it had not come to the attention of the nominee. Now we want to read into it something dastardly.

I think the commonsense of Members of this body will assert itself, and they will put it in proper perspective.

Mr. BAYH. Mr. President, will the Senator yield further?

Mr. HRUSKA. I yield.

Mr. BAYH. Does the Senator from Nebraska know when this covenant relating to a former Member of this body, who was nominated to be Vice President, was first placed in the deed?

Mr. HRUSKA. I did not make any search for it. I did not consider it that important. It was unconstitutional.

Mr. BAYH. The Senator from Nebraska, who is a patently fair man, apparently sees nothing to be concerned about, when this covenant, the very matter we are discussing, was added at the time the judge's family received title to the property. That does not concern the Senator at all and the fact that the judge himself signed the deed transferring the property?

Mr. HRUSKA. No; it does not. It has no relationship, whatsoever, to the qualifications of this nominee. As I understand, it was the deed from Mrs. Carswell's brother to her, and it is customary, under State law—and, certainly, it is the requirement in Florida—that the husband of a married woman must join with her even when she conveys her property.

I venture to say that Judge Carswell had that deed placed on the desk in front of him and he signed it; that he was asked to sign it by the lawyer for his wife; that he was not aware of the covenant; and that he made no conscious effort to put it in there or to perpetuate it.

Of course, it does not concern the Senator from Nebraska, not one bit.

I would think if anyone wishes to place any significance on it, they will be impugning the integrity, honesty, and truthfulness of Judge Carswell. If that is the position of the Senator, we would like to hear it.

Mr. BAYH. The Senator has raised an entirely different matter. I think each Senator should make that determination for himself. But it seems to me strange that a piece of property bought as late as 1963, long after this had been outlawed by the Supreme Court and such covenants held unenforceable, that even then, after the property was conveyed to the judge's wife, that this covenant was retained in the deed.

As I said a while ago, I have asked one of the staff men to get a copy of the deed which we will place in the RECORD. I do not want to specify anything that is not accurate, but it is my understanding, from reading this deed during the hearings we held, that when the Carswells together, man and wife, sold this property in 1966, the judge not only signed the deed but that the deed at that particular time included another provision calling for enforcement of this restriction.

I do not wish to interrupt the Senator because each Member can put his own interpretation on the acts of the nominee.

Mr. HRUSKA. The Senator from Nebraska only refers to it because it is being asserted as a ground for disqualification of the nominee. I suggest he had nothing to do by way of placing it in there. The deed was actually signed by Judge Carswell in 1966. It was prepared by an attorney in Tallahassee who actually represented the buyers of the property. In keeping with the general practice he included a "subject to" clause to exclude from the Carswell's warranty any restrictive covenants already on the property. The only time the judge saw this deed was on the day he and Mrs. Carswell executed it. They were simply executing a document which had been prepared in a conventional form, with the appropriate language in it, to protect them, based on restrictions which had been placed on the property by the previous owner. That is the simple story on it. If anyone wants to read black implications in that, they are straining beyond a reasonable degree.

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

Mr. HRUSKA. I yield.

Mr. DOLE. I think the Senator has made it clear. As I understand the situation, this covenant was not placed in the deed in the first instance by Judge Carswell; that it appears, if anything, guilt by association because of what may have been on the deed at that time. I think the Senator has covered the point I wanted to raise.

Mr. HRUSKA. In signing the deed as they did, they neither adopted, approved, nor signified any agreement with any restrictions on the property.

It is further pointed out that from 1959 to the present they sold off several parcels of property they had in Tallahassee. In none of the deeds they executed conveying portions of the parcels they owned did they impose any racial restriction on that property.

Mr. BAYH. Mr. President, will the Senator yield further? Then, I will let the Senator finish his remarks in peace.

Mr. HRUSKA. I yield.

Mr. BAYH. I just think I should explain, as I shall later on this afternoon, that the Senator from Indiana is not raising the question of the convenant in a vacuum, totally removed from any other matters which concern him, relative to the judge's pattern of conduct, activity, and judicial decorum. But this is just one matter which concerns the Senator from Indiana and does not concern the Senator from Nebraska. I think, in all good conscience, the Senator from Nebraska and I look at the matter differently.

I appreciate the courtesy of the Senator in yielding.

Mr. HRUSKA. The Senator from Indiana says again this was placed in the deed by one other than the nominee. It is the same answer in the other case concerning Vice President Humphrey.

Mr. BAYH. The Senator from Indiana——

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order. The Senator from Nebraska is supposed to be yielding only for a question.

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

The PRESIDING OFFICER. Does the Senator yield?

Mr. HRUSKA. Mr. President, I yield for a question.

Mr. BAYH. Did the Senator understand that the Senator from Indiana was referring to a covenant that had been placed in the deed at the time the Judge's wife received this property from the judge's brother-in-law?

Mr. HRUSKA. It was my understanding that what he represented the fact to be was that Mrs. Carswell's brother inserted the restrictive covenant in the deed before it was conveyed to Mrs. Carswell. But that had nothing to do with the deed signed by Mrs. Carswell who by law had to be joined by her husband to convey a property title. When she transferred the property to a third person.

If my recollection of the facts and statement of the matter are at fault I would be happy to defer to the Senator from Indiana for a correction.

Mr. BAYH. The Senator from Indiana does not wish to infer anything incorrect; and I defer to the request of the Senator from West Virginia.

Mr. HRUSKA. Judge Carswell has had a thorough, wide, varied, and practical experience, constructive in the fields of judicial administration and legal education.

Few members of the Supreme Court have served in all these capacities and in such fruitful a fashion. He has had extensive, firsthand acquaintance with the endless variety of litigation that is brought to our Federal courts. His experience has made him conversant with the atmosphere and practicalities of the courtroom as can come only from experience in the actual combat of that forum.

Judge Carswell's experience will serve him well on the Supreme Court; and the Court will be well served by such experience.

BASES FOR EVALUATING A JURIST'S RECORD

Several principles and requirements must be kept in mind when reviewing and appraising a judge's official act.

It should be assumed that the object of such review is to determine whether he possesses the qualities expected of a Justice of the U.S. Supreme Court, to wit: That he is learned and experienced in the law; that he will be fair and just in his consideration of cases; that he will decide cases on the law and evidence without bias or prejudice; that he is a man of integrity, and possesses a judicial temperament.

Any evaluation should be cast according to some relatively neutral, objective standard. Bias and prejudice have no place here either.

To declare opposition to a candidate because "he has failed to heed and to promote the civil rights revolution of the past decade, as was urged by one of our colleagues, is to deny any pretense of fairness and objectivity. Moreover, it is presumptive that such a standard totally ignores the essential qualification for a Supreme Court Justice. After all, a Justice should not be an advocate. In fact, he would more normally be rejected if he were an advocate. He is expected to

be an arbiter, a judge—one who will decide controversies and disputes. To seat one as a Justice, as some suggest, because he advances and promotes as preconceived point of view is to ask for one who is biased and prejudiced. Such a man cannot properly judge on the law and on the facts.

Here are four simple rules which I think ought to be considered in evaluating a judge's record.

First. In the process of evaluating a judge's record, a substantial number of typical cases should be considered. These cases should not be cited out of context, nor on a selected basis to support an already arrived-at conclusion.

Second. A single case should not be criticized on the basis of the ultimate decision alone. Long before final disposition of a case, a judge makes many rulings and decisions, writes many memorandum decisions and legal instructions. A judge issues many orders, both interim and interlocutory.

Most cases in our complex society have these features and many are prolonged and of continuing jurisdiction. This is especially true of civil rights school desegregation and integration cases. All of the circumstances in any given case being analyzed should be considered, and statements or sentences must not be taken out of context.

Third. A judge's decisions also must be considered in light of the law as it exists when the decision is rendered; and not on what the law develops to be at a later time, or even what the law should have been, or what some people think it should be.

Again, this is especially applicable to civil rights cases because this field is so dynamic, fluid, and quickly changing.

In fact, it was not until October 29, 1969, that we had the latest decision by the Supreme Court that turned on and developed another facet of Brown against Board of Education. Of course, that was a landmark decision, to which reference will be made after a while.

This point is well stated by a highly qualified witness in an earlier confirmation hearing held last September—G. W. Foster, Jr., of the University of Wisconsin Law School. Here is a man who is now associate dean of the law school. He had served as administrative aide to Secretary of State Dean Acheson, and legislative assistant to Senator Francis Myers, Democrat, of Pennsylvania. He has been a consultant on problems of school segregation to the U.S. Commission on Civil Rights and to the U.S. Office of Education. He says:

> Any description of judicial implementation of *Brown* v. *Board of Education* involves a moving picture. Every judge worth his salt who has devoted any substantial time to wrestling with problems of school desegregation has changed views he earlier held. The reasons are straightforward: Remedies thought workable when ordered by the court turned out in practice to be partially, sometimes entirely, unworkable either because they were circumvented by school authorities or had encountered obstacels not foreseen. Again, there remain to this day questions not resolved as to the final scope of the Brown mandate: even now I know no one bold enough to attempt a final definition of what constitutes a "racially nondiscriminatory" public school system.

Mr. President, that is the testimony of a person who is highly in sympathy with and who has been an advocate of the expanding role of the desegregation of schools and the integration of our system of schools by the courts, or by statutes, or whatever; and he recognizes, as do all of us, that we should sit back and wait for a moment for our decisions to catch up with our overeager thoughts. We know it is a moving picture and we know it is a picture which has been changed not only by legislation but by intervening judicial decisions.

Fourth. A Federal district judge is not a policymaker. It is not for him to make "landmark" decisions. His duty is to apply the rules and interpretation of law as declared by his superior courts—the Supreme Court and his circuit court.

That is what he is expected to do. When he does not do it, of course, he is overruled by the circuit court to which appeal is taken.

DISREGARD OF ABOVE PRINCIPLES BY CARSWELL OPPONENTS

There has been a disregard of these principles and simple tests and rules by many of the opponents of Judge Carswell's nomination.

Charges against Judge Carswell's judicial record are based on disregard and violation of these standards and requirements. Fairness demands more.

A lack of objectivity is clearly evident in such cases.

The list of cases considered is very selective and not representative; often intervening decisions of a superior court are not mentioned.

The same is true as to subsequently enacted legislation which imposes need for a different decision.

Instead of a freedom from prejudice and bias, a nominee is demanded who will heed and promote the civil rights revolution.

First. In assessing Judge Carswell's judicial record, critics considered a limited number of typical cases. Their list of decisions was very incomplete, selective, and some cited out of context.

As I mentioned above, Judge Carswell has considered 2,000 civil cases and about 2,500 criminal cases. There were cases with multiple rulings, which means that he formally ruled on at least 7,000 to 8,000 different occasions. Only about 100 of his decisions found their way into the published reports.

Of these, one witness selected a list of 15 cases. The balance of the judge's record is not included. Many of the 15 "selected" cases were set out and discussed out of context and without laying a proper foundation as to what preceded that case and what intervened between the decision in the district court and the time the appeal was decided, either by the Circuit Court of Appeals for the Fifth Circuit or by the Supreme Court.

Another critical witness said he read published cases over a 5-year period of Judge Carswell's 11 years of tenure as judge and based his testimony on this limited knowledge, and there are other indications of scant reference and scant basis for appraisal of the judge's record on a judicial basis.

Second. Many charges against Judge Carswell's decisions are too often based on the ultimate or final decision alone. They refuse to consider or even recognize the many preliminary and interlocutory decisions, rulings, and orders which precede final judgment and are the true mark of a judge to a large extent.

Third. Many, in fact most, of the cases on which criticism is based fail to take into consideration the state of the law as it existed at the time such case was decided.

Fourth. Criticism of cases by his opponents often fails to recognize and give weight to the rule that a district judge is bound by the law as it exists when he renders a decision. That law is determined by his superior courts.

Judge Carswell should not be blamed when the superior court changes the rules after original judgment is entered.

The result of disregard for common sense principles and requirements of appraising a jurist's record is a misleading, distorted, and unfair presentation.

Let us consider some examples:

EXAMPLE OF LATER SUPREME COURT RULING CAUSING REVERSAL

Much is made of the fifth circuit court reversal of two decisions by Judge Carswell when he was on the district bench: First, Youngblood against Board of Bay County, and second, Wright against Board of Alachua County. They are cited as unanimous reversals and as proof of Judge Carswell's "hostility on the racial issue," as proof of his refusal to allow the law of the land to apply to the schools of the district in which he sat.

The fact is the Youngblood and Wright cases were but two of 13 similar school desegregation cases decided by district courts in the fifth circuit. All of them were consistent with fifth circuit court law. I venture to say, in fact we know, that there were in other circuits similar situations to that which is now being described.

In October 1969, after Judge Carswell had been elevated from the district bench to the circuit court, the Supreme Court decided Alexander against Holmes County Board.

This decision requires reversal of all 13 of the cases pending in the fifth circuit to which I have referred. The entire fifth circuit court, including Judge Carswell, reversed and remanded to their respective district courts, 11 of those cases. The circuit court, with Judge Carswell abstaining because he had written and rendered the decisions in the Youngblood and Wright cases, also reversed and remanded the Youngblood and Wright cases which had been decided by Judge Carswell while he was district judge.

Technically, it can be truthfully said that Judge Carswell had been reversed by the circuit court in those two cases. But if he is to be so charged with these two cases, he should also, by the same line of reasoning and the same approach, be given credit for having voted in 11 cases in favor of civil rights group contentions when he voted to reverse and remand those 11 cases.

These facts were not brought out by the witness who presented the testimony

before us. His testimony was a simple statement, as though Judge Carswell had, in defiance of the law of the land, made decisions in the Youngblood and Wright cases that were unanimously reversed and rejected by the Court of Appeals for the Fifth Circuit.

Any fairminded man would know that neither the charging of the two cases against Judge Carswell nor giving him credit for thinking favorable to the civil rights group in the 11 other cases makes much sense.

The fact is that the Supreme Court had made a new rule. The circuit and district courts applied that new rule. This is their duty and responsibility.

The noteworthy item is that Carswell opponents in their testimony did not cite the entire record. Their failure to do so resulted in a misleading and distorted picture. This omission may have been due to carelessness or design—but that was the result, nevertheless, whatever the cause may have been.

It is not true that Judge Carswell refused to follow the law of the land as applied to the schools of his district in the Youngblood and Wright cases. His holdings were the law of the land as applicable in the fifth circuit when he rendered his decision.

Those holdings were changed by the Supreme Court speaking out to the contrary at a later time.

If Judge Carswell is to be charged with failing to anticipate that change by the Supreme Court, then every Federal judge who heard civil rights cases from 1865 to 1954 should have been charged with failure to foresee the judgment in Brown against Board of Education.

Let us recall the testimony of G. W. Foster, Jr., of the University of Wisconsin, quoted earlier in my remarks. When he appeared, in addition to testifying as I have already quoted him, he also stated:

> Thus an assessment of a judge's view on school segregation must be made in the context of the time in which he spoke. Said another way, he must be judged by comparison with other judges facing the same problems with respect to the particular forthcoming school year to which the answers were to be applied. The reason is simply that from school year to school year the picture changed—and rules and priorities applied for one year were modified or abandoned for the next.

Judge Carswell made his decision in these cases consistent with his judicial contemporaries and in the context of the law of the times in which he spoke.

STILL ANOTHER EXAMPLE: WECHSLER AGAINST GADSDEN

Much has been attempted by way of discredit to Judge Carswell on the basis of his handling of *Wechsler* v. *Gadsden* found at 311 Fed. 2d 311 (1965). In this situation, which involved a removal case in a State prosecution. Judge Carswell, citing the fifth circuit decision in the Dresner case, remanded to the State court a criminal prosecution originally brought in the State court but removed to the Federal court by the defendant. The fifth circuit vacated Judge Carswell's order on the authority of two cases which had been handed down by the fifth circuit itself subsequent to Judge Carswell's initial order. These two other cases were later appealed to the Supreme Court: *Georgia* v. *Rachel*, 384 U.S. 780 (1966), and *Greenwood* v. *Peacock*, 384 Fed. 808 (1966).

The fifth circuit's decision in the Peacock case was reversed. Based upon statements of the Wechsler case counsel found in the Carswell hearing record, it is clear that the doctrine enunciated by the court in the Peacock case is applicable to the facts presented to Judge Carswell in the Wechsler case.

Thus, by reversing the fifth circuit's decision in Peacock, the Supreme Court made clear that Judge Carswell was correct in holding that the Wechsler case was not properly removable to the Federal court and should have been remanded, as Judge Carswell ordered.

Witnesses testifying in the Carswell hearings on the Wechsler case conveniently pointed out the fifth circuit reversal, but they did not mention, until challenged, in the hearings themselves, the later appeal to the Supreme Court which vindicated Judge Carswell.

Either the witnesses were not aware of the Supreme Court ruling in the Peacock appeal, or they did know about it and failed to disclose it to the committee.

Neither of those alternatives would reflect creditably upon the witnesses.

In any event, Judge Carswell applied the law of the fifth circuit as it existed when he remanded the Wechsler case to the State court.

It was the fifth circuit court which strayed from the law of the land in reversing Carswell, but the Supreme Court later confirmed the correctness of the Carswell ruling by its decision in the Peacock case.

Yet Judge Carswell's critics ask us to believe that Judge Carswell was racially motivated when he sent the Wechsler case back to the State court. The simple truth is that they are disgruntled litigants with animus toward the judge because he did not see the law as they did.

ANOTHER EXAMPLE OF MISLEADING AND UNFAIRNESS

Steele against Board of Leon County is cited by opponents as another example of Judge Carswell being reversed in a school desegregation case on January 18, 1967.

The fifth circuit court did remand this case for further consideration on January 18, 1967. That part is true. But the reason for remand lay in the fact that 20 days before, on December 29, 1966, the circuit court had handed down a landmark case, United States against Jefferson County Board.

The basis for the Leon County school plan was totally and radically changed by two legal events:

First, the Jefferson case, embracing seven school plans, decided December 29, 1966, and

Second, the passage of the Civil Rights Act of 1964, which was subsequently applied in Jefferson.

But that act did not even exist when Judge Carswell had made his decision in the case of Steele against Board of Leon County.

The school plan in Steele had been adopted in 1963. Judge Carswell had no way of anticipating future events, such as a congressional act and a landmark case—Jefferson—based on the new law.

Mr. President, to indicate how important the Jefferson case is, let us consider that the opinion is approximately 75 printed pages long in the Federal Reporter, including a decree and a plan and a letter to be sent to parents regarding the plan. The opinion has 125 footnotes. The Federal Reporter sets out 114 syllabus points.

It is quite clear that no preexistent school plan could have been written to comply with such a vast ocean of detail and particularity created some years later.

Yet, opponents criticize Judge Carswell for not doing the impossible. They suggest that in 1963 Judge Carswell should have anticipated what Congress and the fifth circuit were going to do some 3 or 3½ years later. This is wrong.

THE FILING FEE

A belabored but misguided effort is made to make it appear that Judge Carswell was racially prejudiced because he collected a filing fee in a criminal case petitioning for removal from State to Federal court.

I can just envision, as one who practiced law for many years, a Federal judge collecting a fee. It just does not happen. It is charged that the fifth circuit had in Lefton against Hattiesburg, decided at an earlier time, eliminated filing fees for such cases.

First and foremost, filing fees are charged and collected by the clerk of the court—not by a judge.

Second, the clerk of the court, Mr. Marvin Waits, testified that in the charging of fees, the clerk is guided and bound by the clerk's manual. That manual is formulated and is distributed by the Administrative Office of the U.S. Courts. The manual at the time of the removal case had been in effect from about 1952 to April 1, 1966. It provides a filing fee of $15 for removal cases.

If the clerk had not collected the $15 in such cases, he testified, upon audit of accounts by the administrative office, he, himself, would have been called upon to make the payment personally.

He testified further that in 1966 the clerk's office received a new manual from the Administrative Office of the U.S. Courts, which contained section C, 1001.5 reading:

> Note. New language effective April 1, 1966: A. Criminal cases removed from state courts; filing fees are not chargeable for filing of petitions to remove criminal prosecutions from state courts. (*Lefton* v. *City of Hattiesburg*).

From that day on, no fee was charged or collected.

If anyone wants to complain about tardiness of a new, revised clerk's manual on this point, he should direct his efforts to the Administrative Office of the U.S. Courts, but not against the clerk. And, in any event, not against the judge. This Senator would be the last one to criticize blindly the Administrative Office of the U.S. Courts. I have no information as to why there was a delay in the amendment of the clerk's manual.

But, at any rate, it is by that manual that a clerk of the court is bound.

Further, the clerk testified that Judge Carswell always waived payment of a fee upon an affidavit in forma pauperis.

The clerk was asked whether he knew of any case in Judge Carswell's court where such affidavit was filed, where it had been refused by Judge Carswell.

The clerk replied:

No, sir; not any case accompanied by any affidavit *in forma pauperis.*

So that the matter of the filing fee showing racial bias and prejudice is but another attempt to discredit Judge Carswell based upon distorted facts.

HIGH RESPECT AND COMMENDATION FOR JUDGE CARSWELL'S COMPETENCE AND DEMEANOR

I come now to the subject of the high respect and commendation for Judge Carswell's conduct and demeanor as a public official.

The 17 years of Judge Carswell's public life have earned for him solid approval by bar, bench, and the public.

In this regard it is best to turn for information and counsel to those who have known him well, who have had opportunity to work with him as an official, with or against him as a lawyer, and to observe him in his actions and to know his record.

We commend those who pore over all or even a part of the official records, and then seek to render judgment upon the quality and character of the judge and his works. It is sought to vest such ventures with authority and with an aura of some high standing and quality.

But it is earnestly submitted that they are but superficial, even if pursued in an objective, scholarly, competent, and balanced fashion. I have already pointed out that such an ideal, or even satisfactory quality, is definitely wanting in the surveys and reports on the judge's record. In fact, such ventures are a sterile, narrow-based intellectual exercise rather than a balanced appraisal.

I might make a brief reference at this point to a full-page advertisement published in one of the local newspapers. At breakfast time I read the one concerning a statement made and published in New York, signed by some 350 law school and faculty members opposed to Judge Carswell's nomination. The signers of that statement—considering only the contents of that statement itself, self-serving as it is, erroneous, and sketchy as it is, and highly selective as it is, without having read the hearing record of the nomination—blindly accepted the judgment of the man who drafted that report as to the facts in the case. This is all part of a slick Madison Avenue type game being played against Judge Carswell. It is confirmed, interestingly enough, by a phony deluge of postcards, apparently originating in California but postmarked from the various States, in an attempt to make it appear there is broad, national opposition to Judge Carswell's nomination. It is an effort to show there is a great ground swell of opposition to confirmation of the nomination.

But, Mr. President, in due time, this statement as contained in the New York newspaper and the mail campaign will be commented upon more fully as this debate proceeds.

Let us consider instead some of the better qualified witnesses on the subject:

First. Florida State Bar Association: Testimony came from its president, Mark Hulsey, Jr. In preparation for his appearance, he polled the 41-member elective board of governors, who unanimously endorsed Judge Carswell's nomination. During his testimony, President Hulsey stated:

I might also say to the committee that it has been my pleasure to know Judge Carswell personally for over 17 years. Based on my observation of him . . . it is my opinion that Judge Carswell possesses the integrity, the judicial temperament, as well as, of course, the professional competence required to hold the high office of Associate Justice of the Supreme Court of the United States. And I hope that this committee will unanimously recommend his confirmation to the Senate.

Second. Judge Carswell's colleagues of the Fifth Circuit Court of the United States have endorsed him.

Third. American Bar Association: Its committee on judicial selection concluded unanimously that Judge Carswell is qualified for the appointment. Hon. Lawrence Welsh, a former Federal judge, is chairman of the committee. He was at one time Federal district judge, and is considered one of the leaders of the American bar. This standing committee does not engage in routine and nominal acts to reach its decision. It is based upon the views of a cross section of the best informed lawyers and judges in the area served by the nominee. Many of the interviews are personal; others by phone. Inquiry is made in depth into factors bearing upon the integrity, judicial temperament and professional competence of the nominee. The committee's report is always welcomed by the Judiciary Committee since it has the capability to, and has a record of rendering a fair and impartial judgment. Certainly, this Senator's membership on the Judiciary Committee has never considered that the American Bar Association would hold a veto necessarily on the actions of the committee. It is certainly evidence of the highest grade and of the highest quality in the proceedings that might evolve on the nomination of anyone for any position to the Federal bench.

Fourth. The Honorable LeRoy Collins, a former Governor of Florida and a longtime acquaintance, active in professional and civic affairs with Judge Carswell, testified in part that he knew the nominee "as a man of untarnished integrity, a man with an extraordinary keen mind, and very importantly, a man who works prodigiously."

At another point in his testimony, Governor Collins said:

I feel strongly that Judge Carswell's appointment deserves confirmation. I feel this way on the basis of my personal knowledge of the man, first of all, but more importantly on the basis of the overwhelming judgment of the bar of my state, on the basis of the judgment of his peers on the bench, and, I think this is most important, on the basis of the judgment of the Senate and of this distinguished committee based upon your prior hearings and investigations.

Fifth. Hon. James William Moore, to whom I have already referred earlier in my remarks, sterling professor of Yale University Law School, with a career of 35 years in teaching as well as in practice at special capacities, also testified on this particular point. He got to know Judge Carswell personally and also his works by reason of close association over several years. This was in connection with Professor Moore's consultation work, without compensation, for the founders' group at Florida State University at Tallahassee Law School.

In regard to professional and other qualifications of the nominee, Professor Moore stated:

From those and subsequent contacts I have formed the personal opinion that Judge Carswell is a vigorous young man of great sincerity and scholarly attainments, a good listener who wants to hear all sides, moderate but forward-looking, and one of great potential.

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

From the contacts I have had with Judge Carswell, and the general familiarity with the federal judicial literature, I conclude that he is both a good lawyer and a fine jurist.

Mr. President, these are men and organizations highly respected and regarded in the legal community. Their opinions and judgments must be given great weight. The opinions expressed are unbiased and objective.

They are but a few of the many fellow jurists and fellow trial practitioners who contacted the committee and who offered their support for Carswell. These are the people who know him as a man, lawyer, and judge. They rely on personal knowledge and not a superficial review of a number of legal opinions not even closely approaching the total work product of this man's 17 years in public service.

CONCLUSION

The individual isolated acts referred to by the opponents of this nomination must be viewed as part of the total record. Then you will see a picture which shows that Judge Carswell is a man with a thorough knowledge of the judicial processes. It shows a man who is respected by his peers and has a reputation as a diligent hard-working judge. It shows a man who has applied the law of the superior courts as he knew it and to the best of his ability. It reveals that Judge Carswell is a man devoted to the law and its institutions and is one who by training and aptitude is qualified to sit on the Supreme Court.

Mr. President, I urge every Member of the Senate to give this nomination serious thought. When studying the nomination, I urge that the total record be inspected. If done, I am confident that each Senator will independently decide to support the President's choice and vote to confirm the nomination of G. Harrold Carswell as an Associate Justice of the U.S. Supreme Court.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

What is the will of the Senate?

Mr. BAYH. Mr. President, I rise in opposition to the confirmation of the nomination of Judge G. Harrold Carswell as Associate Justice of the Supreme Court. I must say, at the outset, that opposing presidential nominees is hardly ever a welcome or pleasant task. I did not welcome nor was it pleasant for me personally to oppose the nomination of Judge Haynsworth. As we recall, this was perhaps the hardest fought nomination in over a generation, and it was made doubly difficult because the matter that concerned us centered on the very sensitive issue of judicial ethics. It was a matter in which many of us felt obliged to object, not because we in any way felt that the judge had become involved personally through calculated design to take advantage of his high office, but because we felt he had exhibited a high degree of insensitivity to the very area where increasingly large numbers of our people are calling for a higher standard of conduct; namely, the area of ethical propriety.

The Carswell nomination, in contrast, does not involve the ethical questions present in the Haynsworth nomination, but involves, instead, the question of judicial competence and professional distinction. The President's nomination of Judge Carswell presents to the Senate, for its advice and consent, a nominee whose legal credentials are too threadbare to justify appointment to the highest court in the land.

The Supreme Court is not just another court, Mr. President. Many observers have long regarded it as a unique American contribution to democratic government, insuring progress with stability. No court in any other political democracy has its awesome responsibilities and powers.

As the late Chief Justice White once remarked:

> The glory and ornament of our system which distinguishes it from every other government on the face of the earth is that there is a great and mighty power hovering over the Constitution of the land to which has been delegated the awful responsibility of restraining all the coordinate departments of government within the walls of the governmental fabric which our fathers built for our protection.

And Winston Churchill, from what can accurately be called his unparalleled perspective on history, could say of the Supreme Court that it is "the most esteemed judicial tribunal in the world."

That is quite a compliment and quite a tribute paid to the Supreme Court of the United States—a compliment that I personally feel is more than justified.

Surely, then, only the most distinguished and qualified members of the legal profession ought even to be considered for appointment to the Court. Surely, too, it is part of the Senate's responsibility, in exercising its power to advise and consent, to require a standard of professional excellence as the minimum qualification for elevation to the Supreme Court. To demand less of a nominee is a disservice to this esteemed tribunal and its unique place in our national life.

Mr. President, because of my position on the Judiciary Committee and because I have been in the midst of both of these confrontations over Supreme Court nominees, perhaps I have become overly sensitive to some suggestions made by distinguished officials in the administration, as well as certain other voices around the land, that the Presidential prerogative is absolute and all inclusive when it comes to Supreme Court nominations. The President's power is great, and he does have much leeway, true, and everything else being equal, certainly he should be sustained.

But the Senate does, in fact, have a responsibility under the advice and consent authority written into the Constitution by our forefathers, and it seems to me we must take very seriously the responsibility and the gravity of it when considering nominations of this magnitude. In my judgment, I do not believe the Members of this body want simply to serve as a rubberstamp agent for the President of the United States.

I do not believe it is a matter of disrespect—certainly the Senator from Indiana does not rise in opposition to this nomination in any way intending to be disrespectful—to our Chief Executive. Rather, it is the position of the Senator from Indiana, and I believe the position of many other Members of this body, that we should actually advise, before consenting.

In Judge Carswell, rather than having a man of excellence, the President has, unfortunately, confronted the Senate with a nominee who is incredibly indistinguished as an attorney and as a jurist. That is, itself, an affront to the Supreme Court.

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

Mr. BAYH. I am glad to yield.

Mr. LONG. Did not some of these same professors upon whom the Senator relies object to nominees who interpreted laws in ways that reversed previous laws and resulted in a 100-percent increase in crime? Did not those same legal authorities recommend, for example, Judge Fortas?

Mr. BAYH. I do not know to whom the Senator is referring. If he cares to enumerate who they are and whom they recommended, I would be willing to take his statement as accurate, because I know he makes accurate statements. If he would care to name them, I will be glad to have them in the record.

Mr. LONG. The Senator is telling us about these great lawyers. Were they not pretty unanimously for Justice Fortas? Did not most of these same great people themselves favor a judge who participated in the Miranda decision, which reversed previous decisions and led to a 100-percent increase in rapes and murders in this country?

Mr. BAYH. I do not know what great legal minds the Senator is referring to. I wish he would mention one or two of them so we could have them in the record. The Senator from Indiana has not mentioned any names. Yet my good friend from Louisiana is mentioning some. I will be glad to have the names of those he has in mind, so we will have them in the record.

Mr. LONG. I assume the Senator is going to refer to some of them. Is the Senator aware, for example, of some of the professors and lawyers who signed the letter in the Washington Post such as Mr. Plimpton, of the New York Bar? Did some of these people object to the nomination of Justice Fortas to be a member of the Court?

Mr. BAYH. I do not know what Mr. Plimpton wrote or whether he took any advertisements in favor of Judge Fortas. Did Mr. Plimpton take out any advertisements?

Mr. LONG. Mr. Plimpton and members of the Yale Law School faculty have opposed the nomination of Judge Carswell. Is the Senator aware of any of them from that Yale Law School group who supported the nomination of Judge Fortas?

Mr. BAYH. I was not aware of letters or petitions in support of Judge Fortas from the Yale Law School. I would suppose that perhaps only on occasions of extreme concern would as large a number of legal minds, as we now see exorcised, become exorcised over appointments to the Supreme Court.

Mr. LONG. When the appointment of Judge Fortas was before the Senate, much was made of the point that he was a brilliant student. My reaction was, "Look at those decisions on law and order. Look at that Miranda case, and the other cases that have made it virtually impossible to punish criminals in this country."

The Senator from Arkansas (Mr. McCLELLAN) stood here and mustered the support of a majority of the Senate for the proposition that those decisions were responsible for much of the 100-percent increase in crime in this country. We voted, by a majority vote, to do something about that. I do not think we mustered the vote of the Senator from Indiana, but we did muster the votes of a majority of the Senate.

May I say to the Senator that all this ability to think in corkscrew fashion, to stand on one's head and make it sound logical, did not particularly appeal to this Senator, if the result was wrong, leading to an increase in murder, rape, burglary, and major crime across this country, and making law enforcement authorities powerless to act.

Does it not seem to the Senator that we have had enough of those upside down, corkscrew thinkers? Would it not appear that it might be well to take a B student or a C student who was able to think straight, compared to one of those A students who are capable of the kind of thinking that winds up getting us a 100-percent increase in crime in this country?

Mr. BAYH. I do not know what my friend from Louisiana calls corkscrew thinking. I think if he will look at the record, however, he will find that the Senator from Indiana joined him in voting for passage of the crime bill,

which I think was the bill he referred to.

The man whose nomination is presently before us has been woefully lacking in ability to interpret what the law of the land is and apply it to the situation before him.

Mr. LONG. My friend says he has no credentials. I do have a few credentials. At least they have my name on the building where I graduated. I was associate editor of the law review. As one who was associate editor of the law review, I recall that we never picked out for a case note or comment some decision where the judge said, "Look, it is just perfectly plain; the statute says black is black and white is white, and since this happens to be black, I have to hold that it is black; and since, on the other hand, this happens to be white, I have to hold that it is white."

If you want to be written up, however, you take something that is white and try to reason it to be black or some shade of yellow; or take something over here that is square and reason it to be circular. You will perhaps get yourself written up in the Harvard Law Review, especially if you can get some court to uphold that kind of reasoning.

Such a case is the Miranda decision. Nothing in the Constitution says that when you apprehend a criminal, you have to tell him he does not have to answer questions, and that he is entitled to have a lawyer, and if he does not feel like hiring a lawyer, the State will hire one and have him advised as to the law; and then you can ask him the question, "What are you doing with that blood on your hands?" That was a contrivance of Judge Fortas, the sort that gets a judge the kind of notoriety that is written up in law reviews.

I assume the Senator would have voted for Judge Fortas, would he not, had he had the opportunity? Decisions of that sort would get you in the Harvard Law Review. However, but if you say, "Look, there has been no decision like that, but we have 50 cases that say you are entitled to ask the question," that would not be picked up for comment or any note. You do not pick up all that notoriety if, as a straightforward person you decide the cases on the law and the precedents.

Mr. BAYH. Mr. President, the Senator from Louisiana makes the Senator from Indiana feel less ashamed of his legal accomplishments, if being the editor of the Law Review automatically makes him an expert in the law. The Senator from Indiana was a member of the Indiana Law Journal, and on the board of review there. I am sure he did not make as illustrious a record as the Senator from Louisiana did, and he surely does not have a building named for him.

Mr. LONG. I did not say there was a building named for him on the LSU campus. I said my name was on the building where I graduated. It is on a plaque they put up for people in a moot court competition.

I assume, since the Senator has some ability as a lawyer, then, he is not simply relying on what someone has said. It has been my impression that if one has some ability to think about these things, and he has credentials, he ought to state them. The Senator started out by disqualifying himself; I am pleased that now he does qualify himself as a lawyer.

Mr. BAYH. The Senator from Indiana, with all due respect to my distinguished colleague and friend, for whom I have a great deal of respect, does not need the help of the Senator from Louisiana to interpret the cases for him. He will make that determination for himself. But he is broadminded enough to hear what various legal scholars have to say about a man's qualification to sit on the Highest Court in the land, before he makes his decision.

Does the Senator from Louisiana know of any dean of any law school who recommends the confirmation of the nomination of G. Harrold Carswell?

Mr. LONG. I have not looked for any, but I am sure I can find plenty of them.

Mr. BAYH. I thought, since we are trying to fight a battle of experts here, that surely the Senator could name some.

Mr. LONG. Well, I will make the assertion, without the slightest fear of successful contradiction, that I will find quite a few who recommend the man's confirmation. I assume that those who signed the petition to which the Senator refers did not have the support of 50 law school deans, because they are the only ones who signed it. I assume if you have 500 lawyers on an advertisement, it is because you did not have a thousand who wanted to sign it.

So far as I know, I do not know of anyone who happens to hail from my State who would not agree that the nomination of Judge Carswell should be confirmed.

Mr. BAYH. I am sure that the Senator from Louisiana speaks with authority relative to what the people of his State think. I know of no one who has ever represented his State more ably, and I compliment him for it, and have just a touch of envy and hope in my voice, that I will have a chance to serve my State as well and as long as the Senator from Louisiana has served his; and I know his period of service has just begun.

Mr. LONG. Mr. President, permit me to return the compliment. I think the Senator from Indiana is doing a great job for his State. While I regret that he may be in error in this particular case, I have the highest regard for the Senator, and I hope nothing that I have said implied anything to the contrary.

Mr. BAYH. I think the Senator from Louisiana and the Senator from Indiana understand each other perfectly, and each knows what the other is after.

In the final analysis, I think the Senator from Louisiana and the Senator from Indiana, as well as their 98 colleagues, for whom we have the greatest respect, are not going to make their determination on what is said in an advertisement or what is said by law school deans or a list of lawyers pro or con, but on the facts as they see them. I know that the Senator from Louisiana would be the first to say that it is possible for reasonable men, and good friends, as far as that is concerned, to look at the same facts and perhaps come to somewhat different interpretations.

Mr. LONG. Mr. President, if the Senator will be so kind as to yield further——

Mr. BAYH. I am happy to yield.

Mr. LONG. When President Johnson was considering possible nominees for Chief Justice, this Senator made a television presentation which appeared in his State, and was broadcast on a large number of radio stations as well. We were discussing the crime bill. At that particular time, I made the statement that there were about four decisions of that Supreme Court for which I would blame a major part of the 100-percent increase in murder, rape, armed robbery, and other major crimes in this country.

I discussed those decisions, and I pointed out that there were certain Judges on that Court that I could not vote to confirm, if I knew they were going to vote that way, and that, looking at their records, I could not vote to promote any of them. I mentioned Justice Fortas as one of them.

That was not putting myself against all nine of them; that was just saying that the five who had constantly voted to help the criminal enthrone himself above society would never attain my vote, if I had anything to say about it, because I thought those decisions were destroying this country.

When Justice Fortas' name came down, I was one of the Democratic leaders in the Senate at that time, the assistant majority leader, notwithstanding which I told the President, who was a very dear friend of mine, that I could not support his nomination and I could not vote for him.

I told my people how I felt about it, and that I felt that if a man stood for anything, he ought to be consistent. I said if it were up to me, I could not support his even being on the Court, considering what I knew about him then.

That was not a matter having anything to do with ethical sensibilities. That was just a fact that men are responsible for decisions that, in my view, might have been erudite. They might have marked him as a legal scholar, as one who can reason around from the decisions to reach a conclusion different from his predecessors. Nevertheless, it seems to me that that was not the kind of man we need for Chief Justice or who even should be a member of the Supreme Court—not that I do not admire him as a brilliant lawyer. He had no business being a Chief Justice because of the kind of reasoning and the decisions of the Court that were destroying this country. They were part of the 100-percent increase in crime that this country has sustained.

I heard President Nixon say, on the issue of law and order, that if he became President, he was going to appoint someone who would vote with the three who had tried to uphold the cop against the criminal, rather than the five who had voted to uphold the criminal against the cop.

When he submitted Judge Carswell's nomination to the Senate, it was my impression that that is the kind of man he had nominated.

A man does not have to have such brilliance as to be able to reason as nobody ever reasoned before in order to satisfy me. All he has to do is to read where it says it is a crime to kill somebody, and if you did it you are guilty and have to go to jail, and perhaps face the death penalty for it. If the law says that the penalty is death, he would say, "It says that you suffer death if you do that." That is how it has been since this Nation was founded. He would not try to find some way to say, "You do not have to face the death penalty," to a man who had killed many people and who deserved to be put to death, if that was the judgment of the State and the law passed by the State.

We would not need all that sort of brilliance to say that capital punishment had been outlawed, when Congress did not see fit to outlaw it.

I would think that that sort of straightforward thinking might not merit a comment in the Harvard Law Review or the Yale Law Review, but I think it would help to get on with the business of saving this great country of ours and arresting the increase in crime.

It seems to me that that is the kind of man we ought to be looking for. The ability to come up with some brilliant new legal thought which nobody ever thought about before would seem to me to be something we have had too much of already. That is half of our trouble.

I thank the Senator.

Mr. BAYH. I appreciate the Senator's comments. I certainly would be the first to suggest that the President was within his right, totally and completely, to suggest that if he were elected President of the United States he would appoint men of certain qualifications. I think he referred to strict constructionists. I think he referred to a balance that was necessary on the Court. I think he also referred to boyhood idols, such men as Holmes, Brandeis, and Cardozo. Does the Senator from Louisiana feel that G. Harrold Carswell fits into the same category as these three men whom the President admires?

Mr. LONG. Brandeis, Holmes, and Cardozo could very well qualify as dissenters, and that is fine. They were great dissenters of their day. Once in a while, though, someone should be nominated who is something of a conformist, and I would take it that that is apparently what the Senator is complaining about with regard to Judge Carswell.

Mr. BAYH. I want to know if the Senator from Louisiana feels that Mr. Carswell fits in the same caliber and is of the same quality of judicial competence as the three men to whom the President alluded.

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

Mr. LONG. I have no particular objection to those Judges. So far as the decisions they handed down, I see no particular mischief that they reflected at that particular time. I think that some of those decisions were very well taken, for which those men were very famous.

But I am frank to say that what we need at this time more than anything else is some conformists on the Court, someone who would conform to what the law always has been, rather than some of those who try to upset what the Constitution says and what the law has always been regarded as being, particularly that which has been pretty well established in the field of law and order. We need them.

Mr. BAYH. I note that the Senator is deeply concerned about reversing the increase in crime. I am concerned about that, too. I wish it were possible to say that the presence or absence of one man on the Supreme Court is automatically going to reverse this increase in crime. Judge Fortas has been off the bench for more than a year now. Has the Senator from Louisiana paid any attention to the direction in which the crime rate has been headed during the absence of former Justice Fortas?

Mr. LONG. In the District of Columbia, we are told, it is going down, which is fine. Of course, I do not know of any of Mr. Fortas' decisions that have been changed.

Incidentally, on that subject, the Senator said he voted for the crime bill. Only one Senator voted against it. How did the Senator vote on the McClellan amendments?

Mr. BAYH. There were several.

Mr. LONG. How about the one that had to do with the Miranda warning?

Mr. BAYH. I do not remember. I would be glad to check it out and see.

Mr. LONG. May I say that that particular case has to do——

Mr. BAYH. My assistant advises me that I voted against an amendment that would have struck the McClellan amendment from the bill.

I think the Senator referred to some supposed statistics relative to the District of Columbia. I think I recall seeing an FBI report to the effect that last year crime went up nationwide 17 percent, even without Judge Fortas on the Supreme Court. I wonder how that happened.

Mr. LONG. The scene had been set. We still have not done what needs to be done to apprehend and punish those who have been committing all these crimes in this country.

Mr. BAYH. With all due respect to the Senator from Louisiana, I think we have gotten a bit far afield. I do not want my last question to suggest in any way that the Senator from Indiana feels that Judge Fortas was responsible for any increase in the rate of crime. I think we have a number of factors that have to be dealt with, only one of which is certain decisions that the Court might hand down.

If the Senator is concerned about getting men on the Court who will think or vote a certain way, the Senator from Indiana has been of the opinion that the President has the primary prerogative of making this choice.

I wonder if it would not be possible to find a man who fits the stereotype that the Senator from Louisiana is searching for, whether it is a strict constructionist or a Southern conservative, or whatever it might be that he is searching for, to reverse this trend we are talking about but that such a man also be one of great professional competence and distinction.

When I was in Louisiana a few years ago, I had the good fortune to meet a learned judge from the Senator's home State, Judge Wisdom. I wonder how the Senator from Louisiana would weigh the Carswell nomination, and Judge Carswell's qualifications against the learned judge from Louisiana, Judge Wisdom.

Mr. LONG. Mr. President, Judge Wisdom's name is not before us.

Mr. BAYH. Neither is Judge Fortas', let me suggest, but we are trying to assess the relative qualifications of men who might be nominated.

Mr. LONG. Judge Fortas' name was here, and I took a position on Judge Fortas, and I do not regret it for a moment. I think the position I took was right.

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

Mr. BAYH. I yield.

Mr. HART. Judge Fortas' nomination was not before us. We were never permitted to get Judge Fortas' name out here. Now is the time to remind those who are sensitive about how long a debate is going to take——

Mr. LONG. Perhaps it happened in a dream. I thought the Senator from Michigan sat right there, in that chair, with Judge Fortas' name.

Mr. HART. And pleaded with the Senator from Louisiana to permit us to bring it up.

Mr. LONG. I had nothing to do with bringing it up.

Mr. BYRD of West Virginia. Mr. President, I ask for the regular order.

Mr. BAYH. I would be glad to yield to my friend from Louisiana if he wants to ask any more questions.

Mr. LONG. I have asked the questions I had in mind.

Mr. BAYH. I would be glad to hear any more comments from the Senator from Louisiana. The Senator from Louisiana has been favorably impressed with the qualifications of Judge Wisdom. I believe that he is the kind of man that would not be confronted with any opposition on an intellectual basis or on the basis of judicial demeanor basis. If the Senator from Louisiana does not agree, I would be glad to have his thoughts.

Mr. LONG. The Senator has asked me a question. Would he yield to permit me to respond to that question?

Mr. BAYH. I would be very glad to yield to the Senator.

Mr. LONG. Frankly, I would say that Judge Wisdom impresses me as one of those fellows who sometimes seeks to wander out into the wide blue yonder and make new law and rule in areas where rulings have not been made before. He may be just exactly what the Senator is looking for, because he will rule that something is the law even though the question has never been brought up before, and he is seeking to make new law and to make a name for himself. I would assume that such decisions would meet with the Senator's praise. Personally, that does not particularly impress me. I hold to the old-

fashioned view that any time we take something out of the Constitution we have violated our oath to uphold and defend the Constitution.

If we rule on something against the Constitution which was put in there by our Founding Fathers or amended later by constitutional amendments by Congress and the country, we have violated our oath. So far as I am concerned, we should amend the Constitution only when a man deliberately does differ, and I think that when a man does differ with the Constitution, that man should be subject to being voted off the Court or to have his term expire, so that we can decline to put him back on.

The other day we voted on something and I was in the minority on it, about the 18-year-old matter. So far as I am concerned, that was clearly an unconstitutional procedure. It concerned something that can be done, in my judgment, only by a constitutional amendment. In my judgment, had I voted for that, I would have violated my oath. That is just one of those cases. That is how I feel about it. If I think a man takes an oath to uphold the Constitution and then votes to destroy some of it, he is violating his oath. Does that answer the Senator's question?

Mr. BAYH. I think the Senator spoke rather eloquently there as to his lack of faith in Judge Wisdom. I disagree with the Senator's assessment. I think we need to be careful, with all due respect to my friend from Louisiana, that we do not adhere to the mistaken notion that a judge must decide every case as we would decide it, as the Senator from Louisiana or the Senator from Indiana would decide it. For that reason I am very reluctant to put myself in a position where I would say that Judge X or Judge Y should be recalled or voted down because he is rewriting the Constitution.

The Senator from Indiana would be the last to suggest that if Judges find contrary to the way I would decide things, that they should be kicked off the Court.

Mr. LONG. Mr. President, will the Senator from Indiana yield?

Mr. BAYH. I yield.

Mr. LONG. I would suggest to the Senator that what we need on the Court is a man who simply keeps his oath of office and upholds the Constitution and the laws of the country, construing them to mean exactly what Congress intended them to mean and not one who wants to "innovate," try to make new law, which is not his job. That man is not supposed to be making new law, he is supposed to be upholding the law that was passed on to him, to uphold the Constitution, which is our fundamental law. It was my understanding that President Nixon indicated that he wanted to appoint someone who would do that. My impression is that there is much disappointment with some people over Judge Carswell since he appears to be that kind of man, the kind of man who does not have all this sort of sophistication in order to come up with a forthright decision.

It seems to me that Judge Carswell has all the qualifications we need, contrary to some of those—let us face it, those who were deliberately appointed in years gone by, based on the probability that they would differ with their predecessors. I feel that if one does not like the basic law put in the Constitution, they should not do so by usurpation. Those who like the other school, for one reason or another, might not like Judge Carswell, might like Judge Fortas a lot better, but there are quite a few others who would find some way to destroy that Constitution and engage in some brilliant reasoning to show that they had not done what they clearly had. My impression is that Judge Carswell is not in this thing to bring that about and I applaud that. He is not being appointed as being that kind of judge.

Mr. BAYH. I do not want to belabor the point, but I think perhaps the Senator and I have different interpretations as to how to rate a judge's characteristics and competence relative to interpreting the Constitution. The Senator from Louisiana, of course, is, I am sure, proud of the fact that his State of Louisiana is in the fifth circuit. Is that not accurate?

Mr. LONG. We are in the fifth circuit, yes.

Mr. BAYH. Louisiana is in the fifth circuit. I suppose the Senator from Louisiana has a certain degree of pride for the overall competence of the judges that sit in the fifth circuit relative to their interpretation of the Constitution?

Mr. LONG. I have never been heard to say that the judges of the fifth circuit were the greatest judges in the land. Did the Senator ever hear me say that?

Mr. BAYH. I never heard the Senator say that.

Mr. LONG. So be it.

The Senator asked me what I thought of the fifth circuit. I did not have occasion to cast a vote for judges on the fifth circuit because those judges were appointed without consulting me, with the exception of one, Judge Ainsworth, who I think is a fine man—while I may differ with him from time to time, I take no particular issue in that. I think he is a fine judge.

Now, Mr. President, I would be glad to give the Senator my assessment of the judges that I did have something to say about who were on the Federal judiciary, men who came from Louisiana. They are all fine judges. I have in mind both those appointed by President Eisenhower, with regard to whom I was not consulted, those appointed by John Kennedy and those who were appointed by Lyndon Johnson. Every last one of them are very fine men.

The Senator asked me about the fifth circuit, and I should like to make the Senator a sporting proposition here, to pick out any of those, any three, I will call them, the judges that the Senator thinks are men who have had more cases before them than before Judge Carswell. Those are judges I know. I went to law school with some of them.

Mr. BAYH. Relative to the interpretation of the Constitution and how the judges on the fifth circuit might interpret the Constitution, is it fair to say that the Senator from Louisiana has not objected to the appointment of any of these men on the fifth circuit on the basis that they could not adequately interpret the Constitution?

Mr. LONG. Mr. President, I do not know of any of these judges on the fifth circuit that I have opposed. I know of one that I supported, and I am not complaining. As far as I am concerned, he is all right.

Mr. BAYH. Mr. President, I do not want to belabor the question. However, it seems to me that I have been listening to the Senator from Louisiana express the great concern he has over certain decisions made by certain Judges of the Supreme Court.

What concerns me relative to the ability of the present nominee, Judge Carswell, on interpreting constitutional questions is not related to what the Supreme Court has said on Carswell cases. But it is related to the fact that on 17 occasions, by a unanimous vote of the fifth circuit, the judge has been overruled on matters involving civil rights, human rights, and habeas corpus petitions.

It seems to me that should be of some concern to the Senator if he is consistent, because he would have to suggest that the judges—whom he did not object to and who knew how to interpret the Constitution in the fifth circuit, have said that Carswell was wrong on 17 occasions.

Mr. LONG. Mr. President, would the Senator from Indiana tell me how many cases Judge Carswell decided that the court affirmed and the vote on those cases?

Mr. BAYH. I think, since the Senator from Louisiana is asking the question, he could supply the information.

Mr. LONG. Mr. President, I would not ask the question if I were going to answer it. I am not on the committee. The Senator brought up the matter for the record. He seems to be very well aware of the number of times he was reversed.

Is the Senator here just trying to give one side of the matter?

Mr. BAYH. I am here to show what I think is his very unbalanced picture on civil rights.

Mr. LONG. Mr. President, I do not know whether it is an unbalanced picture, but I think it is an unbalanced presentation.

Does the Senator have the information?

Mr. BAYH. Mr. President, the Fifth Circuit Court agreed with Judge Carswell's decisions so well that they reversed him 59 percent of the time when written opinions were handed down on appeals.

If the Senator would like to do so, he could ask to have one of the members of the staff of the committee go through them case by case.

I am informed that this is three times the rate of reversal for a district judge. And I am particularly concerned because of the insensitivity that the judge shows with respect to the areas of civil rights, human rights, and habeas corpus.

I point out that we are talking about circuit court reversals, and not about the Supreme Court of the United States that some people say is out of balance. We are talking about the fifth circuit which is a little more conservative than other circuits. It is not a flaming bastion of liberalism.

The fifth circuit has overruled the judge, unanimously, on 17 occasions involving civil rights, human rights, and habeas corpus. That is a matter of some concern to me.

Mr. LONG. Mr. President, I am well aware of the fact that the fifth circuit has sought to be out in front of the Supreme Court of the United States and in many instances has sought to make new law, even going beyond the Brown case. And I would assume that when a court is trying to make new law, it is going to have to reverse a judge who holds in accordance with the old law. And I would have to say that the judge is right and that the fifth circuit is wrong.

Mr. BAYH. Seventeen to nothing?

Mr. LONG. Mr. President, I am not here to say that the fifth circuit is always right. I am trying to say that there are a lot of occasions when I have felt that the fifth circuit was wrong.

Is the Senator aware that the fifth circuit has been reversed by the Supreme Court? I do not say that they are always right.

Mr. BAYH. Mr. President, I am sure that few of us would say that any circuit has escaped being reversed by the Supreme Court.

I must say that this is an interesting description of the fifth circuit given by the distinguished Senator from Louisiana, that it is trying to establish new law and is out in front of the U.S. Supreme Court.

I am sure that would be of some interest to the Senate and to the country, but I do not think it is correct.

ORDER OF BUSINESS

Mr. RANDOLPH. Mr. President, will the Senator from Indiana yield to me as in legislative session.

Mr. BAYH. Mr. President, I yield.

THE RIGHT TO VOTE

Mr. RANDOLPH. Mr. President, as in legislative session, I point out that in the aftermath of the recent Senate action to lower the voting age to 18 by statute, there have been editorials of varying opinions on the method of achieving this desired objective.

I particularly call the attention of my colleagues to the editorial published in the Washington Post on Saturday, March 14, 1970, in which the editor strongly recommends that a constitutional amendment be pursued.

I believe that our 18-, 19-, and 20-year-old citizens are vital to the American system of selecting public officials. They will add the vibrancy of youth and new insight in the determination of national policies du.ing these trying and challenging times.

Mr. President, I ask unanimous consent that the editorial to which I have referred, as well as an editorial which was published on Saturday, March 14, 1970, in the Washington Daily News, be printed at this point in the RECORD.

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

[From the Washington Post, Mar. 14, 1970]

THE 18-YEAR-OLD VOTE: STATUTE OR AMENDMENT?

The Senate's 64–17 vote to lower the voting age to 18 reflects a widespread demand for greater youth participation in the processes of government. It is a salutary trend. This newspaper is fully sympathetic with the objective, but the attempt to attain it by means of a statute instead of a constitutional amendment seems to us highly dubious.

The reasoning that a statute alone will suffice is based largely on the Supreme Court's opinion in *Katzenbach* v. *Morgan* and the subsequent projection of the reasoning in that opinion to voting-age requirements by former Solicitor General Archibald Cox. The court, in that case, upset a New York law which made ability to read English prerequisite for voting. The state requirement was in conflict with the Voting Rights Act of 1965 which provided that no person may be denied the right to vote because of inability to read or write English if he had successfully completed the sixth grade in a Puerto Rican school where the instruction was in Spanish. The Supreme Court gave preference to the federal statute because it could "perceive a basis" on which Congress might view the denial of the vote to Spanish-speaking Puerto Ricans "an invidious discrimination in violation of the equal protection clause" of the Fourteenth Amendment.

Mr. Cox and some other constitutional authorities have concluded that Congress is now free to say that the denial of the vote to citizens between 18 and 21, on the ground that they lack the maturity to vote, is also invidious discrimination. It is a long leap, however, from striking down a discriminatory language requirement to fixing an age limit at which voting may begin. In the New York case there was actual discrimination against Puerto Ricans seeking to vote in that state despite the seeming general applicability of the statutory language. But where is the denial of equal protection in a voting-age requirement that is applied without discrimination to citizens of all nationalities, races and so forth? If it is invidious discrimination to deny the vote to 18- 19- and 20-year-olds, would it not be equally unconstitutional to deny it to 17-year-olds?

The founding fathers unquestionably intended to leave voting age requirements to the states. This is evident in the provision that voters in congressional elections "shall have the qualifications requisite for electors of the most numerous branch of the state legislature." The effect of the Senate's 18-year-old voting amendment to the voting rights bill would be to transfer to Congress this authority to fix requirements, in state as well as federal elections. We agree that the voting age should be lowered, but there are powerful arguments on grounds of policy as well as constitutional law for using the amendment process.

Sponsors of the change by statute, Senators Mansfield, Kennedy and Magnuson, think they have adequately guarded against inconclusive elections under the bill by expediting a test of its constitutionality. Certainly that is a wise precaution. But when basic changes of this kind are to be made (46 states now impose the 21-year-old voting requirement) the proper procedure is a constitutional amendment. Now that senators have had an opportunity to vote for a popular measure, they could logically agree to rest the reform on more secure ground.

[From the Washington Daily News, Mar. 14, 1970]

LET'S VOTE AT 18 IN 1971

The U. S. Senate's decision by a vote of 64 to 17 to lower the voting age to 18 next year indicates the nation finally may be ready to do something about the fact that millions of Americans have been unfairly excluded from the political process.

The chief argument in the Senate against lowering the voting age to 18 by an act of Congress was that it might be unconstitutional.

But the Constitution does not explicitly speak to the matter one way or another. This would seem to mean that Congress is free to act.

If there is any question about lowering the voting age by act of Congress rather than by constitutional amendment, the lower voting age proposed by the Senate would not take effect until Jan. 1, 1971, allowing plenty of time for a Supreme Court ruling.

Highly significant was the fact that Senate debate ignored almost entirely the outworn argument that persons 18-to-21 are too young to be trusted with the responsibilities of citizenship.

As the situation stands, more than 10 million Americans between the ages of 18 and 21—some of our brightest and most concerned citizens—are denied the right to vote in local, state and national elections.

Waiting for the states to lower the voting age (only four have done so) would be an admission that the nation simply doesn't care enough to correct an obvious injustice.

Unfortunately, the Senate bill has a long way to go before it becomes law.

The vote-at-18 proposal was attached as a rider to the bill extending the protection of Negro voting rights in the South.

This means the youth issue could become entwined with the race issue when the differences between the Senate bill and a bill passed by the House of Representatives last year are worked out.

Another obstacle is the opposition of the Nixon Administration to a lowering of the voting age without constitutional amendment.

But if the Senate action is any measure of the new mood in Congress, there is good reason to believe that voting at 18 is an idea whose time has finally come.

Mr. RANDOLPH. Mr. President, additionally, a New York Times editorial of Saturday, entitled "Protecting the Right To Vote," states:

The proposal to lower the voting age from 21 to 18, though highly desirable, is too important to be slipped through as a rider. Indeed, it is far from certain that the change in voting age can be made by simple act of Congress without formal amendment of the Constitution. The whole question deserves consideration—and approval—on its merits.

ADDITIONAL COSPONSOR

SENATE JOINT RESOLUTION 147

Mr. RANDOLPH. Mr. President, as in legislative session, I ask unanimous consent that, at the next printing, the name of the Senator from California (Mr. MURPHY) be added as a cosponsor of Senate Joint Resolution 147, proposing an amendment to the Constitution of the United States extending the right to vote to citizens 18 years of age or older.

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

Mr. GRIFFIN. Mr. President, with the addition of the senior Senator from California (Mr. MURPHY), would the Senator inform the Senate how many Senators are cosponsors of his resolution.

Mr. RANDOLPH. Mr. President, I am grateful for the inquiry of the able as-

sistant minority leader. There are now 72 Senators who have joined me in the cosponsorship, making a total of 73 Senators on Senate Joint Resolution 147.

As the Senator knows, Senate Joint Resolution 147 is now pending in the Subcommittee on Constitutional Amendments chaired by the Senator from Indiana.

I am sure it is the hope of the Senator from Michigan (Mr. GRIFFIN) and also of my colleague, the Senator from West Virginia (Mr. BYRD), who is in the Chamber at this time, as well as other Senators, that we will have a prompt reporting of that resolution from the subcommittee to the full Judiciary Committee and then to the Senate, so that we will be prepared to act immediately on the constitutional amendment approach.

As I stated last week, it is my belief that the lower voting age would best be accomplished through the constitutional route by an affirmative vote of two-thirds of the Members of the two Houses present and voting and the subsequent ratification by three-fourths of the States. This would bring the matter to finality by writing this change into the language of the Constitution of the United States.

COMMISSION ON GOVERNMENT PROCUREMENT—APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. DOLE). The Chair, on behalf of the Vice President, pursuant to Public Law 91–129, appoints the Senator from Washington (Mr. JACKSON), the Senator from Florida (Mr. GURNEY), and Mr. Richard E. Horner to the Commission on Government Procurement.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Acting President pro tempore (Mr. ALLEN):

S. 495. An act for the relief of Marie-Louise (Mary Louise) Pierce.

H.R. 1497. An act to permit the vessel *Marpole* to be documented for use in the coastwise trade.

SUPREME COURT OF THE UNITED STATES

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

Mr. HART. Mr. President, a few moments ago I had the privilege of hearing the exchange between the Senator from Indiana (Mr. BAYH) and the Senator from Louisiana (Mr. LONG). It was interesting and informative in several respects. I rise to make comments not on the qualifications of the nominee now pending, nor on the fact that the Senate was not permitted to consider the name of Justice Fortas who had been nominated to be Chief Justice, nor on the performance record of the fifth circuit. I just wish to express my hope that this debate will not contribute to the foolish notion that crimes of violence—such as murder, rape, and robbery, which the distinguished Senator from Louisiana mentioned—can be eliminated or substantially reduced by changing the men on the Supreme Court. Indeed, I suggest it would serve the country poorly in this debate to advance the proposition that it is because of the Supreme Court that there has been this shocking increase in crimes of violence.

Every American realizes that if he is fearful to go out of his home at night, his liberty is less; if he is afraid to attend a parents meeting at school at night, his freedom is impinged—and not as the result of anything Mao Tse-tung or Moscow is doing.

But to suggest that these conditions result from three or four decisions of the Supreme Court and can be changed by adding new personnel until there is a reversal of those decisions does not promote the security of this country.

It is suggested once again that there is an easy and cheap answer. Only when we realize there is no cheap answer, but only an expensive one; and not a quick answer but only a long term answer, will we begin to fight crime intelligently.

What I have said echoes cautions that have been voiced for years. Congress can get into a great lather when some hoodlum commits a crime that outrages a community; and agree to do a great deal about that fellow. Why do we not react as vigorously to the documentation of the unmet human need as it relates to the incidence of crime. Let us go back to the Wickersham Commission. I think I was still in school when that group told us we should put up money, incorporate systems of jurisprudence, and improve the institutions to which criminals are sent.

What are our needs today? This is where too many people today turn off their listening devices. There is assurance of equality of opportunity which begins with decent, healthy bodies in childhood; in this way, malnutrition has its affect on crime. There are the needs for a decent home in which to grow up and a school system where there is excellence. It involves whether one comes from a home of darkness to begin with or not; it involves all of this.

Let us stop encouraging the dangerous mood in this country which suggests that if we just get tough and double or triple jail sentences, everything would be great.

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

Mr. HART. I yield.

Mr. BAYH. Mr. President, I do not wish to interrupt the Senator's thought, but I could not concur more than I do with what the Senator said very adequately when he pointed out the fallacy and the mistaken reasoning of some that to stop the increase in crime is a 2-plus-2-equals-4 problem; that it is, indeed, a complicated algebraic problem; and he made reference to the locking up of suspects. Of course, all of us feel that anyone who transgresses against his neighbor and is convicted should be subject to punishment under the law. But it seems to me totally inconsistent for those who are really concerned in a meaningful way about doing something to increase the safety on our streets and in our neighborhoods to suggest that we lock up more people and put them in the same snake pits they were taken from.

Seventy percent of those who are turned out of the prisons are going to be right back on the streets, preying on the men and women in this country. They are going to be back in the prisons. Once that happens they become professional criminals and we are not doing anything to solve the problem.

I am glad the Senator from Michigan brings it out so clearly.

Mr. HART. I thank the Senator. I had better be careful as I go on because I do not want to forget one point I intended to make when I rose. I did not intend to make it at any great length. I just hope that not alone in connection with this debate but in the conduct of all of our business we will resist the temptation to suggest to ourselves, much less to the country, that there is some shortcut, easy answer to reverse the prevalence of crime in this country.

I intend to make the point that national commission after national commission has told us the things that must be done if we want to make America secure internally from the threat of violent crime. There was the Wickersham Commission of some 30 or 40 years ago. No attention was paid to that in terms of delivering on the basic recommendations. There is in our own recent past the report of the President's Commission on Crime, which is about 3 years old. They told us what had to be done.

There is the Kerner Commission of 2 years ago, and there is the Commission on Causes and Prevention of Violence, on which I was permitted to sit. Let me read two sentences from a section of our report on violence and law enforcement:

> Too little attention has been paid to the Crime Commission's finding that the entire criminal justice system—federal, state and local, including all police, all courts and all corections—is underfinanced, receiving less than two percent of all government expenditures. On this entire system—

May I repeat—Federal, State, and local—

> we spend less each year than we do on federal agricultural programs and little more than we do on the space program.
>
> *In this Commission's judgment, we should give concrete expression to our concern about crime by a solemn national commitment to double our investment in the administration of justice and the prevention of crime, as rapidly as such an investment can be wisely planned and utilized.*
>
> When the doubling point is reached, this investment would cost the nation an additional five billion dollars per year—less than three-quarters of one percent of our national income and less than two percent of our tax revenues. Our total expenditure would still be less than 15 percent of what we spend on our armed forces. Surely this is a modest price to pay to "establish justice" and "insure domestic tranquility" in this complex and volatile age.

Mr. President, this has attracted very little attention, but assume the conclusion of the Commission is sound. Think

of all the things that have to be done at each level of our government before anybody can get up here and say he is engaged in fighting crime. And let nobody get up here and say he is engaged in fighting crime by picking off some seat on the Supreme Court.

I do hope that those who feel so deeply that certain decisions of the Supreme Court have contributed in substantial fashion to the increase in crime—and when a man does feel that he has every reason to seek to turn the Court around—will join those of us who say there is much more to be done, including this massive infusion of resources.

The suggestion the Senator from Indiana has made is one that I hope he will now continue to develop. Is the nominee before us possessed of such distinction, academically and professionally, as a judge to persuade us to consent to the nomination? If he is a strict constructionist, none of us can quarrel with that. That was one-half of the President's pledge when he was campaigning for the Presidency. But is he a man of eminence in his profession? That was the second part of his pledge. That is what the Senator from Indiana addresses himself to. I welcome the opportunity to hear him further on it.

Mr. BAYH. Mr. President, I am reluctant ever to take issue with the Senator from Michigan because he is such a student of anything he speaks on, but, in the judgment of the Senator from Indiana, when one examines carefully the record of the case law established by G. Harrold Carswell, it seems to me he really does not meet the standard of a strict constructionist at all.

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

Mr. BAYH. I yield.

Mr. HART. I sense that the Senator is going to develop a point that has been overlooked, and I am prepared to stand corrected. When I said I have no doubt that he is a strict constructionist, I used the term "strict constructionist" in the shorthand message that is intended to be conveyed by someone in an election when he is campaigning for President; but in terms of whether he in fact understands the flow of history that produced the Constitution and the forces that operated then and that operate now with respect to that interpretation, I would like to see that developed to see whether Judge Carswell meets the test of whether he understands the meaning of construing the Constitution constructively and conservatively.

Mr. BAYH. I appreciate the comments of the Senator from Michigan. The Senator from Indiana is going to follow the effort of developing what is and what is not a strict constructionist. That is why I was so anxious to get the thoughts of our colleague, the Senator from Louisiana, into the RECORD, to see what test one must meet to be a strict constructionist. I suppose there are 100 opinions in this body with respect to what a strict constructionist means, but if by "strict constructionist" we mean one who applies given facts to a situation and the law involved to the Constitution and what has been said prior to that time on the Constitution, not only by the Supreme Court but the various circuit courts, then it seems to me we have an abundance of opinion which leads us to the conclusion that, rather than being a strict constructionist, this nominee has been launching on a sea of new law, trying to establish a record of "Carswell on the Constitution." I frankly do not see how that is related in any way to the now famous term of "strict constructionist."

The Senator from Indiana was about to discuss what some eminent legal scholars throughout the country had determined was the legal competence of the nominee, when he became involved in a very enlightening colloquy with our distinguished colleague from Louisiana. I will return to that part of my remarks, but before doing so, inasmuch as the Senator from Louisiana and the Senator from Indiana had been discussing the number of times in which the nominee had been reversed by the fifth circuit, and trying to analyze his ability to interpret the Constitution as it had been interpreted by the fifth circuit, and other courts as well, I ask unanimous consent to have printed in the RECORD perhaps the most thorough analysis of the judge's various holdings in a number of cases, which was compiled by the Ripon Society, and then let the Senate decide for itself the validity of the assessment made by that body.

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

THE CASE AGAINST CARSWELL: A RIPON SOCIETY PAPER

The Ripon Society urges Republican Senators to uphold their party's best traditions by rejecting confirmation of the nomination of Judge G. Harrold Carswell to the United States Supreme Court. While very damning evidence concerning Judge Carswell's judicial impartiality has already come to light, the most manifest reason for refusing confirmation to this nomination is the undeniable legal inadequacy of Judge Carswell.

Virtually all legal historians and scholars who have examined G. Harrold Carswell's record have found him to be one of the least qualified, if not the least qualified, nominee to the United States Supreme Court in the twentieth century. Exhaustive studies which have been performed jointly in the last month by a large number of lawyers and law students and which are being released for the first time in this Ripon Society paper give extremely strong statistical corroboration to the contention of judicial scholars that G. Harrold Carswell is seriously deficient in the legal skills necessary to be even a minimally competent Supreme Court Justice.

IN THE LEGAL INADEQUACY OF JUDGE CARSWELL

Legal scholars who have examined G. Harrold Carswell's judicial opinions (Carswell has written no scholarly articles) or who have studied his record have concluded that Carswell lacks any legal distinction whatever.

Duke University Law School Professor William Van Alstyne, who testified in favor of the Haynsworth nomination, testified of Carswell: "There is in candor, nothing in the quality of the nominee's work to warrant any expectation whatever that he could serve with distinction on the Supreme Court of the United States."

Yale University Law School's Luce Professor of Jurisprudence, Charles L. Black, Jr., himself a native of Texas, has stated of Carswell, "There can hardly be any pretense that he possesses any talent at all."

Twenty professors at the University of Pennsylvania Law School have announced concerning Carswell: "Our examination of his opinions in various areas of the law compels the conclusion that he is an undistinguished member of his profession, lacking claim to intellectual stature."

After thoroughly examining Judge Carswell's opinions of recent years, Louis Pollak, Dean of the Yale University Law School, testified to the Senate Judiciary Committee: "I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century, and this century began as I remind this committee with the elevation to the Supreme Court of the United States of the Chief Justice of Massachusetts Oliver Wendell Holmes."

An exhaustive statistical study recently completed by a number of lawyers and law students organized by Law Students Concerned for the Court reveals some very damaging information concerning Judge Carswell's judicial record. After a careful examination of the statistics yielded by the study and of the soundness of the methodology used in obtaining them, the Ripon Society concludes that these statistics strongly corroborate the contentions of legal scholars that Judge Carswell is an exceptionally inadequate federal judge besides being a poorly qualified Supreme Court nominee. This study yielded the following results:

1. *Reversals on Appeal.* During the eleven years (1958–1969) in which Judge Carswell sat on the federal district court in Tallahassee, 58.8% of all of those cases where he wrote printed opinions (as reported by West) and which were appealed resulted ultimately in reversals by higher courts. By contrast in a random sample of 400 district court opinions the average rate of reversals among all federal district judges during the same time period was 20.2% of all printed opinions on appeal. In a random sample of 100 district court cases from the Fifth Circuit during the 1958–1969 time period the average rate of reversals was 24.0% of all printed opinions on appeal.[1]

2. *Reversals in General.* Carswell's rate of reversals for all of his printed cases was 11.9% as compared to a rate of 5.3% for all federal district cases and 6% for all district cases within the Fifth Circuit during the same time period.

The majority of cases before any federal district judge ordinarily do not result in appeals, hence precluding the possibility of reversals in those cases. It is significant however, that Carswell's overall reversal record for his printed cases is more than twice the average for federal district judges. When additional unprinted opinions revealed by the testimony of Joseph L. Rauh, Jr. before the Senate Judiciary Committee and by the memorandum of Senator Hruska are included, Carswell is found to have an overall reversal rate of 21.6%. [For further discussion refer to the statistical summary in the appendix to this paper.]

3. *Citation by Others.* Carswell's 84 printed opinions while he was serving as a district court judge were cited significantly less often by all other U.S. judges than is the average for the opinions of federal district judges. Carswell's first 42 opinions during his first five years on the federal judiciary (1958–1963) have been cited an average of 1.8 times per opinion. Two hundred opinions of other district judges randomly chosen from district court cases spanning this same time period have been cited an average of 3.75 times per opinion. The 42 most recent of Carswell's printed district court opinions have been cited an average of 0.77 times per

Footnotes at end of article.

opinion. Two hundred opinions of other district judges randomly chosen from cases spanning the same 1964–1969 time period have been cited an average of 1.57 times per opinion.

4. *Elaboration of Opinions.* Carswell's printed district court opinions average 2.0 pages. The average length of printed opinions for all federal district judges during the time period in which Carswell sat on the district bench was 4.2 pages.[2]

5. *Use of Authority.* In the 84 above-mentioned printed Carswell opinions the average number of citations of cases is 4.07 per opinion, and the average number of citations of secondary source material is 0.49 per opinion.[3] The average for all district judges during the 1958–1968 time period was 9.93 case citations per opinion and 1.56 citations of secondary source material per opinion.

When these results are analyzed cumulatively they form a most impressive indictment of Judge Carswell's judicial competence. The incredibly high rate of reversals (59%) which Carswell has incurred on appeals in those cases in which he has written printed opinions brings into serious doubt the nominee's ability to understand and apply established law.

The shortness of a particular opinion and the relative paucity within it of case citations and citations of secondary materials do not necessarily indicate deficiency. Short opinions which are succinct and logical display great legal virtuosity, as Justice Holmes demonstrated. Yet not even Carswell's strongest supporters could argue seriously that the nominee's opinions have shown any unusual conciseness, perceptiveness, or skill. The very fact that Judge Carswell was so rarely cited by other federal judges who as a group are best equipped to evaluate the weight to be given to a judge's opinion underscores the generally low quality of Carswell's opinions. We are led inevitably to the conclusion that the shortness and slim documentation of most of Carswell's opinions is evidence of either Carswell's lack of diligence or his lack of ability.

The Senate Judiciary Committee record shows the Fifth Circuit Court of Appeals' reversing Judge Carswell again and again for failing to follow established legal procedures. Of particular concern was Carswell's failure to grant adequate hearings to individual petitioners in civil rights and criminal cases. [Attached to this paper is an appendix summarizing a number of these cases.]

Judge Carswell is said to have boasted that he almost never held an evidentiary hearing in the federal equivalent of a *habeas corpus* case. This cavalier attitude on Carswell's part is yet another example of his insensitivity to essential individual rights dating at least as far back as the Magna Carta. Judge Carswell's attitude in *habeas corpus* cases, as well as in the civil rights area, suggests that his constructionism has been more "selective" than "strict."

The analysis of Judge Carswell's record during his eleven years on the federal district court would suggest that the nominee was significantly below the level of the average federal district courts judge. There is no evidence to suggest that Carswell possesses any unusual talent to raise him above other federal judges. G. Harrold Carswell's performance in the short time since he was appointed to the Fifth Circuit Court of Appeals has shown no signs of a late-blooming virtuosity.

Whatever their legal philosophies, young lawyers, law students, and law professors have reacted with overwhelming dismay to the appointment of such a mediocre lawyer to the Supreme Court. These individuals who form a major portion of the Ripon Society's constituency are fully aware of the enduring character of a Supreme Court appointment, especially that of a man as young as Carswell.

This dismay is felt generally throughout the legal profession. The vote of the Standing Committee on the Judiciary of the American Bar Association finding Carswell qualified is unrepresentative of membership sentiment within either the overall bar or the American Bar Association. Significantly the Chairman of this Standing Committee is the same man who as Deputy Attorney General of the United States played a major role in 1958 in the selection of Carswell to the federal bench in the first instance.

II. CARSWELL FALLS FAR SHORT OF REPUBLICAN STANDARDS FOR JUDICIAL DISTINCTION

During the twentieth century Republican Presidents have maintained a remarkable standard in choosing judicial statesmen for the Court. Oliver Wendell Holmes, Charles Evans Hughes, William Howard Taft, Harlan Fiske Stone, Owen J. Roberts, Benjamin Cardozo, Earl Warren, John Marshall Harlan, William Brennan and Potter Stewart have all made significant contributions to American jurisprudence. The Ripon Society welcomed Mr. Nixon's campaign pledge to appoint to our nation's highest court persons of the caliber of Holmes, Brendeis, and Cardozo. Yet the members of the Ripon Society and many other concerned Americans find themselves deeply disappointed with the quality of recent nominations to the Supreme Court made by the present administration.

The Haynsworth nomination was inadequate to the national need to restore public confidence in the integrity of the judiciary in the wake of the Fortas resignation. Yet far more important than the possible vulnerability of Judge Haynsworth to conflict of interest charges was his limited sensitivity to the rights of blacks and labor. Judge Haynsworth, although a decent man, did not meet either in judicial insight or craftsmanship the standards of greatness which a nation demanded.

The duty which Republican Senators deliberating on the Carswell nomination owe to the Court and to the best traditions of the Republican Party transcends any duty to support a President of their own party on his Court nominee. They do the President no disservice by preventing a mistake which is likely to endure long after the President's tenure in the White House. In fact, by opening this seat once more to a Presidential nomination Senators could enable the President to put on the Supreme Court a person of greatness.

Legal inadequacy of a Court appointee has historically been a principal ground for the rejection of a number of Supreme Court nominees. President Grant withdrew the nominations of George H. Williams of Oregon and Caleb Cushing of Massachusetts after public outcries based largely on their mediocrity. Two of President Cleveland's nominees, William B. Hornblower and Wheeler H. Peckham, were rejected by the Senate largely because they were felt to lack either the impartiality or the stature necessary for the judiciary.

III. CARSWELL'S LACK OF JUDICIAL IMPARTIALITY

Although it may be true that most people including judges have biases of one sort or another, it is incumbent on a judge in fulfilling his judicial function that he rise above these biases and adopt a neutral posture as an adjudicator of the law. Yet Judge Carswell through his decisions and his other uses of judicial power has seemed to eschew the role of impartiality demanded of a judge.

When he was serving as a federal district judge, Judge Carswell achieved the astonishing record of reversal in a tremendous number of civil rights decisions. Fifteen times Carswell was unanimously reversed on civil rights cases by the Fifth Circuit Court of Appeals.

Carswell's 1948 election speech declaring undying allegiance to the principles of white supremacy is deplorable, but we fully recognize that such ill-spoken words can be surmounted by men with a potential for growth. The example of Justice Hugo Black comes readily to mind. Judge Carswell during his entire time of federal service, however, has shown no growth either in legal ability or in sensitivity to the rights of black Americans.

In 1956 when he was serving as a United States attorney responsible for upholding the rights of members of all races, G. Harrold Carswell acted as an incorporator of a private club set up to take over the municipal golf course to prevent its integration. Judge Carswell's recent denials that he knew the private club was set up to maintain segregation seem disingenuous in the extreme.

More disturbing than the golf course incident, however, has been the blatantly anti-Negro, anti-civil rights character of Judge Carswell's conduct on the federal bench. In his letter of reply to Senate Judiciary Committee members who had queried him concerning charges of activity on his part to stifle civil rights workers, Judge Carswell failed to make any denial of some severe charges of judicial misconduct. He left unrebutted the charge that while he served in Tallahassee as a federal district judge he arranged with a local sheriff to rejail some civil rights workers he had been ordered to free by the Fifth Circuit Court of Appeals.

The testimony before the Senate Judiciary Committee suggested that in one case Judge Carswell granted a writ of habeas corpus, required the prisoners' attorney to serve the writ on the sheriff at the jail, then notified the sheriff that he had remanded the case to local jurisdiction so the prisoners could be rearrested before they left the jail.

Other unrebutted testimony has alleged that Judge Carswell commuted sentences of civil rights workers for the purpose of preserving illegal local practices. Faced with a legal necessity to overturn the convictions of certain civil rights workers, Judge Carswell allegedly advised the city attorney that if he commuted their sentences to time already served the matter would become moot.

Judge Carswell's continuing involvement as a charterer of a segregated Florida State University Boosters Club, his passage of property in 1966 under a racially restrictive covenant, and his telling of a tasteless "darky" joke as speaker at a recent public gathering of the Georgia Bar Association are all indications that G. Harrold Carswell has not progressed appreciably beyond the views expressed in his 1948 campaign speech.

IV. THE CARSWELL NOMINATION IS AN INSULT TO SOUTHERN JURISPRUDENCE

Our opposition to the Carswell appointment in no way derives from the nominee's Southern origin. A number of great towers of our nation's judiciary are Southerners. Such men as Judge John R. Brown of Texas, Elbert Tuttle of Georgia, John Minor Wisdom of Louisiana and Frank Johnson of Alabama all have displayed an unflinching devotion to the Constitution of the United States and have exhibited a moral courage of high degree. Justice Hugo Black of Alabama has established himself as one of the great jurists of American history.

Both today and throughout our nation's history the South has produced first-rate legal minds. A Virginian, John Marshall, has had as great an influence as any American judge on the development of our legal institutions. The first Justice John M. Harlan from Kentucky and Justice L. Q. C. Lamar from Mississippi both demonstrated the high potential of Southern legal scholarship.

In passing over so many well qualified Southern lawyers and jurists, the choice of Carswell seems an insult to Southern jurisprudence. Unhappily a man lacking in both intellectual distinction and in judicial fairness is presented to the nation as representative of Southern jurisprudence.

Conclusion:

Persuaded that G. Harrold Carswell lacks either the intellectual stature or the judicial

impartiality to qualify for a place on our nation's highest court, we urge the Republican members of the Senate to uphold their party's best tradition by denying confirmation to G. Harrold Carswell's nomination thus allowing President Nixon to submit the name of a person who can command national respect both for his or her fairness and legal stature.

BRIEF SUMMARY OF REVERSALS OF JUDGE CARSWELL

Judge Carswell has been reversed by the Fifth Circuit Court of Appeals and by the United States Supreme Court at least 33 times. A brief description of some of those cases follows.

Augustus v. *Board of Pub. Instr. of Escambria County, Fla.*, 185 F. Supp 450 (1960). Judge Carswell was unanimously reversed by the Fifth Circuit, 306 F. 2d 862 (1962) for striking portions of Negro children's complaint asking integration of school faculties. He held they had no standing to enjoin teacher assignments based on race, which he said was like enjoining "teachers who were too strict or too lenient." (p. 453). The Fifth Circuit criticized Carswell's ruling: "Whether as a question of law or one of fact, we do not think that a matter of such importance should be decided on a motion to strike. As well said by the Sixth Circuit: '. . . it is well established that the action of striking a pleading should be sparingly used by the courts. . . . It is a drastic remedy to be resorted to only when required for the purposes of justice.'" (p. 868)

In the same opinion, the Fifth Circuit also unanimously reversed Judge Carswell's school desegregation plan order of 1961, 6 Race Rel. L. Rep. 689, which was merely to permit continued assignment of pupils under Florida's Pupil Assignment Law, which the Fifth Circuit has twice held, in both 1959 and 1960, to be inadequate to meet the *Brown* requirement, because it was "administered . . . in a manner to maintain complete segregation in fact." (p. 869) After being reversed Carswell waited four months to implement the Fifth Circuit's decision, then postponed the effective date of the plan for 10 months or more.

Steele v. Board of Pub. Instr. of Leon County, Fla., 8 Race Rel.L.Rep. 934 (1963), decided by Judge Carswell 10 months after the *Augustus* reversal, found him again approving assignments under the Pupil Assignment Law, then thrice held inadequate by the Fifth Circuit Court of Appeals, and making token desegregation of only one grade per year beginning in 1963 despite the Fifth Circuit's statement in *Augustus:* "[If it is too late to integrate for the 1962 year] then the plan should provide for such elimination as to the first *two* grades for the 1963 fall term." (p. 869, emphasis added) Two years after Carswell's 1963 order the Negro children moved to have him speed up the plan in compliance with subsequent Supreme Court rulings, and Carswell refused to reorganize the plan, telling their attorney, "it would just be an idle gesture regardless of the nature of the testimony." The Fifth Circuit unanimously reversed both of Carswell's orders, 371 F.2d 395, instructing him to follow its subsequent definitive *Jefferson* ruling extending the earlier precedents.

Youngblood v. Board of Pub. Instr. of Bay County, Fla., 230 F.Supp 74 (1964), two years after the reversal in *Augustus*, was another Carswell decision unanimously reversed by the Fifth Circuit (No. 27683, Dec. 1, 1969), in which he had permitted token desegregation under the disapproved Pupil Assignment Law, and even that delayed for 16 months. Carswell's plan allowed only for so-called "freedom of choice" transfers during a five-day registration period and parents would have to come to the superintendent's office during working hours. His plan was again a grade-a-year plan, violating the Fifth Circuit's then one-month-old decision in *Armstrong*, 333 F.2d 47 (1964).

Subsequent motions in *Youngblood* denied by Carswell also violated precedents unmistakably clear at the time of denial. For example, in 1965, when Carswell refused to speed up his grade-a-year plan, such plans had already been clearly held unconstitutional by the Third Circuit (*Evans*, 281 F.2d 385 (1960)), Fourth Circuit (*Jackson*, 321 F.2d 230 (1963), Haynsworth, J., concurring), Sixth Circuit (*Goss*, 301 F.2d 164 (1962), rev'd on other grounds 373 U.S. 683) and Eighth Circuit, and Carswell's own Fifth Circuit Court of Appeals had held months earlier, in *Lockett*, 342 F.2d 225 (1965): "It was then [after *Calhoun*, 377 U.S. 263 (1964)] beyond peradventure that shortening of the transition period was mandatory." (p. 277) Similarly, after the Justice Department intervened to support plaintiffs' motions to substitute effective methods in place of so-called "freedom of choice" transfers, Carswell on August 12, 1968 and April 3, 1969 approved "freedom of choice"—all of this after the U.S. Supreme Court on May 27, 1968 held: "The New Kent School Board's 'freedom-of-choice' plan cannot be accepted as a sufficient step to 'effectuate a transition' to a unitary system." ". . . experience under 'freedom of choice' to date has been such as to indicate its ineffectiveness . . ." *Green*, 391 U.S. 430, 440, 441.

Wright v. Board of Pub. Instr. of Alachua County, Fla., unreported, unanimously reversed by the Fifth Circuit (No. 27983, 1969) repeats the story of *Youngblood*.

Singleton v. *Board of Comm'rs of State Institutions*, 11 Race Rel.L.Rep. 903 (1964) was another segregation decision by Carswell unanimously reversed by the Fifth Circuit, 356 F. 2d 771 (1966). In a 99-word opinion he held that inmates had no standing to seek desegregation of reform schools because before he had rendered judgment they had been released on conditional parole. The Court of Appeals decisively rejected that notion: "The plaintiffs' probationary status brings them well within the future-use requirement for standing." It relied on its own *Anderson* decision, 321 F. 2d 649, rendered a year before Carswell's order.

Due v. *Tallahassee Theatres, Inc.*, 9 Race Rel.L.Rep. (1963), still another segregation case in which Judge Carswell denied even an evidentiary hearing, also resulted in unanimous reversal by the Fifth Circuit, 333 F. 2d 630 (1964). In a suit seeking desegregation of theatres and alleging a conspiracy between the theatres, the city and the sheriff, Carswell dismissed the complaint as against the theatres and the city for failure to state a justiciable claim, and granted summary judgment on the sheriff's affidavit denying that there was any conspiracy. The Fifth Circuit held that both of his actions plainly violated clear pre-existing law: "This Court has repeatedly held that if the complaint alleges facts, which, under any theory of the law, would entitle the complainant to recover, the action may not be dismissed for failure to state a claim. *Arthur H. Richland Company* v. *Harper*, 5 Cir., 302 F. 2d 324 [1962]. There is no doubt about the fact that the allegations here stated a claim on which relief could be granted, if the facts were proved. See *Lombard* v. *Louisiana*, 373 U.S. 267 [May, 1963 (5 months before Carswell's decision)]." (p. 631) And on the issue of granting summary judgment without a trial: "There clearly remained issues of fact to be determined on a full trial of the case. . . ." (p. 633).

Dawkins v. *Green*, 285 F. Supp. 772 (1968) was, as the Fifth Circuit recognized in its unanimous reversal of Carswell's grant of summary judgment for the defendants, 412 F. 2d 644 (1969), a case similar to the well-known *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965). The plaintiffs were Negro civil rights workers, suing public officials and alleging that the defendants had initiated prosecutions in bad faith to retaliate for and to chill their exercise of constitutional rights in civil rights activities. The public officials filed affidavits, described by the Fifth Circuit as "simply a restatement of the denials contained in their answer . . . they set forth only ultimate facts or conclusions . . . that they did not enforce the laws against plaintiffs in bad faith." (p. 646) Carswell held that, "From the proofs here it is clear that there was no harassment, intimidation or oppression . . . and they are being prosecuted in good faith. . . ." (p. 774) Once more, the Fifth Circuit cited its own clear pre-existing law on summary judgments in reversing Carswell: "No facts were present so that the trial Court could arrive at its own conclusions. As discussed in *Woods* v. *Allied Concord Financial Corporation*, (Del.), 373 F. 2d 733 (5 Cir. 1967), in summary judgment proceedings, affidavits containing mere conclusions have no probative value." (p. 646)

In at least 10 habeas corpus cases, Carswell was unanimously reversed by the Fifth Circuit for refusing to permit petitioners the opportunity to prove facts they alleged, which if proven would have clearly—under then-existing rulings—entitled them to relief, except perhaps in *Beufve*, below, where substantive law was clarified in the interim. The 10 cases are listed first, then discussed:

Meadows v. United States, 282 F.2d 942 (5th Cir. 1960);

Dickey v. United States, 345 F.2d 508 (5th Cir. 1965);

Rowe v. United States, 345 F.2d 795 (5th Cir. 1965);

Beufve v. United States, 344 F.2d 958 (5th Cir. 1965);

Baker v. Wainwright, 391 F.2d 248 (5th Cir. 1968);

Dawkins v. Crevasse, 391 F.2d 921 (5th Cir. 1968);

Brown v. Wainwright, 394 F.2d 153 (5th Cir. 1968);

Cole v. Wainwright, 397 F.2d. 810 (5th Cir. 1968);

Harris v. Wainwright, 399 F.2d 142 (5th 1968); and

Barnes v. State of Florida, 402 F.2d 63 (5th Cir. 1968).

Following is some of the Fifth Circuit's language in its peremptory reversals, citing Carswell to controlling precedent:

Meadows: "We think that the allegations of the motion, inartful though they be, are sufficient to set forth the contention [that mental illness voided effective waivers and guilty plea]. His statements of prior determination of a mental illness takes the motion out of the category of frivolous claims and requires a hearing. Bishop v. United States, 350 U.S. 961 [1956]."

Dickey: "the prisoner was entitled to an evidentiary hearing. Gregori v. United States, 5 Cir., 243 F.2d 48 [1957]."

Rowe: The *entire* Fifth Circuit opinion states: "The appellant sought relief under 28 U.S.C.A. § 2255 from a mail fraud conviction. The district court denied relief. Merrill v. United States, 5th Cir. 1964, 338 F.2d 763, requires a reversal." The Fifth Circuit's order then not only reversed and remanded, but added the unusual directions to vacate the conviction and sentence and dismiss the indictment.

Baker: "[Defendant] sought habeas corpus relief in the district court on the ground that he was denied the right to counsel on the appeal from this conviction. The court denied relief without a hearing. . . . In Entsminger v. Iowa, 1966, 386 U.S. 748 . . . the Supreme Court said: 'As we have held again and again, an indigent defendant is entitled to the appointment of counsel to assist him on his first appeal' . . . [T]he cause is remanded for an evidentiary hearing. . . ."

Dawkins (the same Dawkins as in Carswell's summary judgment reversal): "we conclude that the Trial Judge erred in not granting a writ of habeas corpus at least to

the extent of ordering appellants' release on bail pending their appeal in the Florida courts. We . . . direct the District Judge to enter an order granting bail in the amount of $1000. . . ."

Cole: The entire Fifth Circuit reversal states: "The allegations of the petitioner are of such a nature as to require a hearing under 28 U.S.C.A. § 2243. It could not appear from the application and the file supplied by the state 'that the applicant . . . [was] not entitled' to the writ."

Barnes: "[Defendant] alleges coercion of a plea of guilty and ineffective assistance of counsel, contending that court-appointed counsel, whom he saw only for a few minutes four days before trial and a few minutes prior to trial, coerced him into pleading guilty, assuring him that a deal had been made for shorter sentences. . . . If appellant's allegations as to what occurred at his arraignment and sentence are found to be true, he is entitled to have the writ granted and his conviction set aside. Holloway v. Dutton, 5 Cir., 1968, 396 F. 2d 127 Roberts v. Dutton, 5 Cir. 1966, 368 F. 2d 465. . . ."

In addition to the Fifth Circuit's frequent unanimous reversals of Carswell for failing even to hear the claims of civil rights and habeas corpus petitioners, the appellate court sharply rebuked his judgment for a bank in a National Banking Act case, *Dickenson v. First National Bank*, 400 F. 2d 548 (1968). The issue was whether the bank's shopping center receptacle and armored car messenger service constituted illegal "branch banking" under Florida law. "The district court granted judgment for First National stating explicitly: 'Florida statute 659.06(1)(a) is not operative or controlling in this instance.' We conclude that in this instance Florida law is operative and controlling and reverse." Carswell held that the lacking of inclusion of the bank's activities in the words of the federal statute (Section 36(f)) ended the matter, and ignored the reference of another section to activities permissible under *state* law. Of his dubious reasoning, the Fifth Circuit stated: "Congress is in the defining business and is knowledgeable as to how to immunize or deimmunize an activity from its statutory engulfment. In Section 36(f) Congress provided only that the term 'branch' 'shall be held to include'. . . . Such a provision is hardly adequate as a definition. . . . If we construed Section 36(f) as permitting paper evasions from state anti-branching laws, we would be letting the left hand give and the right hand take away. *Statutory construction has not fallen to such legalistic depths.* (p. 557, emphasis added)

FOOTNOTES

[1] A reversal is defined in this study to include an outright reversal, a vacation, a remand, and an affirmance with major modifications. An affirmance is defined to include an outright affirmance, an affirmance with minor modifications, a dismissal of an appeal, and a denial of a writ of certiorari. The ultimate disposition of the case rather than the action alone of an intermediate appellate court determined whether the result was to be classified as an affirmance or a reversal. It also should be noted that the Carswell figures are based on 84 of the nominee's reported decisions, believed to be all of his printed district court opinions. The completeness of this analysis might be confirmed if the Justice Department made public its entire file of Carswell opinions. Unfortunately the Justice Department has not yet seen fit to make available such a complete file.

[2] The 84 printed Carswell opinions were calculated to the nearest tenth of a page. Four hundred decisions of other district judges were drawn randomly from Federal Supplements spanning the years 1958 to 1969. These opinions were calculated also to the nearest tenth of a page. In making all page computations only the text of the opinion was counted. Headnotes were not counted as part of the opinion.

[3] These averages for all federal district judges were derived from another random sampling of 80 opinions drawn from Federal Supplements spanning the 1958–1969 period. Citations for any reason are included in these computations.

SUMMARY OF STATISTICAL STUDY OF PERFORMANCE OF JUDGE CARSWELL—JUDGES' DECISIONS CONSIDERED, SAMPLE

Index, number, type of data	Carswell, all 84 decisions 1958–69 printed in F. Supplement	All circuits: 400 decisions (1958–69 random selection) in district courts printed in F. Supplement	All circuits: 400 appeals (1959–69 random selection) to all C.A.'s printed in F. 2d.	5th circuit only: 100 decisions (1958–69 random selection) in district courts printed in F. Supplement	5th circuit only: 100 appeals (1959–69 random selection) to 5th Cir. C.A. printed in F. 2d.
I. Reversals:					
Number	10	21		6	
As percent of decisions	11.9	5.3		6	
Carswell's percent worse by		+123		+98	
IA. Reversals; including Rauh and Hruska cases [1] not printed:					
Number	33	21		6	
As percent of 152 decisions	21.6	5.3		6	
Carswell's percent worse by		+308		+260	
II. Reversals/appeals:					
Number	10/17	21/104	115/400	6/25	26/100
Percent	58.8	20.2	28.8	24.0	26.0
Carswell's percent worse by		+181	+104	+145	+126
IIA. Reversals/appeals including Rauh and Hruska cases [1] not printed:					
Number	33/85	21/104	115/400	6/25	26/100
Percent	38.8	20.2	28.8	24.0	26.0
Carswell's percent worse by		+81	+35	+62	+49
III. Authority value:					
Cite frequency/1958–63 cases	1.80	3.75		3.93	
Percent greater than Carswell		+108		+118	
Cite frequency/1964–69 cases	0.77	1.47		1.50	
Percent greater than Carswell		+91		+95	
IV. Use of authority:					
Case cites per opinion	4.07	[2] 9.93			
Percent greater than Carswell		+144			
Secondary source cites/opinion	0.49	1.56			
Percent greater than Carswell		+218			
V. Elaboration of opinions:					
Page length per opinion	1.99	4.21			
Percent greater than Carswell		+112			

[1] 12 of the 15 reversals by the 5th Cir. C. A. in civil rights and habeas corpus which were mentioned in the testimony of Joseph L. Rauh, Jr., had no printed opinion below by Carswell; 44 additional appeals of criminal trials and 12 more habeas appeals were in Senator Hruska's memo.

[2] Sample was 80 random printed district court cases.

Mr. BAYH. I was impressed by the fact that Louis Pollak, distinguished dean of the Yale Law School, looked at the credentials of this nominee and said that, in his judgment, to quote Dean Pollak, he has more slender credentials than any other nominee for the Supreme Court put forth in this century.

It is true, as Judge Carswell's supporters have pointed out, that he has been a practicing attorney, a Federal prosecutor, and a Federal court judge. For appointment to the Supreme Court, however, mere length and variety of service is certinly not a substitute for distinction—and yet that is what President Nixon promised the country his "strict constructionists" would be—not only strict constructionists, but men of distinction.

There are many such men in the South if, as the President seems to believe, this appointment must be based on geography. I would note, for anyone who cares to pursue it, the list of these eminent jurisists in the individual views in the report from the Committee on the Judiciary. The Senator from Maryland (Mr. TYDINGS) lists several southern jurists and southern lawyers, the Senator from Maryland being a lawyer who practiced in the fourth circuit, and a member of the Judiciary Committee, who would be qualified not only as strict constructionists but as men of distinction.

Prof. William Van Alstyne, one of the most eminent legal scholars in the South and a supporter of Judge Haynsworth, testified, however, that there was nothing in Judge Carswell's record to "warrant any expectation whatever that he could serve with distinction on the Supreme Court of the United States." And more than one dozen members of the University of Virginia Law School faculty, after studying Judge Carswell's record, described his abilities and judicial service as "sadly wanting."

It seems to me that the general assessment is that in his truly second-rate career as a Federal district judge, it is obvious that Judge Carswell has failed to exhibit any of those qualities the late Justice Frankfurter described as essential for service on the Supreme Court. After 15 years of distinguished service on the Court, Frankfurter himself concluded that a judge "should be compounded of the faculties of the historian and the philosopher and the prophet." No one has yet been audacious enough to claim any of these qualities for Judge Carswell. In fact, even his most ardent supporters have been unable to point to one contribution he has made to the law; none have cited his opinions as worthy of recognition.

Even Professor Moore of Yale, in his statement supporting the Carswell nomination, failed to mention a single Carswell decision as worthy of note. For the leading student of Federal practice to omit any reference to Judge Carswell's judicial record is, to my mind, an omission of great significance. It tells us, in effect, that there is nothing in Judge Carswell's record worthy of mention, as far as the contributions he made while sitting on the Federal district bench are concerned.

Interestingly, a close look at Judge Carswell's decisions reveals him to be not a strict constructionist but an activist. As his 17 unanimous reversals in civil rights and habeas corpus cases indicate, Judge Carswell has not adhered to a strict construction of the law of the land in civil and human rights cases, but has used his judicial office to advance his own personal racial and social philosophy—and to deny to defendants in his court the basic constitutional rights of equal protection and due process.

Mr. President, this nomination is an affront to the Senate, to the Supreme Court, and to the finest ideals of the American people. I do not hesitate to call upon my colleagues, therefore, to deny confirmation. An examination of the record could lead them to no other conclusion.

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

Mr. BAYH. I am happy to yield to my committee chairman.

Mr. EASTLAND. The Senator mentioned some cases in which he said that Judge Carswell was reversed by the fifth circuit. Does the Senator know that most of those cases were reversed on decisions of the fifth circuit decided after Judge Carswell had ruled?

Mr. BAYH. I think it is rather obvious that the circuit court could not decide to overrule a Federal district judge until after the district judge had made his decision.

Mr. EASTLAND. No; that is not what I am saying. In at least a majority of those cases, it is my understanding that after Judge Carswell's decision, the fifth circuit, in other cases, had decided the law was different.

What I am saying is that his ruling originally was in line with what the law was, as interpreted by the fifth circuit.

I know those are Ripon Society decisions that my distinguished friend has cited. One of the cases he decided, where he was overruled, was the Wechsler case, which went on to the Supreme Court of the United States, and the Supreme Court overruled the fifth circuit and decided Judge Carswell was right.

I say that in simple justice to Judge Carswell, and to keep the record clear.

Mr. BAYH. If the Senator will yield back to me——

Mr. EASTLAND. I cannot yield back.

Mr. BAYH. Then I might just interrupt long enough to make one observation. Inasmuch as the Senator is pointing out that in some of these cases the fifth circuit made new law, and that is why Judge Carswell was out of step, I might suggest that the Wechsler case was one where the fifth circuit made new law, and thus Judge Carswell was out of step with the fifth circuit at the time the fifth circuit decided it.

Mr. EASTLAND. Yes; but the Supreme Court upheld Judge Carswell's decision. It was the law at the time he ruled. He was reversed by the fifth circuit on the basis of new law, and the Supreme Court corrected it, and sustained Judge Carswell.

Just in simple, ordinary justice to him—and I think on the Senate floor every nominee should receive a straight deal—in a substantial number, even in most of those reversals, Judge Carswell's decisions were in line with the decisions of the fifth circuit at the time he made them. That decision had been changed, or the law had been changed, by the fifth circuit by the time the decision got from Judge Carswell to the fifth circuit.

Mr. BAYH. I appreciate our distinguished chairman, my friend the Senator from Mississippi, adding his thoughts to the statement of the Senator from Indiana. I would not want the Ripon Society held to account for the assessment that the Senator from Indiana is making of these cases. I put their interpretation into the RECORD so that everyone would have a chance to compare it with the statement the Senator from Indiana is about to make on his own.

Mr. EASTLAND. No; I asked the Senator a question. I asked him if his figures on Judge Carswell's reversals in the colloquy with the distinguished Senator from Louisiana were not compiled by the Ripon Society.

Mr. BAYH. The figures that I had were figures that were established long before the Ripon Society report was published.

I appreciate the fact that our chairman is adding his thoughts to the matter.

Mr. EASTLAND. Anyway, the figures given by the Senator were misleading.

Mr. BAYH. I respectfully suggest that I do not think they are misleading at all. What the figures were designed to do was to try to give us some feeling for Judge Carswell's ability to wrestle with the interpretation of the Constitution and the law of the land as compared to various cases that came before him.

The matter of the circuit court, and, indeed, the Supreme Court deciding new law is a matter that confronts all judges, but I think some rather interesting comparisons can be made.

The average rate of reversal for all judges throughout the country is 20 percent. In other words, the average Federal district judge is going to be reversed 20 percent of the time. In the fifth circuit, the average percentage of reversal is 24 percent of the time. But, interestingly enough, Judge Carswell was reversed by the fifth circuit 59 percent of the time—about 2.5 times the average reversal rate can be attributed to Judge Carswell, as compared to all of the other district judges in the fifth circuit.

Mr. EASTLAND. That is exactly what the Senator said, and that is exactly where my friend put his foot in it.

Mr. BAYH. I hope my chairman will help me pull my foot out of it, then.

Mr. EASTLAND. In a majority of those decisions, when they were made by Judge Carswell, he was applying what the fifth circuit had said the law was.

Mr. BAYH. Would my chairman——

Mr. EASTLAND. Wait just a minute, now. To the facts in the case; and when the case got to the fifth circuit for decision, they had changed the law.

Then the Wechsler case went on to the Supreme Court of the United States, and they overruled the fifth circuit and said Judge Carswell was right.

Mr. BAYH. Is my distinguished chairman, who is such an ardent student of the fifth circuit, suggesting that the fifth circuit is changing the law relative to just those cases in which Judge Carswell sits?

Mr. EASTLAND. The Attorney General of the United States told me one time that the fifth circuit was the most liberal circuit in the United States. I know some of the judges change the law as they desire.

Mr. BAYH. The question I was trying to develop was that I am not quite willing to accept the glowing plaudits that the Senator from Mississippi gives to the fifth circuit relative to their philosophy. But, given that case, does the Senator feel they are more liberal in dealing with Carswell cases than they are in dealing with cases of all the other judges in the district? Why is it, if that is the case, that they reverse Carswell twice as often as the average of any of the other judges in the fifth circuit?

Mr. EASTLAND. What is the basis of the figures?

Mr. BAYH. The basis is the total numbers of reversals in the fifth circuit.

Mr. EASTLAND. I say, what is the basis of those figures?

Mr. BAYH. Looking at the cases and the number of times his decisions were reversed.

Mr. EASTLAND. Who compiled them?

Mr. BAYH. The Library of Congress.

Mr. EASTLAND. I have just explained it in simple justice to Judge Carswell. In most of those cases, when he rendered a decision, his decision was in line with the way the fifth circuit had interpreted the law. They had decided otherwise when the case got to the fifth circuit.

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

Mr. BAYH. I yield.

Mr. HRUSKA. Numerically, how many cases are involved? Does the Senator have that information?

Mr. BAYH. That will be in the RECORD with the entire Ripon Society paper. The Senator from Nebraska, inasmuch as he is a strong supporter of the distinguished nominee, perhaps has a better idea of how many cases he sat on than I do.

Mr. HRUSKA. The Senator from Nebraska has read the record and has his own conception of what the percentage is in which the nominee was sustained and reversed. Here comes a new figure, which I cannot identify. I presume that in due time the Senator from Indiana will put in the RECORD the basis for that statement.

But I should like to call the attention of the Senator from Indiana to this proposition: The judge, when he was district judge, sat in judgment upon and disposed of a total of some 4,500 cases—2,000 civil cases and 2,500 criminal cases. Approximately 100 of them are found in the printed reports of the West Publishing System and in the official reports. A small fraction of a district judge's opinions appear in the printed reports. The fact is that the ultimate decision of reversal or of being upheld does not necessarily indicate the nature of a judge's rulings.

The further fact is, as the Senator

from Mississippi pointed out, that in many of the cases—very likely in most of them—when they were rendered by Judge Carswell they were in keeping with the law of the land, as indicated either by the Supreme Court or by the fifth circuit or by the statutes that governed. There have been some Supreme Court decisions that reversed the Supreme Court itself. There have been cases in which the fifth circuit, which reversed Judge Carswell, was reversed by the Supreme Court.

So when we get into a numbers game, Mr. President, we all know the story, that figures can be used to prove a lot of things. It will be with interest that the Senator will await the production of that list of cases and the number of them.

Mr. BAYH. I think the Senator from Nebraska has helped to substantiate the adage that statistics can be used to prove a number of things, because he is looking at the same statistics the Senator from Indiana is looking at, and we are coming to entirely different conclusions. The figures the Senator from Indiana is referring to are the number of cases that have been appealed; and considering Judge Carswell's cases that have been appealed, the Senator from Indiana arrives at the statistics given in the discussion with our distinguished committee chairman.

Of course, I would be the first to suggest that any circuit court, or the Supreme Court itself, from time to time does change the law. But it seems to me that no court would change the law any more often for one judge than for another, and therefore equally qualified judges should in theory be reversed the same proportion of the time. Interestingly enough, this is not the case with the President's nominee.

Mr. HRUSKA. Mr. President, will the Senator yield further?

Mr. BAYH. I yield.

Mr. HRUSKA. Has the Senator given figures on the criminal cases decided by Judge Carswell that were appealed, and the record thereon?

Mr. BAYH. The Senator has not gotten into the area of criminal cases in detail, although these statistics include criminal cases. He would be glad if the Senator from Nebraska would supply more detail. Perhaps the Senator did that in his remarks today. Unfortunately, I did not hear the Senator's remarks.

Mr. HRUSKA. I had them in my remarks today. On page 319 of the hearings is the list of 36 affirmances in criminal cases decided by Judge Carswell, and only eight reversals. That is a pretty good record, Mr. President.

II. PERSONAL AND POLITICAL BACKGROUND

Mr. BAYH. In 1948, while a candidate for the Georgia State Senate, Judge Carswell delivered an undeniably racist speech. He spoke forcefully of his belief "that segregation of the races is proper and the only practical and correct way of life in our States."

He also said:

I have always so believed and I shall always so act. I shall be the last to submit to any attempt on the part of anyone to break down and to weaken this firmly established policy of our people.

If my own brother were to advocate such a program, I would be compelled to take issue with and to oppose him to the limits of my ability.

I yield to no man as a fellow candidate, or as a fellow citizen in the firm, vigorous belief in the principles of white supremacy, and I shall always be so governed.

That was 1948, only 22 years ago. I suppose all of us would be somewhat tolerant and hopeful that, with the passage of time, such thoughts and philosophies and ideals might change, hopefully for the better. But I think it is most interesting, in addition to pointing out that that was 22 years ago, to point out what was happening 22 years ago. It was at a time when the national leadership of Carswell's party was attempting to enact President Truman's civil rights program. That was 1948, 6 years before Brown, as Carswell has said in defense of the speech, but 60 years after Plessy against Ferguson had held separate but equal to be the law of the land.

Shortly after the President submitted Judge Carswell's name to the Senate, a reporter uncovered the 1948 speech. It was said, in defense of the judge, that the speech was made in the heat of a political campaign, and, therefore, should be discounted as political rhetoric. Others have advanced the so-called redemption theory, which holds that Judge Carswell indeed spoke of, and might even have believed in, white supremacy in 1948, but what has he said and done since? That is the standard his supporters seek to apply. That is the standard Judge Carswell himself has asked us to apply.

After espousing that standard, Judge Carswell stated unequivocally:

There is nothing in my private life, nor is there anything in my public record of some 17 years, which could possibly indicate that I harbor racist sentiments or the insulting suggestion of racial superiority. I do not so do, and my record so shows.

I have sought to apply that very same standard, hoping that Judge Carswell's deeds would match his words. I certainly like to believe in the redemption theory. I like to believe that each and every one of us is a bit better today than he was yesterday, and that we will try to be even better tomorrow. But, unfortunately, I found nothing in Judge Carswell's subsequent personal and professional life that would indicate he ever renounced his belief in racial superiority. There is, in fact, throughout Judge Carswell's private and public career a not-too-subtle pattern of conduct that only confirms his 1948 views. He may not have been as eloquent or vociferous in later life, but his private actions, his judicial demeanor, and his incredible record of 17 unanimous reversals in civil rights and habeas corpus cases show him to be as completely and totally insensitive to human rights in the 1950's and 1960's as he was in 1948.

Mr. HRUSKA. Mr. President, will the Senator from Indiana yield for a question?

Mr. BAYH. I yield.

Mr. HRUSKA. Would the Senator consider that Judge Carswell's active participation with a group that founded a law school for Florida State in Tallahassee, in which there was insistence by Judge Carswell upon a completely open policy, that there would be open doors to members of all minorities of all races, colors, and creeds, not only from his State but from the country at large, would that be considered in any way an indication that he still believes as he spoke in 1948, or would it, in all fairness, considering the very high degree and high quality of evidence to the effect that he has repudiated that 1948 statement?

Mr. BAYH. If the Senator could be more specific as to where, when, and how, the Senator from Indiana could perhaps answer that question more intelligently.

Mr. HRUSKA. The remarks I made earlier this afternoon cover the testimony which is in the record, by Prof. James William Moore, sterling professor of law at Yale University, a man with 35 years' experience as a teacher and also of practice. He is a recognized authority. He appeared personally before the Judiciary Committee and testified in regard to his activities as a consultant to this group of founders of the law school at Florida State in Tallahassee, and it was over a sustained period of time that he did that work, free, gratis, in an effort to try to form that college.

He testified on the quality of work that was done and the activities in which Judge Carswell participated. The testimony is there. He did say this during the course of his testimony:

I was impressed with his views on legal education and the type of school that he desired to establish; a school free of all racial discrimination—he was very clear about that; one offering both basic and higher legal theoretical training; and one that would attract students of all races and creed and from all walks of life and sections of the country. Judge Carswell and his group succeeded admirably.

Then the professor proceeded to describe some of the excellent academic results which flowed from the early years of the university and they have become increasingly successful since.

Mr. President, repeatedly we hear it said that there has been nothing in the record repudiating Judge Carswell's 1948 statement.

I submit that when he repudiated that statement, as he did in open committee hearing, and wrote it in a letter afterward, that this was supplementing a career as a judge and a lawyer in which he has repeatedly repudiated that 1948 speech, not only the law school being formed but his implementing of a jury selection system long before there was a Federal statute on the subject, in which there was an effort made to adopt the program later incorporated into the Federal statute of the 90th Congress for the selection of jurors in a way to get away from racial discrimination. Those two acts helped to put to rest the question of repudiation any of the words and spirit of that 1948 speech.

But some people are so intent upon remaining back in 1948 that they refuse

to open their minds to the high excellence and quality of evidence of this type. I suggest that for the consideration of the Senator from Indiana.

Mr. BAYH. Mr. President, I ask unanimous consent to have printed in the RECORD the document included on page 294 relative to the Washington Research Project Action Council's assessment of whether this jury system indeed was discriminatory or nondiscriminatory.

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

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

WASHINGTON RESEARCH PROJECT ACTION COUNCIL MEMORANDUM—FEBRUARY 1, 1970

Re racial discrimination in Judge Carswell's system of selecting persons for jury service.

To: Marian W. Edelman.
From: Richard T. Seymour.

In 1968, Judge Carswell adopted a plan for the selection of persons for jury service in the Northern District of Florida which has resulted in gross racial discrimination in every one of the four Divisions of his district. Moreover, it is clear that this result could easily have been predicted from information available to him at the time. His failure to take action to correct this discrimination is in clear violation of a Federal statute passed several months before he adopted the plan.

On March 27, 1968, the Jury Selection and Service Act of 1968 was enacted.[1] It required a number of sweeping reforms in the methods used by Federal district courts for selecting jurors for grand juries and trial juries. One of the primary goals of the legislation was to ensure that black citizens and members of other minority groups would be fairly represented on grand juries and trial juries in the future.[2]

The Act provides that jury lists shall be compiled by selecting names on a random basis from either lists of actual voters or of registered voters of the political subdivision within the district. But where reliance on only these sources of names will result in the disproportionate exclusion of racial or other minorities, a district court is required by the Act to turn to other sources of names in order to achieve a reasonable cross-section of the community.[3]

The Act requires all Federal district courts to draw up plans showing the exact manner in which lists of potential jurors will be compiled and members of juries selected from the lists. Under the plan ordered into effect by Judge Carswell on September 12, 1968, a grossly disproportionate number of black citizens will, regardless of their qualifications, be excluded from consideration in drawing up the jury lists.[4]

Judge Carswell's plan provides for the selection of names on a random basis from lists of registered voters, and no provision has ever been made for using supplementary sources. In each of the four Divisions of the Northern District of Florida, statistics available to Judge Carswell at the time he adopted the plan show that, compared with the statistics for whites, relatively few black citizens of voting age are registered to vote. Considering the proximity of the counties in the Northern District to Alabama and Georgia, and the pervasive history of voting discrimination throughout this area, the statistics could scarcely have been surprising.

In accordance with the plan,[5] the Clerk of Judge Carswell's court sent out questionnaires to persons on the jury list late in 1968. When the completed questionnaires were tabulated, it was apparent that the system adopted was working in a grossly discriminatory fashion in each one of the four Divisions in the Northern District of Florida. Not even then, however, did Judge Carswell take any remedial action.

GAINESVILLE DIVISION

The Gainesville Division is composed of Alachua, Dixie, Gilchrist, Lafayette and Levy Counties. There were 40,225 white persons and 12,155 nonwhite persons in the voting-age population in 1960, and there were 36,455 registered white voters and 6,296 registered nonwhite voters in these counties in 1968. Assuming that the increases and decreases in voting-age population in these counties since 1960 has been roughly proportional between the two races, 90.6% of the white voting-age population is registered to vote and therefore eligible to serve on Federal juries, but only 58.8% of the nonwhite voting-age population is eligible.[6] More directly, Judge Carswell's plan disqualifies only 9.4% of the whites of voting age from consideration for jury service, but disqualifies 41.2% of the nonwhites.

The results of the official questionnaires sent out and returned to the Clerk of Court show that the racial disparity shown above actually affected the composition of the jury list. 1,468 whites and 199 blacks were selected under Judge Carswell's plan.[7] After deducting the names of those exempt or excused from jury service and the names of those who are unqualified, 1,044 qualified white persons and only 149 qualified black persons were placed on the jury list. If Judge Carswell's plan had used nondiscriminatory sources of names, 415 qualified black persons would have been placed on the jury list.

MARIANNA DIVISION

The Marianna Division is composed of Bay, Calhoun, Gulf, Holmes, Jackson and Washington Counties. There were 65,152 white persons and 13,344 nonwhite persons in the voting-age population in 1960, and there were 55,895 registered white voters and 8,361 registered nonwhite voters in these counties in 1968. Assuming that the increases and decreases in voting-age population in these counties since 1960 has been roughly proportional between the two races, 82.7% of the white voting age population is registered to vote and therefore eligible to serve on Federal juries, but only 62.7% of the nonwhite voting-age population is eligible. More directly, Judge Carswell's plan disqualifies only 17.3% of the whites of voting age from consideration for jury service, but disqualifies 37.3% of the nonwhites.

The results of the official questionnaires sent out and returned to the Clerk of Court show that the racial disparity shown above actually affected the composition of the jury list. 1,698 whites and 181 blacks were selected under Judge Carswell's plan. After deducting the names of those exempt or excused from jury service and the names of those who are unqualified, 1,214 qualified white persons and only 133 qualified black persons were placed on the jury list. If Judge Carswell's plan had used nondiscriminatory sources of names, 249 qualified black persons would have been placed on the jury list.

PENSACOLA DIVISION

The Pensacola Division is composed of Escambia, Okaloosa, Santa Rosa and Walton Counties. There were 130,172 white persons and 22,306 nonwhite persons in the voting-age population in 1960, and there were 104,105 registered white voters and 15,143 registered nonwhite voters in these counties in 1968. Assuming that the increases and decreases in voting-age population in these counties since 1960 has been roughly proportional between the two races, 80.0% of the white voting-age population is registered to vote and therefore eligible to serve on Federal juries, but only 67.9% of the nonwhite voting-age population is eligible. More directly, Judge Carswell's plan disqualifies only 20.0% of the whites voting age from consideration for jury service, but disqualifies 32.1% of the nonwhites.

The results of the official questionnaires sent out and returned to the Clerk of Court show that the racial disparity shown above actually affected the composition of the jury list. 2,256 whites and 262 blacks were selected under Judge Carswell's plan. After deducting the names of those exempt or excused from jury service and the names of those who are unqualified, 1,638 qualified white persons and only 215 qualified black persons were placed on the jury list. If Judge Carswell's plan had used nondiscriminatory sources of names, 315 qualified black persons would have been placed on the jury list.

TALLAHASSEE DIVISION

The Tallahassee Division is composed of Franklin, Gadsden, Jefferson, Leon, Liberty, Taylor and Wakulla Counties. There were 54,620 white persons and 30,679 nonwhite persons in the voting-age population in 1960, and there were 49,692 registered white voters and 15,532 registered nonwhite voters in these counties in 1968. Assuming that the increases and decreases in voting-age population in these counties since 1960 has been roughly proportional between the two races, 91.0% of the white voting-age population is registered to vote and therefore eligible to serve on Federal juries, but only 50.6% of the nonwhite voting-age population is eligible. More directly, Judge Carswell's plan disqualifies only 9% of the whites of voting age from consideration for jury service, but disqualifies 49.4% of the nonwhites.

The results of the official questionnaires sent out and returned to the Clerk of Court show that the racial disparity shown above actually affected the composition of the jury list. 1,643 whites and 413 blacks were selected under Judge Carswell's plan. After deducting the names of those exempt or excused from jury service and the names of those who are unqualified, 1,215 qualified white persons and only 301 qualified black persons were placed on the jury list. If Judge Carswell's plan had used nondiscriminatory sources of names, 682 qualified black persons would have been placed on the jury list.

FOOTNOTES

[1] Pub. L. 90–274, 82 Stat. 53.

[2] Sec. 101 of the Act, codified as 28 U.S.C. secs. 1861 and 1862 provides:

"Section 1861. *Declaration of policy.*

"It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

"Section 1862. *Discrimination prohibited:*

"No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status."

The House Report further confirms this purpose:

"More important, random selection eliminates the key man system and insures that jurors will be selected without regard to race, wealth, political affiliation, or any other impermissible criterion."

H. Rept. No. 1076, 1968 U.S. Code Cong. & Adm. News 1972, 1974 (footnote omitted).

[3] This provision, codified as 28 U.S.C. sec. 1863 (b), provides in part:

"Section 1863. *Plan for random jury selection:*

"(b) Among other things, such plan shall—

"(2) specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this title * * *."

The House Report leaves no room for doubt that this provision is mandatory:

"The bill requires that the voter lists be supplemented by other sources whenever they do not adequately reflect a cross section of the community * * *.

"The voting list need not perfectly mirror the percentage structure of the community. But any substantial percentage deviations must be corrected by the use of supplemental sources * * *."

H. Rep. No. 1076, 1968 U.S. Code Cong. & Adm. News 1792, 1794.

[4] A copy of Judge Carswell's plan has been attached as Appendix A. There have never been any modifications of the plan attached. Although the Act was approved on March 27, 1968, it would be unfair to criticize the delay between that date and the adoption of this plan, since sec. 104 of the statute only required that a plan be in effect by December 22, 1968. The drawing of names for the jury list was actually carried out in November.

[5] See the plan, Appendix A, at pp. 4–5.

[6] These statistics are taken from Tables A and B below.

[7] The Clerk included in his tabulation only questionnaires returned by December 23, 1968. The vast majority had been returned by that time. The Clerk's office informed me that they considered the persons who failed to designate their race in the questionnaire as having the same racial proportion as those who did designate their race. Only those who did designate their race have been included in the figures used in this memorandum.

A tabulation of these results for each Division has been attached as Table C.

TABLE A.—1968 VOTER REGISTRATION STATISTICS FOR THE 22 COUNTIES IN THE NORTHERN DISTRICT OF FLORIDA [1]

County	1960 voting-age population		Registered voters, 1968		Percentage of the voting-age population who are registered voters	
	White	Nonwhite	White	Nonwhite	White	Nonwhite
Alachua	30,555	9,898	25,534	5,081	83.6	51.3
Bay	31,940	4,964	22,747	3,033	71.2	61.1
Calhoun	3,434	582	3,674	366	100+	62.9
Dixie	2,138	363	2,981	396	100+	100+
Escambia	76,688	18,041	59,511	12,593	77.6	69.8
Franklin	3,186	779	3,477	531	100+	68.2
Gadsden	11,711	12,261	6,655	4,610	56.8	37.6
Gilchrist	1,513	154	1,855	86	100+	55.8
Gulf	4,196	1,138	3,861	693	92.0	60.9
Holmes	6,131	249	6,465	179	100+	71.9
Jackson	14,087	5,390	11,349	3,207	80.6	59.5
Jefferson	2,383	2,600	2,410	1,494	100+	57.5
Lafayette	1,536	152	1,791	138	100+	90.8
Leon	28,241	12,322	36,599	6,902	94.2	56.0
Levy	4,483	1,568	1,294	595	95.8	37.9
Liberty	1,525	240	1,940	211	100+	87.9
Okaloosa	30,816	2,097	23,569	1,073	76.5	51.2
Santa Rosa	14,710	1,082	13,186	726	89.6	67.1
Taylor	5,454	1,724	5,961	1,090	100+	63.2
Wakulla	2,120	753	2,650	694	100+	92.2
Walton	7,958	1,086	7,839	751	98.5	69.2
Washington	5,364	1,021	5,799	883	100+	86.5
Total for northern district	290,169	78,464	244,147	45,332	84.1	57.8

[1] All figures in this table, except the totals, have been taken directly from Voter Registration in the South: Summer 1968, a publication of the voter education project of the Southern Regional Council. The pages from which this information has been taken, and the pages with explanatory notes, have been duplicated and attached. I have prepared the totals myself.

TABLE B.—1966 VOTER REGISTRATION STATISTICS FOR THE 22 COUNTIES IN THE NORTHERN DISTRICT OF FLORIDA [1]

County	1960 voting-age population		Registered voters (October 1966)		Percentage of the voting age population who are registered voters	
	White	Nonwhite	White	Nonwhite	White	Nonwhite
Alachua	30,555	9,898	25,595	6,216	83.8	62.8
Bay	31,940	4,964	23,587	3,345	73.8	67.4
Calhoun	3,434	582	4,007	390	100+	67.0
Dixie	2,138	363	2,778	370	100+	100+
Escambia	76,688	18,041	59,197	13,574	77.2	75.2
Franklin	3,186	779	3,423	533	100+	68.4
Gadsden	11,711	12,261	6,557	4,620	56.0	37.7
Gilchrist	1,513	154	1,833	88	100.0	57.1
Gulf	4,196	1,138	3,681	712	87.7	62.6
Holmes	6,131	249	6,406	196	100+	78.7
Jackson	14,087	5,390	11,485	3,525	81.5	65.4
Jefferson	2,383	2,600	2,470	1,628	100+	62.6
Lafayette	1,536	152	1,778	102	100+	67.1
Leon	28,241	12,322	25,856	7,331	91.6	59.5
Levy	4,483	1,568	3,910	613	87.2	39.1
Liberty	1,525	240	2,088	177	100+	73.8
Okaloosa	30,816	2,097	24,140	1,349	78.3	64.3
Santa Rosa	14,710	1,082	13,281	765	90.3	70.7
Taylor	5,454	1,724	5,393	974	98.9	56.5
Wakulla	2,120	753	2,684	602	100+	79.9
Walton	7,958	1,086	7,909	862	99.4	79.4
Washington	5,364	1,021	5,641	867	100+	84.9
Total for northern district	290,169	78,464	243,699	48,839	84.0	62.2

[1] All figures in this table, except the totals, are a matter of public record. The statistics showing the 1960 voting age population are taken from the 1960 census. The statistics showing the number to registered voters are as of Oct. 8, 1966, and are taken from the "Tabulation of Official Votes Cast in the General Election, Nov. 8, 1966," compiled by Tom Adams, Florida's Secretary of State. These figures and accompanying notes are reprinted in a May 1968 report of the U.S. Commission on Civil Rights, "Political Participation," at 230–233. Only persons registered as Democrats or as Republicans were included in Mr. Adams' compilation. I have prepared the totals myself.

TABLE C.—RESULTS OF QUESTIONNAIRES MAILED BY THE CLERK OF THE NORTHERN DISTRICT OF FLORIDA TO THE PERSONS ON THE JURY LISTS OF THE FOUR DIVISIONS OF COURT [1]

	White	Black	Failed to designate race
GAINESVILLE DIVISION			
Persons exempt from jury service	129	14	41
Persons excused from jury service at their request	83	18	15
Persons unqualified for jury service	212	18	62
Persons qualified for jury service	1,044	149	117
Total questionnaires returned	1,468	199	235
MARIANNA DIVISION			
Persons exempt from jury service	106	5	41
Persons excused from jury service at their request	129	16	29
Persons unqualified for jury service	249	27	55
Persons qualified for jury service	1,214	[2] 133	118
Total questionnaires returned	1,698	181	243
PENSACOLA DIVISION			
Persons exempt from jury service	153	6	45
Persons excused from jury service at their request	126	3	17
Persons unqualified for jury service	339	38	125
Persons qualified for jury service	1,638	215	125
Total questionnaires returned	2,256	262	312
TALLAHASSEE DIVISION			
Persons exempt from jury service	131	31	46
Persons excused from jury service at their request	106	31	17
Persons unqualified for jury service	191	50	65
Persons qualified for jury service	1,215	301	142
Total questionnaires returned	1,643	413	270

[1] This information was given to me by the office of the clerk of court for the Northern District of Florida, in a telephone conversation January 30, 1970.

[2] Includes 1 Indian.

Mr. BAYH. I appreciate the fact that the distinguished Senator from Nebraska has brought this matter of the law school into the record for the second time today. I think it bears on our deliberations. Perhaps it would be even more informative if the Senator could provide the same degree of description as to the judge's charter of the Florida State Boosters Club, which was a white-only organization supporting a public institution. Here we have a man who has been a Federal district attorney, a Federal district judge, and an appellate court judge, but I have yet to see one speech that this nominee made in public asserting that he did not believe what he said in 1948.

Now can the distinguished Senator from Nebraska give me one sentence disaffirming this terrible statement made back in 1948?

Mr. HRUSKA. The committee has taken the official view:

> Unless the committee were to adopt the proposition that all political candidates are to be forever held to every sentiment which they express during an election campaign, this speech delivered more than 20 years ago provides no basis for recommending against confirmation of Judge Carswell. The committee is satisfied, both by his own statement, and by his public career spanning the years from 1953 to the present time, that he has long since abandoned the notions which he expressed in his 1948 speech.

That language is found on page 3 of the committee report.

When a man makes a speech in 1948, Mr. President, and it could be in the campaign of 1958 as well, or at any time, and it is clearly wrong, does he have to get up at stated periods each week, or each month, and mount a soapbox or a stump, and proclaim to all the world that he made a speech back there in 1948, that he repudiates it and is no longer bound by it, and now has reason to hope that salvation will come his way?

Is that the way speeches are repudiated? Or is it by official act and career?

Former Gov. Leroy Collins testified:

> Judge Carswell, gentlemen, is no racist. He is no white supremist. He is no segregationist. I am convinced of this and I am sure that most if not all of you are.

Mr. President, what does Governor Collins base that statement on, and his estimate of this man that he testified he has known ever since he moved to Tallahassee? He reaches the deliberate conclusion that this man is no racist, then we have such programs as the founding of the law school and the initiation and implementation of the jury selection system long before there was the compulsion of a Federal statute. But those things are completely ignored. There is a grubbing around in the year 1948, when the temper of the times was completely different than it is now, a temper which has been completely rejected, orally and expressly, as well as by the life and the deeds of this man.

I say, let us put that down. Let us put that down as an argument. It is not fair. It does not even make sense. The official position taken by the committee is that unless we want to hold every politician to every statement that he makes forever and a day, regardless of what he says and does after that, this is going to be considered as a factor which will disqualify the nominee.

Mr. BAYH. I appreciate the position of my good friend from Nebraska. Of course, to quote the statement in the committee report as gospel completely ignores the fact that four members of the committee took strong issue with it. So, I think that the Senate itself will have to decide whether the basis on which the committee reached its determination is valid or not. But, Mr. President, as I said a moment ago, I believe in the theory of rehabilitation, or whatever we might call it. I believe that it is possible for someone to say something today that he regrets tomorrow or will change his mind on. The Senator from Indiana, when he was running for the legislature back in 1954—I do not remember everything I said—but I know that nothing I said ever approximated the type of statement that this nominee made back in 1948.

I will not read that statement again. But it is so contrary to everything that I believe in and to everything I think most Members of the Senate believe in that I cannot suggest in a cavalier manner that it should be ignored since it was 22 years ago. I have to look carefully.

I am glad to have the thoughts of my friend as to the establishment of the law school. But then I am faced with the establishment of the white only booster club and with the chartering of the white only golf club intentionally designed to avoid the Supreme Court holding.

I think the Senator from Nebraska and I can disagree. But I do not think it is unreasonable to suggest the impact of a statement such as this made back in 1948, never publicly repudiated by a man holding public office—a man who has made speeches over a large part of this country—and never refuted until the man is nominated for the Supreme Court.

I do not think it is totally unreasonable to suggest that this repudiation might be a little self-serving.

Mr. President, I yield to my friend, the Senator from Michigan.

Mr. HART. Mr. President, as the Senator from Indiana has pointed out, there are many reasons assigned by those who oppose the nomination as a basis for our opposition.

Some may be convinced that each alone is persuasive. Others may feel that some of the assigned reasons are not reasons at all.

Others who oppose the nomination do so on the basis that the accumulation of reasons forces us to the conclusion that the nominee is not the distinguished, gifted person whom we should seek for the Supreme Court.

On this one point concerning what force should be assigned to the white supremacy statement of 1948, I confess that I am troubled as to what conclusion we should draw and to what extent we should assign this one incident as the principal objection. Or should we go beyond that and say that a statement such as this estops any man in these times from Senate approval for any position? Or at the other extreme should we, as the Senator from Nebraska suggests, recognize that each of us in our day has said things that were either foolish or wrong and that each of us seeks to be given the opportunity of reparation and rehabilitation, through a change of mind and position?

We can debate that as white Americans. But what if one were a black American? We have a responsibility to evaluate the judgment of black Americans on our action and their future attitude toward this Court.

I do not know who it was, but some gifted mind in this country years ago wrote something that went something like this, and I regret that this is a paraphrase, "What we are today is a part of what we were; and what we will be is a part of what we are."

Part of this man was a public promise that he would always believe in white supremacy.

We must try to empathize with the feelings of black Americans. Let us assume that the man was being nominated to the office of justice of the peace. Let us assume that the Senator was a white lawyer who was interested in assuring the elimination of inequity and injustice in this community.

Let us assume that the Senator realized that it was more likely that injustice could be eliminated through the process of the law than by violence against the system. If a militant black in the community engaged the Senator to represent him, the Senator would try to persuade him to stay within the system, to go to court, and get this thing corrected.

The client would say, "Who is the judge?"

The Senator would tell him, and he would say, "That man told me what he thought of me 18 years ago." Nonetheless, the Senator would get the client to agree to go to court.

Suppose that the rules of law were applied with eminent professional precision and that, as far as the Senator could see, the verdict against him and his client was soundly based, does the Senator think that he could really convince that black client that it was a decision made at the hands of a just man?

This is something that I think troubles many of us. I do not say that I am yet prepared to assert that that statement should bar a man from high office per se, but the Senator from Indiana is perfectly correct in raising it early in the debate so that we can each answer it in our own light.

Is this the man in the year 1970 who should be on the Supreme Court to whom we will point as a symbol of the progress made under law?

This is a delicate kind of think to talk about. And I am not comfortable about it. But it is something that everyone, when the roll is called, will have to include in his yea or nay vote.

Mr. HRUSKA. Mr. President, will the Senator yield to me so that I might ask a question of the Senator from Michigan?

Mr. BAYH. Mr. President, I will be glad to yield to the Senator from Nebraska in a moment. However, I first

want to respond to the Senator from Michigan.

I have tried to make it clear that I am willing to accept at face value the judge's feelings as of this moment. But I really feel an obligation to do a little double-checking as a result of that decision made back in 1948. It waves as a red flag and invites me to look closer and see if the judge really has evolved in his thinking on this very important matter.

That is why I got into the discussion with my friend, the Senator from Nebraska, over this matter of the covenant. It is the pattern of things that convinces me as of this moment—and perhaps the Senator from Nebraska can convince me that I am wrong—but the pattern of public and judicial conduct and association do not indicate to me that the nominee has changed.

Mr. President, I yield to the Senator from Nebraska.

Mr. HRUSKA. Mr. President, it was with interest that I listened to the question concerning how we could make the black man feel that he would be treated honestly and fairly as outlined by the Senator from Michigan.

Let me pose a question that entered the minds of millions of Americans when the Senate considered the nomination of Judge Thurgood Marshall to be a Justice of the Supreme Court, a man admittedly possessed of bias and prejudice and great advocacy for the cause of the black man.

He did it well as an advocate. He carried 31 cases to the Supreme Court and won 29 of them—a pretty good record.

There were grounds for many white people to say, "My goodness, how can we look to that Court for justice, if we have a problem before the Court with a man like that sitting in judgment on a problem involving the rights of white people as opposed to rights asserted by some members of the minority?"

We bridged that situation. This Senator voted to report out of committee the nomination of Thurgood Marshall; and this Senator voted to confirm the nomination of Thurgood Marshall. There were not any misgivings about it. I will tell the Senator why. Before that nominee went out of the room he was asked, "Judge Marshall, can you be fair in lawsuits brought before you as a member of the Supreme Court, fair to the point that you will be rendering decisions on the basis of the law and the evidence, regardless of the color of a man's skin, whether black or white, and whether he is from the North, the South, or any other place?"

The judge said, "Yes, I can and I will be fair." That is where the matter ended.

That is not the situation now. Now, there is a man accused but not proven to be possessed of bias and prejudice; the man's record is frankly good on matters involving civil rights law. But even if it were granted for argument that he had a bias the other way, what would be wrong with that? It is wrong in the one case but it is not wrong in the other case. That is a double standard.

If there is any doubt in the minds of people, I say there is no objection to bias and prejudice for a nominee to the Supreme Court for some people, provided it is in the right direction; provided there is advocacy for this great civil rights revolution of the last 10 years—that is what one Senator said; he said, "I object to him because he is not an advocate of the great civil rights revolution."

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

The PRESIDING OFFICER. Does the Senator from Indiana yield to the Senator from Michigan?

Mr. BAYH. I yield.

Mr. HART. Mr. President, I think all of us appreciate the comment made by the Senator from Nebraska. I am not sure it is on all fours. Our population is 200 million people; the black population is 20 million people. I am not at all sure we can suggest an analogy, given the circumstance and history of this country, and I am not at all sure that there was ever assigned to Thurgood Marshall the statement that he would always be guided by black supremacy, but this man has said, "I yield to no man in the firm and vigorous belief of white supremacy," and he said, "I shall always be so governed."

I suggest that when the minority member goes to court to present a grievance to that man, that theoretical guardian, he might say, "He told me what he thought of me 18 years ago, and it is in black and white."

Another distinction between the nominee and Thurgood Marshall is in the record of the man as a lawyer. As the Senator from Nebraska said, Thurgood Marshall was, indeed, a distinguished member of the American bar. If my recollection serves me correctly, there were only two other men at the bar in America who had been so brilliantly successful in their arguments before the Supreme Court. Thurgood Marshall is a man of distinction. White lawyers can share in the pride at seeing this man and that record. We envy him. None of us has those litigating credentials. That is another distinction between the nominee and Thurgood Marshall.

That is what we should be in search of for the Supreme Court today. Surely, each of us can agree there should be some recognition that a nominee is among the most distinguished candidates available.

We do not seek to put on the Court nine men who, as a whole, represent the ratio of adequacies and inadequacies of our society. We should look at the qualifications of the nominee. Here again the Senator from Nebraska and I disagree.

I think the Senator from Indiana states it well in his second paragraph when he says:

> The Carswell nomination involves a question of judicial competence and professional distinction.

We are getting off the question as to how we should treat the pledge of 1948 that he shall always be governed by the principle of white supremacy. It was not all right to say that 18 years ago merely because the Supreme Court had not yet handed down the Brown against Board of Education case; the doctrine of white supremacy has been unconstitutional for 100 years. The 14th amendment settled that. That was as wrong in 1948 as it would be today.

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

The PRESIDING OFFICER. Does the Senator yield?

Mr. BAYH. I yield.

Mr. HRUSKA. If we are going to say we look at the quality of the man and we are going to do it here on the floor of the Senate, then we are invading the province of the man who appoints. The appointing power is different than advising and consenting. If the Senate is going to go into the business of saying that each one of us here, 100 strong, is going to have his own idea of quality, we would be engaging in the business of appointing. That is for the President to decide. The President is the appointing power. The Founding Fathers, and a reading of the Federalist Papers will show, considered whether the Senate should do the appointing. They came to the conclusion that a body of only 26 men could not do the appointing business and that that power should be fixed in the President. Now, we have four times as many Senators as 26. This body does not appoint. There must be someone to appoint, and that is the President. It is for this body to determine the capacity to be a judge, for being learned and experienced in the law, the experience in judging the law, and as a district attorney, and so forth, and decide whether to confirm or not.

But let us not get the business of appointment mixed up with advising and consenting.

Mr. BAYH. If the Senator will bear with us a moment, I must say after listening to the Senator's discussion of the advise and consent authority that I wonder what powers are delegated to this body. It is for the Senate to decide if a man can stand up to the strains of the Court. What does the Constitution mean when it says the Senate is going to advise and consent to the President's nomination? Of course, if one looks at what the Founding Fathers did in the early days, in connection with the Supreme Court nominations from the President, a good number of them were turned down by a Senate controlled by the same party as the President.

I am one Senator, and I trust I am not alone, who is not willing to totally abdicate any authority and responsibility I might have in looking at the qualifications of this man or any man. The Senator from Nebraska brought up the point that we were going beyond the realm of our authority. The Senator from Nebraska brought Thurgood Marshall into the discussion in dealing with the very appropriate reference made by the Senator from Michigan. I think the Senator from Michigan raised an excellent point and the Senator from Indiana would like to know if his friend from Nebraska is aware of any black supremacy statement that Thurgood Marshall made.

Mr. HART. May I interject at this point?

Mr. BAYH. I yield.

Mr. HART. In fairness to the record, to no one's surprise in the hearing on the

Thurgood Marshall nomination, there was put into the RECORD a speech that a professor of history made at a meeting of political scientists or historians. This was a professor who had assisted in the development of the case that culminated in the Brown decision. He was discussing many aspects of it—the formal, the procedural, the substantive, and the interesting anecdotal; and he stated that, a convivial dinner one night, as these men were associated in seeking to make the strongest possible case to present to the Supreme Court, Thurgood Marshall had jokingly said if he were in power, he would tax the white man for every breath he drew.

Mr. HRUSKA. Would the Senator want the exact words?

Mr. HART. Were they not almost verbatim?

Mr. HRUSKA. They were reasonably accurate. The exact words were:

> When we take over, the whites will have to pay a tax every time they take a breath.

Those are the words taken from the transcript.

Mr. HART. My memory is better than I would have guessed.

The committee then received from the professor in question a full description of the circumstances of that statement, and, not unanimously, but by solid majority, that white committee concluded it had indeed been in conversational jest.

I think when you look back on the history of those who were brought here in chains, down through the postwar experience of the 1870's, 1880's, and then into the early 1900's, that kind of remark is not surprising at all.

Again, I repeat, the difference, on the one issue that we have been discussing now, the pledge to the electorate that he would always be governed by the principle of white supremacy, voiced by a member of the majority group, is a rather serious element which we have to resolve in considering whether this man, at this moment in history, should be one of the nine symbols on the Supreme Court of the United States.

As I did when I interrupted the Senator from Indiana, I am not suggesting that any one of the reasons that are assigned by those of us who are opposing the nomination should be controlling. I am not suggesting to any colleague how he should resolve the question of what you do when you are presented with a nominee who has made that kind of pledge. But that is what it is. That was a pledge made by the judge: "I yield to no man in the firm, vigorous belief in the principles of white supremacy, and I shall always be so governed." I accepted Judge Carswell's statement. I remember asking him, "Did you believe it then or did you just say it?" It was in the heat of a political campaign in Georgia. As I recall it, I think he said, "Well, I think I meant it, but I do not mean it any more. It is repugnant to me."

I am willing to accept that as descriptive of his present attitude, but what do you say to the 20 million blacks? To what extent should we be concerned with their feelings on that kind of speech? We are all part of what we were. That pledge is a part of that nominee.

Mr. BAYH. Mr. President, as I said earlier in this enlightening discussion with the Senator from Nebraska and the Senator from Michigan, this part of the 1948 speech should not be damning from now until the end of time, but some attention should be paid to subsequent acts, interpreted in light of that statement, to see if indeed there has been a change of heart. When that is done, the Senator from Indiana is concerned that there has not been the necessary change of heart.

Judge Carswell has publicly repudiated his 1948 views, true. But that repudiation, coming as it did, only after the speech had been uncovered by a reporter, and obviously jeopardizing his nomination, surely was involuntary. How much significance should we attach to a repudiation 22 years too late, and dictated by circumstances, when the judge's behavior between 1948 and 1970 belie his words.

Four years after the Georgia speech, for example, Carswell was actively involved in the 1952 presidential primary in Florida. The Carswell forces centered their attack on the Fair Employment Practices Act and the campaign, by all accounts, was marked by racist overtones. As a study of the 1952 primary in northern Florida reported, the campaign was "against FEPC and for white supremacy." The extent to which Carswell was a leader in this effort remains undetermined, but the fact that he was an active participant is undeniable.

George Harrold Carswell was appointed U.S. attorney for the northern district of Florida on July 11, 1953. Some 5 months later, on December 16, 1953, a charter for the Seminole Booster, Inc., a nonprofit corporation, was approved by the Florida circuit court for Leon County. The Seminole Boosters charter was prepared in the law offices of "Carswell, Cotton and Shivers." George Harrold Carswell was not only one of 11 incorporated subscribers and charter members, his name appeared on the notarized affidavit—an affidavit in which the facts as stipulated in the charter were sworn to as being truthful. Article III of the Seminole Boosters charter holds that "the qualifications and members shall be any white person interested in the purposes and objects for which this corporation is created." George Harrold Carswell, according to the testimony of his former law partner, Douglas Shivers, personally drafted that charter.

On November 7, 1955, the U.S. Supreme Court ruled that the city of Atlanta's refusal to permit Negroes to use municipal golf facilities was in direct violation of the 14th amendment's guarantee of equal protection and ordered the city to desegregate the golf course by making it available to Negroes. *Holmes* v. *City of Atlanta*, 350 U.S. 879 per curiam. By Christmas of 1955, Negroes were playing golf on Atlanta's municipal course and a series of suits, throughout the South, were instituted to desegregate municipal recreational facilities. One such suit was Augustus against City of Pensacola, filed in the northern district of Florida—the same district in which Judge Carswell was then serving as U.S. attorney.

Ingenious local officials in Tallahassee who were seeking to avoid litigation and the necessary desegregation of municipal facilities, obviously, thought that by turning over such facilities to private groups they would be removed from the purview of the 14th amendment's guarantee of equal protection. In December 1955, for example, at a meeting of the Tallahassee City Commission the question was raised—and hotly debated—about leasing the municipal golf course to the Tallahassee Country Club, a private corporation. A front-page story in the Tallahassee Democrat, February 15, 1956, at the time the transfer was finally approved by the city commissioners, pointed out:

> The action came after a two-month cooling off period following the proposal's first introduction. At that time Former City Commissioner H. G. Easterwood, now a county commissioner, blasted the lease agreement.
>
> He said racial factors were hinted as the reason for the move.

In view of the Atlanta decision by the Supreme Court only a few months earlier and as reported by the only daily newspaper in Tallahassee, it should be obvious that the purpose of transferring the golf course—which was to circumvent the Supreme Court's ruling—was public knowledge. In a sworn affidavit to the Judiciary Committee, also contained in the record, one of Tallahassee's most prominent citizens, Mrs. Clifton Van Brunt Lewis, confirmed the racial implications of the proposed transfer. According to the affidavit, Mr. and Mrs. Lewis were invited to join the country club but—

> We refused the invitation because we wanted no part in converting public property to private use without just compensation to the public—and because of the obvious racial subterfuge which was evident to the general public.

On April 24, 1956, the Capital City Country Club was formed for the specific purpose of acquiring the municipal facilities and operating a golf club on the premises. The certificate of incorporation lists G. Harrold Carswell, who admittedly is not a golfer, as an original subscriber and as a director of the Capital City Country Club. It seems to me that, as the U.S. attorney for northern Florida, Judge Carswell certainly should have been aware of the litigation pending throughout the South in the wake of Holmes against Atlanta and of the efforts to avoid complying with the Supreme Court's ruling by converting public facilities into private property. Could the transfer of the Tallahassee municipal golf course to the Capital City Country Club, following immediately upon Holmes against Atlanta, and in view of the successful suit in nearby Pensacola to open that city's golf course, have been anything but a thinly disguised attempt to avoid desegregating? In my judgment, a contrary opinion would be difficult to comprehend.

The circumstances surrounding the formation of the Capital City Country Club are too obvious to belabor. It was formed to operate a segregated golf

course on what had been public property and which, under current law, would have had to have been desegregated. As Julian Smith, one of the original incorporators, said when asked about the pressure to desegregate the municipal course, "it was in the back of our minds at the time the transfer was contemplated." "I know I had it on my mind," Smith admitted.

The subsequent history of the Capital City Country Club surely confirms the view that the transfer was an end-run around the Supreme Court. The club was operated on a completely segregated basis—and continues to operate that way even today, though within the last 3 months the first nonwhite guest was admitted.

True, this elaborate scheme to avoid compliance with the Supreme Court's ruling was legal at the time. But I find it particularly disturbing that the U.S. attorney should have been in the forefront of such an effort. We have a right to expect more of our U.S. attorneys—and of Supreme Court nominees. Ingenuity in subverting the Constitution is no recommendation for appointment to the Supreme Court.

In 1963, Judge Carswell's brother-in-law and neighbor, Mr. Jack Simmons, exchanged a piece of swamp land he owned for some shore-front property owned by the Federal Government. Mr. Simmons, in turn, soon conveyed the property to Mrs. Carswell, but added to the deed a restrictive covenant that prohibited transfer of the land to Negroes. The Carswells sold the land in 1966, with the judge signing the deed—and the deed including not merely the covenant but a provision calling for the enforcement of the restriction.

This land transaction, I want to remind my colleagues, took place during Judge Carswell's tenure on the Federal bench. It occurred, moreover, more than a decade and a half after the U.S. Supreme Court in *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), had specifically ruled that restrictive covenants could not be enforced because they represented a denial of equal protection. Surely, as a Federal district court judge, Carswell was familiar with the Shelley decision. Yet, he personally signed the deed anyway.

III. JUDICAL TEMPERAMENT

As Judge Carswell's personal and political activities give us an insight into his character, so his conduct over a period of 12 years as a Federal judge reveals his judicial temperament and suggests the level of his professional qualifications. On the basis of that record, and we intend to lay the record fully before this body, I believe the Senate will deny confirmation.

Perhaps the most shocking aspect of Judge Carswell's judicial record is his personal antagonism and hostility toward attorneys representing clients in civil rights litigation. Not only were Judge Carswell's decisions in these cases out of step with existing precedent—as I shall note in a moment—but Judge Carswell has been clearly hostile and antagonistic to these lawyers and their clients even in his courtroom conduct.

Prof. Leroy Clark of New York University, who spent 6 years supervising civil rights litigation in the South, called Judge Carswell "insulting and hostile" and "the most hostile Federal district court judge I have ever appeared before with respect to civil rights matters." He said that Judge Carswell had on at least one occasion turned his chair away in the middle of an argument. He and other witnesses told the Judiciary Committee of occasions on which Judge Carswell deliberately disrupted arguments while according every courtesy to opposing counsel, shouted at black lawyers, and harassed and attempted to intimidate young civil rights lawyers inexperienced in courtroom procedures.

One of the most surprising acts of judicial hostility involved nine clergymen arrested in the Tallahassee airport restaurant in 1961. They asked for a writ of habeas corpus from Judge Carswell's court, and the writ was denied. On appeal, the fifth circuit ordered the judge to hold a hearing on the case immediately, if the State court did not do so. Judge Carswell, in the presence of the attorney for the nine imprisoned clergymen, then told the city attorney prosecuting the case that "If you go ahead and reduce these sentences, then there will be no hearing. There will not be anything. It will be moot." On Judge Carswell's advice, this is precisely the action that was taken—over the objection of the clergymen, who wanted their claims decided on the merits so that their records could be cleared. As the State court judge told them, when he denied them the opportunity to vindicate themselves, "Now you have got what you came for. You have got a permanent criminal record."

The full range of Judge Carswell's judicial temperament is even more clearly revealed in the bizarre chain of events arising out of the arrest of a group of voting registration volunteers and their imprisonment in the Gadsden County jail. In this case:

First, contrary to controlling precedent in the fifth circuit, *Lefton* v. *Hattiesburg*, 333 F. 2d 280, an illegal filing fee was required by Judge Carswell court before a petition for removal to Federal court was accepted.

Second, when a petition for habeas corpus was filed, Judge Carswell delayed the proceeding by requiring the petition to be resubmitted on a special form, which had been designed for a different class of cases.

Third, the proceeding was delayed further by Judge Carswell's requirement that counsel attempt to secure the signatures of the prisoners, although the attorney's signature was all that could be required under rule 11 of the Federal Rules of Civil Procedure.

Fourth, Judge Carswell told the attorneys representing the civil rights workers that he would try, if at all possible, to deny the petition.

Fifth, when he finally granted the petition, as the law expressly required, he violated 28 U.S.C. 1446 by refusing to have his marshal serve the writ on the Gadsden County sheriff.

Sixth, despite the complexity of the questions posed, without any request from the State, and without affording the civil rights workers any hearing whatever, he remanded the case to the State on his own motion and made possible their immediate rearrest.

Seventh, notwithstanding the congressional grant of a special right of appeal from civil rights remands, he even refused to stay his remand order, a decision promptly reversed by a single judge of the fifth circuit.

When the fifth circuit subsequently considered this case on the merits, it unanimously reversed Judge Carswell. *Wechsler* v. *County of Gadsden*, 351 F. 2d 311 (1965).

Seldom has the Senate heard such a checkered record of judicial action on the part of a Federal judge.

IV. THE QUALITY OF DECISIONS

But, while the Wechsler case may be unusual, or even unique, in the degree of transparent antagonism, there is one way in which it is not the least bit unusual for Judge Carswell. For Wechsler is only one of 17 times when Judge Carswell was unanimously reversed by the fifth circuit in cases involving human rights.

Indeed, the Ripon Society—a group of progressive young Republicans—recently analyzed Judge Carswell's decisions and found that he had been reversed in 59 percent of the appeals in which he wrote published opinions, a rate nearly three times that of other Federal district court judges.

Before analyzing these 17 cases, I believe it is important to make several points about Judge Carswell's record on appeal. In the first place, all of these appeals were to the U.S. Court of Appeals for the Fifth Circuit. The fifth circuit includes the States of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas. The judges of this court can hardly be considered northerners or knee-jerk liberals. They are southern colleagues of Judge Carswell, most of them born and raised in these six States, and faced with the same difficult problems of racial integration arising out of the Supreme Court's decision 16 years ago in Brown against Board of Education. These able judges have come to an honorable reconciliation of these problems. They have by and large faithfully applied the law of the land and followed the precedents set before them—often by overruling the decisions of Judge Carswell. Moreover—and unlike the record of Judge Haynsworth, whose decisions were often overturned by split panels—we are talking about 17 reversals of Judge Carswell, each by a unanimous panel of three fifth circuit judges.

One of these 17 is the incredible Wechsler case, discussed above, in which the fifth circuit finally unanimously reversed Judge Carswell's failure to allow removal.

In a second case, *Augustus* v. *Board of Public Instruction of Escambria County*, 306 F. 2d 862 (1962), Judge Carswell earned reversals on each of two separate grounds. He had held that Negro schoolchildren had no standing to seek integration of school teaching staffs, saying that enjoining teacher assignments based on race was like enjoining teach-

ers who were too strict or too lenient. The effect of Judge Carswell's ruling was to deny these children even a hearing on the question of whether racially discriminatory teacher assignment was unlawful. The fifth circuit unanimously reversed.

In the same case, Judge Carswell had accepted a school desegregation plan in 1961 which merely permitted continued assignment of pupils under Florida's pupil assignment law. Yet the fifth circuit had previously held twice, in both 1959 and 1960, that this law was inadequate to meet the Brown requirement, because it was "administered—in a manner to maintain complete segregation in fact." The fifth circuit unanimously reversed.

After being reversed, Judge Carswell waited 4 months to implement the fifth circuit's decision, then postponed the effective date of the plan for 10 months more.

The third case, *Steele* v. *Board of Public Instruction of Leon County*, 8 Race Rel. L. Rep. 934 (1963), was decided by Judge Carswell 10 months after he was unanimously reversed in Augustus. Again, however, he approved assignments under the pupil assignment law, then three times held inadequate by the fifth circuit. Moreover, he required only token desegregation of one grade per year beginning in 1963, despite the fifth circuit's statement in Augustus that: "If it is too late to integrate for the 1962 year then the plan should provide for such elimination as to the first two grades for the 1963 fall term." Two years after Judge Carswell's 1963 order, the Negro children moved to have him speed up the plan in compliance with subsequent Supreme Court rulings, and he refused even to hold an evidentiary hearing, telling their attorney, "it would just be an idle gesture regardless of the nature of the testimony."

The fifth circuit unanimously reversed both of Judge Carswell's orders. 371 F. 2d 395 (1967).

The fourth case, *Youngblood* v. *Board of Public Instruction of Bay County*, 230 F. Supp. 74 (1964), came 2 years after the reversal in Augustus. Again, Judge Carswell permitted token desegregation under the three-times disapproved pupil assignment law, and even that was delayed for 16 months. Again, he approved a grade-a-year plan, violating the fifth circuit's then 1-month-old decision in *Armstrong* v. *Board of Education of the City of Birmingham*, 333 F. 2d 47 (1964). Moreover, the plan allowed only for so-called "freedom of choice" transfers and then only during a 5-day registration period and only if parents would come to the superintendent's office during working hours.

Judge Carswell's denials of subsequent motions in Youngblood also violated precedents unmistakably clear at the time of denial. For example, in 1965, when he refused to speed up the grade-a-year plan, such plans had already been clearly held unconstitutional by the third, fourth, sixth, and eighth circuits, and the fifth circuit had held months earlier, in Lockett, 342 F. 2d 225 (1965), that "It was—beyond peradventure that shortening of the transition' period was mandatory."

Again, after the Justice Department intervened, seeking to substitute effective methods in place of so-called freedom of choice transfers. Judge Carswell on August 12, 1968, and April 3, 1969, approved "freedom of choice"—all of this contrary to and after the Supreme Court's decision on May 27, 1968, in *Green* v. *County School Board of New Kent County*, 391 U.S. 430. The fifth circuit unanimously reversed, No. 27683, December 1, 1969.

The fifth case, *Wright* v. *Board of Public Instruction of Alachua County*, repeats the story of Youngblood. Again, the fifth circuit unanimously reversed, No. 27983, 1969.

The sixth case, *Due* v. *Tallahassee Theaters, Inc.*, 9 Race Rel. L. Rep. (1963), was a suit seeking desegregation of theaters and alleging a conspiracy between the theaters, the City of Tallahassee, and the sheriff. Judge Carswell dismissed the complaint against the theaters and the city for failure to state a justiciable claim, and granted summary judgment on the sheriff's affidavit denying that there was any conspiracy, thus precluding any evidentiary hearing whatsoever.

The fifth circuit unanimously reversed both of Judge Carswell's actions, 333 F. 2d 630 (1964), stating that "There is no doubt about the fact that the allegations here stated a claim on which relief could be granted, if the facts were proved," and on the issue of granting summary judgment without a trial: "There clearly remained issues of fact to be determined on a full trial of the case."

In the seventh case, *Singleton* v. *Board of Commissioners of State Institutions*, 11 Race Rel. L. Rep. 903 (1964), Judge Carswell had held—in a 99-word opinion—that certain inmates had no "standing" to seek desegregation of reform schools because, before he had rendered judgment, they had been released on conditional parole.

The fifth circuit again unanimously reversed, 356 F. 2d 771 (1966), relying on its own Anderson decision, 321 F. 2d 649 (1963), rendered a year before Judge Carswell's order. The fifth circuit's opinion pointed out that Judge Carswell's approach would preclude any effective effort to desegregate the facilities since the average stay in the reform school was less than the time necessary to fill an action and obtain a court order.

The eighth case, *Dawkins* v. *Green*, 285 F. Supp. 772 (1968), involved Negro civil rights workers alleging that public officials had initiated prosecutions in bad faith to retaliate for civil rights activities and to "chill" their exercise of first amendment freedoms in continuing these activities. The public officials filed affidavits later described by the fifth circuit as "simply a restatement of the denials contained in their answer—they set forth only ultimate facts or conclusions—that they did not enforce the laws against plaintiffs in bad faith." Judge Carswell held that—

> From the *proofs* here, it is clear that there was no harassment, intimidation or oppression . . . and that they are being prosecuted in good faith. . . .

On this basis, he granted a summary judgment for the defendants.

Once more, the fifth circuit unanimously reversed, 412 F. 2d 644 (1969), citing its own preexisting law on summary judgments:

> In summary judgment proceedings, affidavits containing mere conclusions have no probative value.

And in addition to those eight unanimous reversals by the court of appeals, there is at least one other civil rights case in which Judge Carswell has shown himself unaware of the temper of the times—and the law of the land. In *Gaines* v. *Dougherty County Board of Education*, 334 F. 2d 983 (5th Cir. 1964), Judge Carswell was sitting by designation on the fifth circuit while still a district court judge. On appeal from a decision of a Georgia district court, Judges Tuttle and Wisdom ruled that the minimum school desegregation required—10 years after Brown—was the first two grades plus the 12th grade. Tuttle and Wisdom said that if the 12th grade were not desegregated, an entire generation of children would have graduated under Brown without any desegregation.

Judge Carswell, however, dissented, remarking angrily:

> In my view this simply violates the long-standing and wise view that no court should rain down injunctions unless there be some demonstrated factual necessity to insure compliance with the law. (334 F. 2d at 986.)

Surely, 10 years after Brown against Board of Education, this view cannot be sustained.

Each of these cases involves civil rights. But there is another, equally fundamental area of human rights in which Judge Carswell has been no less remiss—in denials of the writ of habeas corpus.

Historically, the writ of habeas corpus, the "Great Writ"—embodied in the Constitution itself—represents one of the most precious safeguards possessed by a free people against abusive and improper governmental confinement. Because the writ often stands as the final judicial guarantee against the tragedy of erroneous imprisonment, each application demands scrupulous attention.

Yet the record reveals that in at least nine cases, involving postconviction relief, Judge Carswell has been unanimously reversed, in almost every case for refusing even to grant a hearing in habeas corpus proceedings or similar proceedings under 28 U.S.C. 2255. In every one of these cases, had petitioners been able to prove what they alleged, they would clearly have been entitled to relief under then existing rulings. Whether this unseemly record is the product of simple callousness, obliviousness to constitutional standards, or pure ignorance of the law, one might only surmise.

I will not elaborate on these cases, because they are all set out in the memorandum attached to the Judiciary Committee report. Moreover, they have much in common—and with terrible consequences. Among the allegations which Judge Carswell would not grant a hearing were charges that a prisoner was unable to waive defenses and enter pleas rationally because of prior mental illness; suffering from mental incompe-

tence at the time counsel was waived; not told of the right to counsel an appeal; involuntarily forced to make self-incriminating statements; not represented by counsel at a crucial hearing; coerced into entering guilty pleas; and denied effective assistance of counsel. In all these cases, the fifth circuit unanimously reversed, ordering Judge Carswell, at least, to provide the minimal guarantee of a hearing before denying such fundamental pleas.

And these are only the habeas corpus cases that were appealed. *Edwards* v. *State of Florida*, N.D. Fla. Crim. Action No. 1271, is a district court case never appealed to the fifth circuit, and thus possibly representative of hundreds of Judge Carswell's unreported actions on habeas petitions. Edwards mistakenly placed the statement "coerced guilty plea" in the wrong blank on his handwritten petition, listing in the proper blank only "denial of appointment of counsel for appeal" and "denial of court records, et cetera, with which to appeal" as his grounds for the writ.

Without holding a hearing, Judge Carswell denied the petition, choosing to ignore entirely the allegation written in the wrong blank—an allegation which, if true, would clearly have entitled him to a writ. Then, incredibly, Judge Carswell denied Edwards a certificate of probable cause for appeal. How many more cases like this might there be?

V. CONCLUSION

Mr. President, all these cases can be interpreted by each Member of the Senate and related as important or insignificant. Of course, it is the right and responsibility of each of us to look at these cases as well as the cases cited by the distinguished Senator from Nebraska in his fine opening remarks. But I am concerned about the picture that all this activity paints of the nominee, Judge G. Harrold Carswell. His words and his deeds, from 1948 until the week of his nomination to be an Associate Justice of the Supreme Court, have been consistently out of step with the direction in which this country must go in providing equal opportunity for all Americans. As I said earlier, he is not a "strict constructionist" at all, in my judgment, but a man reaching out from the Federal bench to foster his segregationist views, both by personal hostility toward the advocates of racial justice and by repeated failure to follow precedent he finds distasteful. A man whose single most distinct judicial trait is an unseeming interest in preventing evidentiary hearings on the merits. What manner of Supreme Court Justice is this?

Some time ago—I think this conclusion is important, and it relates to the remarks of the Senator from Michigan a moment ago—a black militant commented on America in these words:

> For all these years whites have been taught to believe in the myth they preached, while Negroes have had to face the bitter reality of what America practices. It is remarkable how the system worked for so many years, how the majority of whites remained effectively unaware of any contradiction between their view of the world and the world itself.

I do not believe that violence is the way to resolve this contradiction; but all of us must recognize the truth in such a statement. The single most pressing issue of our time is the problem of eliminating the unconscionable gap between what we preach and what we practice.

A hundred years ago, in the 14th amendment, we embodied in the Constitution itself the concept that all Americans are entitled to equal protection of the laws. Only in the past 20 years have we begun to put flesh and bones on the 14th amendment—to turn its promise into reality. That task remains unfinished. Until it is finished, until the day every American has truly equal opportunity, we must continue the struggle.

Today a great many alienated Americans seriously question whether our system can and will deal effectively with this crucial problem. Some have decided that the institutions of our society cannot or will not respond. In their view, our institutions must be scorned and eventually pulled down, as the only course to meaningful reform. At the same time, we face the specter of institutional insensitivity, we feel the hand of officials grown disrespectful of the law and the tradition they represent. While the great majority of elected and appointed officials are in tune with these difficult times and are working for progress, a few still seek to undermine the ability of the system to respond effectively to the crisis of confidence we face.

From Selma and Birmingham to Detroit, from Berkeley to Chicago, we have learned the terrible consequences of violence breeding repression and repression breeding violence. We have learned that those masses who might follow the call to violence must be brought back into our society, even if their leaders cannot be.

Some cite the need to bring our alienated minorities into the system solely as a means of quelling revolution. This is not enough. We must bring all Americans into this great effort because America needs their talents, their energies and ideas to help make a great America an even better America. We cannot begin to make the progress we must, unless we can bring these forces fully into the institutional framework of American society. And we will not do that until we make it clear that those in positions of leadership have a deep moral commitment to the concept of social equality. Today, 100 years after the Civil War, we cannot support a policy which will guarantee anything less than full opportunity for all Americans to enjoy all of the rights of American citizenship.

The evidence is persuasive. Judge G. Harrold Carswell lacks such a deep moral commitment to the concept of racial equality. The elevation to the highest court of such a man would serve as an encouraging symbol to those violent extremists who are outside the mainstream of American life and lend credence to their argument that our system cannot, that it will not, act to make freedom and equality for all Americans a reality. It would also serve as an encouraging symbol to all those at that opposite extreme, who would take comfort in this nomination and redouble their efforts to reverse two decades of slow but steady progress. For all of the millions and millions of Americans—black and white—who have worked as tirelessly to achieve that progress, the confirmation of G. Harrold Carswell, as Associate Justice of the Supreme Court would be a sign of retreat.

Mr. President, I do not think the Senate can withhold its advice and consent from a nominee merely because he is not of the stature of Holmes and Brandeis and Cardozo, men whom the President admires. It is not necessary that we should hold Supreme Court Justices to the high standards of other Republican nominees in this century, the standards of Charles Evans Hughes and William Howard Taft and Harlan Fiske Stone, the standards of Earl Warren and John Marshall Harlan and William Brennan and Potter Stewart. But I do not think we can let our standards fall to the low level suggested by the present nominee. Mr. President, the U.S. Senate, the American people, have a right to insist upon a better man—a man in tune with these difficult times, a man committed to justice for all Americans, a man of recognized stature within his profession, a man of measured sensitivity.

Mr. President, this appointment demeans the Court. It demeans the South. It demeans the Nation. It may be good politics, but it is bad government and bad conscience and it would assuredly give us bad law. At a time when millions of black and white Americans are questioning the American dream, and asking us for a clear sign of where we stand on the most crucial issue of the century, this appointment gives them the back of our hand. I hope the Senate will have the courage and wisdom to refuse to advise and consent to this nomination, and await an appointment by the President of a man more suited for the times in which we live.

Mr. HRUSKA. Mr. President, will the Senator from Indiana yield?

The PRESIDING OFFICER (Mr. HUGHES). Does the Senator from Indiana yield to the Senator from Nebraska?

Mr. BAYH. I yield.

Mr. HRUSKA. Am I correct in my recollection that the Senator asked that there be unanimous consent to include in the RECORD a report of the Washington Research Action Council on the jury selection plan?

Mr. BAYH. That is right.

Mr. HRUSKA. I thank the Senator.

Mr. President, I invite attention to the opening sentence of that memorandum which reads:

> In 1968, Judge Carswell adopted a plan for the selection of persons for jury service in the Northern District of Florida which has resulted in gross racial discrimination in every one of the four Divisions in his district. Moreover, it is clear that this result could easily have been predicted from information available to him at the time.

Then the following is a significant sentence:

> His failure to take action to correct this discrimination is in clear violation of a Federal statute passed several months before he adopted the plan.

Mr. President, I ask unanimous consent that there be printed in the RECORD, a copy of the plan. It commences on page

298 of the hearings after the words "Appendix A."

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

PLAN OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, ALL DIVISIONS, FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS

Pursuant to the Jury Selection and Service Act of 1968 (Public Law 90-274), the following plan is hereby adopted by this court, subject to approval by a reviewing panel and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

I. APPLICABILITY OF PLAN

This plan is applicable to the Northern District of Florida which consists, by divisions, of the counties of:

(1) The Pensacola Division: Escambia, Santa Rosa, Okaloosa and Walton.

(2) The Marianna Division: Jackson, Holmes, Washington, Bay, Calhoun and Gulf.

(3) The Tallahassee Division: Leon, Gadsden, Liberty, Franklin, Wakulla, Jefferson and Taylor.

(4) The Gainesville Division: Alachua, Lafayette, Dixie, Gilchrist and Levy.

The provisions of this plan apply to all divisions in the district.

II. POLICY

This plan is adopted pursuant to and in recognition of the Congressional policy declared in Title 28, United States Code, as follows:

"§ 1861. Declaration of policy

"It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

"§ 1862. Discrimination prohibited

"No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status."

III. MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

The clerk of the court shall manage the jury selection process under the supervision and control of the Chief Judge of the District and there shall be no jury commission. The use of the word "clerk" in this plan contemplates the clerk and any or all of his deputies. The phrase "Chief Judge of this district" wherever used in this plan shall mean the Chief Judge of this district, or in his absence, disability or inability to act, the active District Court Judge who is present in the district and has been in service the greatest length of time. Wherever the Jury Selection and Service Act of 1968 requires or authorizes the plan to designate a district court judge to act instead of the Chief Judge, the above definition shall apply and such active District Court Judge above mentioned is hereby designated to act.

IV. RANDOM SELECTION FROM VOTER LISTS AND MASTER JURY WHEELS

Voter registration lists represent a fair cross section of the community in each division of the Northern District of Florida. Accordingly, names of grand and petit jurors serving on or after the effective date of this plan shall be selected at random from the voter registration lists of all of the counties in the relevant division.

The clerk shall maintain a master jury wheel or a master jury box, hereinafter referred to as master jury wheel, for each of the divisions within the district. The clerk shall make the random selection of names for the master jury wheels as follows. There shall be selected for the master jury wheel for each division as a minimum approximately the following number of names:

Pensacola division	3,200
Marianna division	2,450
Gainesville division	2,100
Tallahassee division	2,600

These numbers are as large as they are to allow for the possibility that some juror qualification forms, hereinafter mentioned, will not be returned, that some prospective jurors may be exempt by law or excused, and that some may not comply with the statutory qualifications. The court may order additional names to be placed in the master jury wheels from time to time as necessary.

If the above numbers are less than one-half of one percent of the total number of registered voters for the division, the court concludes that such percentage number of names is unnecessary and cumbersome.

The clerk shall ascertain the total number of registered voters for each division and divide that number by the number of names to be selected for the master jury wheel from that division. For example, if there are 42,751 registered voters in a division that number will be divided by 2,100 producing the quotient of 20. Then he shall draw by lot a number not less than 1 and not greater than 20 and that name shall be selected from the voter registration list of each county in that division along with each 20th name thereafter. Thus, if the starting number is 19, the 39th, 59th, 79th, 99th, 119th, etc., names shall be picked from the registration list of each county of that division.

Each master jury wheel shall be emptied and refilled during the period June 1–November 30, 1971, and each fifth year thereafter.

This plan is based on the conclusion and judgment that the policy, purpose and intent of the Jury Selection and Service Act of 1968 will be fully accomplished and implemented by the use of voter registration lists, as supplemented by the inclusion of subsequent registrants to the latest practicable date, as the source of an at random selection of prospective grand and petit jurors who represent a fair cross section of the community. This determination is supported by all the information this court has been able to obtain after diligent effort on its part and after full consultation with the Fifth Circuit Jury Working Committee and the Judicial Council of the Fifth Circuit. In order to assure the continuous implementation of the policy, purpose and intent of the Jury Selection and Service Act, a report will be made to the Reviewing Panel on or before March 1, 1969, showing a tabulation by race and sex of all prospective jurors, qualified and unqualified, based upon returns of Juror Qualification Forms from a mailing of such forms to 20% of the total number of persons placed in the master jury wheel or 1,000 persons, whichever is greater.

V. DRAWING OF NAMES FROM THE MASTER JURY WHEEL; COMPLETION OF JURY QUALIFICATION FORM

This plan hereby incorporates the provisions of 28 U.S.C.A. § 1864, which reads as follows:

"(a) From time to time as directed by the district court, the clerk or a district judge shall publicly draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk . . . shall prepare an alphabetical list of the names drawn, . . . The clerk . . . shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk . . . by mail within ten days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk . . . shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk . . . within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk . . . forthwith to appear before the clerk . . . to fill out a juror qualification form. . . .

At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of . . . the clerk or the court, as which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk . . . may be noted on the juror qualification form that transmitted to the chief judge or such district court judge as the plan may provide.

"(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the district court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $100 or imprisoned not more than three days, or both. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than $100 or imprisoned not more than three days, or both."

VI. EXCUSES ON INDIVIDUAL REQUEST

This court finds and hereby states that jury service by members of the following occupational classes or groups of persons would entail undue hardship and extreme inconvenience to the members thereof, and serious obstruction and delay in the fair and impartial administration of justice, and that their excuse will not be inconsistent with the Act and may be claimed, if desired, and shall be granted by the court upon individual request: (1) actively engaged members of the clergy; (2) all actively practicing attorneys, physicians and dentists, and registered nurses; (3) any person who has served as a grand or petit juror in a federal court during the past two years immediately preceding his call to serve; and (4) women who have legal custody of a child or children under the age of 10 years.

Additionally, the court may in its discretion excuse persons summoned for jury service upon a showing of undue hardship, extreme inconvenience, or other ground of exclusion as set forth in Section 1866 of the Act, for such period of time as the court may deem necessary and proper.

VII. EXEMPTION FROM JURY SERVICE

This court finds and hereby states that the exemption of the following occupational classes or groups of persons is in the public interest, not inconsistent with the Act, and shall be automatically granted: (1) members in active service of the armed forces of the United States; (2) members of the Fire or Police Departments of any State, District, Territory, Possession or subdivision thereof; (3) public officers in the executive, legislative, or judicial branches of the government of the United States, or any State, District, Territory, Possession or subdivision thereof who are actively engaged in the performance of official duties (public officer shall mean a person who is either elected to public office or who is an officer directly appointed by a person elected to public office), and (4) all persons over 70 years of age at the time of executing the jury qualification form.

VIII. DETERMINATIONS OF QUALIFICATIONS, EXCUSES, AND EXEMPTIONS

This plan hereby incorporates the provisions of 28 U.S.C.A. § 1865, which reads as follows:

"(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk . . . shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

"(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, shall deem any person qualified to serve on grand and petit juries in the district court unless he—

"(1) is not a citizen of the United States twenty-one years old who has resided for a period of one year within the judicial district;

"(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

"(3) is unable to speak the English language;

"(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

"(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty."

IX. QUALIFIED JURY WHEEL

The clerk shall also maintain separate qualified jury wheels or boxes, hereinafter referred to as qualified jury wheel, for each division in the district and shall place in such wheel the names of all persons drawn at random from the master jury wheels and not disqualified, exempt, or excused pursuant to this plan. Each qualification form as called for by section 1864, *supra*, shall bear the number which its addressee bears on the voter list. The clerk shall insure that at all times at least 300 names are continued in each such qualified jury wheel over and above and exclusive of the names of jurors previously drawn from such qualified jury wheel. The qualified jury wheel in each division shall be emptied and refilled with names when the master jury wheel for that division is emptied and refilled.

X. DRAWING OF AND ASSIGNMENT TO JURY PANELS

From time to time the court or the clerk, if so ordered by the court, shall publicly draw at random from the qualified jury wheel or wheels such number of names of persons as may be required for assignment to grand or petit jury panels, and the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel. These names may be disclosed by the clerk to parties and to the public after said list is prepared and the jurors have been summoned; provided, however, the court may at any time or from time to time order generally, or with respect to any particular term or terms of court, that these names be kept confidential in any case where in the court's judgment the interest of justice so require. (28 U.S.C. § 1863(b)(8)(9))

XI. GRAND JURIES

Two separate and distinct geographic areas of this district are hereby established for the calling of grand jurors, to wit:

(a) Matters within the jurisdiction of the Marianna, Tallahassee, and Gainesville Divisions shall be presented to grand jurors drawn from the qualified jury wheels of each of these three divisions only. A pro-rata, or approximately pro-rata, number of names shall be drawn at random from the qualified jury wheel of each of these three divisions only and those so drawn shall constitute grand juries for those three divisions. Unless otherwise specifically ordered by the supervising judge, as defined in paragraph III, the grand juries for the Marianna, Tallahassee and Gainesville Divisions shall sit at Tallahassee.

(b) Matters within the jurisdiction of the Pensacola Division shall be presented to grand jurors drawn from the qualified jury wheel of the Pensacola Division only.

Court personnel responsible shall proceed to take all action necessary for the implementation of this plan in order that it may be placed in operation on and after December 22, 1968, in accordance with the Jury Selection and Service Act of 1968.

So ordered, this 17th day of July, 1968.

G. HARROLD CARSWELL,
Chief Judge.

WINSTON E. ARNOW,
U.S. District Judge.

I hereby certify that this plan of the Northern District of Florida for random selection of jurors has been formally approved by the Reviewing Panel of the Fifth Judicial Circuit as of September 10, 1968, and that copies hereof have this date been transmitted by mail to The Attorney General of the United States and to the Director, Administrative Office of the United States Courts, respectively.

This 12th day of September 1968.

G. HARROLD CARSWELL,
Chief Judge.

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT REVIEWING PANEL, JURY PLAN

The foregoing and attached plan of the United States District Court for the Northern District of Florida for the random selection of grand and petit jurors in accordance with the Jury Selection and Service Act of 1968, having been reviewed by the Reviewing Panel of this circuit is hereby approved.

Entered for the Reviewing Panel at Houston, Texas, this the 10th day of September, 1968.

JOHN R. BROWN,
Chief Judge.

The following Judges comprised and acted as the Reviewing Panel:

(a) *Fifth circuit judicial council*

John R. Brown, John Minor Wisdom, Walter P. Gewin, Griffin B. Bell, Homer Thornberry, James P. Coleman, Irving L. Goldberg, Robert A. Ainsworth, John C. Godbold, David W. Dyer, Bryan Simpson, Lewis R. Morgan.

(b) *Chief district judge*

G. HARROLD CARSWELL,
Chief District Judge.

Mr. HRUSKA. Mr. President, it strikes me that for any researcher to say that this plan is illegal and that there is a violation of the statute thereby, in the face of the eminent jurists who have studied that plan carefully and matched it up with the statute and who have certified it as complying with the statute, and to come out with a statement of that kind, is certainly effrontery to say the least.

Mr. BAYH. I appreciate the fact that the Senator from Nebraska put that entire plan into the record. It was the intention of the Senator from Indiana—I do not know whether the record will show it—to include from page 294 to page 303 of the hearings, so that both sides of this thing could be made part of the record and everyone can determine it for himself.

I think the Senator from Nebraska knows, and I certainly accord him the knowledge, that although we might differ on the ultimate conclusions, neither one of us would want to try to put something over on the other, or try to give only half the information.

Mr. HRUSKA. Mr. President, I should like to make this added observation. Of course we can differ as to conclusions but we should not differ as to facts. We should try to be fair. This Washington research project action council memorandum is dated February 1, 1970. Nowhere in it is there a word of reference to the fact that the reviewing panel of these eminent members of the fifth circuit court of appeals approved the plan and pronounced it to be, and certified it to be, in compliance with the statute. It seems to me—maybe I am mistaken—maybe I am asking a degree of fairness that is above the capacity of the researcher in the project action council—but in all fairness, attention should be called to the fact that it was so certified.

I am glad that the Senator from Indiana joins me in agreeing that the whole record should be placed in the CONGRESSIONAL RECORD on this debate at this point.

Mr. BAYH. Mr. President, inasmuch as the contention of the memorandum is that the jury selection system has a discriminatory impact, and the memorandum includes several tables and figures and an analysis of the plan, everyone can judge for himself whether the plan is in effect discriminatory.

Certainly I think, as I said a few minutes ago, that it is only fair that all of the information be printed in the RECORD. Then we can let each Senator make this determination for himself. I might also point out that the fifth circuit reviewing panel cited by the Senator approved the plan on September 12, 1968, while the memorandum itself is based on the results of questionnaires sent out by Judge Carswell's court late in 1968. As the memorandum says—at page 295 of the hearings:

> When the completed questionnaires were tabulated, it was apparent that the system adopted was working in a grossly discriminatory fashion. . . ."

So the fifth circuit panel's review is hardly conclusive.

S. 3597—INTRODUCTION OF A BILL TO AMEND TITLE 28, UNITED STATES CODE

Mr. HRUSKA. Mr. President, as in legislative session, I ask unanimous consent to introduce a bill which seeks to amend title 28, United States Code, with respect to judicial review of Interstate Commerce Commission decisions. It is introduced at the request of the Attorney General.

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

Mr. HRUSKA. The bill would modernize the existing judicial machinery for review of decisions of the Interstate Commerce Commission, and is geared to relieve a significant burden on the Federal judiciary. At the same time, the proposal would not alter the Commission's own administrative procedure.

The existing judicial machinery for review of ICC decisions can be tolerated no longer. In the 1968 fiscal year, 51 three-judge courts were convened throughout the country to review ICC orders. This review represents 30 percent of all three-judge courts impaneled that year.

Mr. President, I refer my colleagues to the letter of transmittal from the Attorney General to the Vice President explaining in greater detail the reasons why this bill should become law. I ask unanimous consent that the Attorney General's letter of transmittal and the text of the bill be printed at the conclusion of my remarks, and that the bill be appropriately referred.

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

The bill (S. 3597) to amend title 28, United States Code, with respect to judicial review of decisions of the Interstate Commerce Commission, and for other purposes, introduced by Mr. HRUSKA, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S. 3597

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1336(a) of Title 28, United States Code, is amended to read as follows:

"(a) Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, in whole or in part, any order of the Interstate Commerce Commission, and to enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission for the payment of money or the collection of fines, penalties and forfeitures."

SEC. 2. Section 1398(a) of Title 28, United States Code, is amended by deleting ", suspended or set aside".

SEC. 3. Section 2341(3)(A) of Title 28, United States Code, is amended by inserting following "Federal Maritime Commission," the words "Interstate Commerce Commission,".

SEC. 4. Section 2342 of Title 28, United States Code, is amended as follows:

(a) In the paragraph designated "(3)" following the semicolon, strike "and";

(b) In the paragraph designated "(4)," strike the period and insert in lieu thereof a semicolon followed by the word "and";

(c) Add a new paragraph "(5)" as follows:

"(5) all rules, regulations or final orders of the Interstate Commerce Commission made reviewable by section 2321 of this title."

SEC. 5. Section 2321 of Title 28, United States Code, is amended to read:

"2321 Judicial review of Commission's orders and decisions; procedure generally; process.

"(a) Except as otherwise provided by an Act of Congress, a proceeding to enjoin, set aside, annul, or suspend, in whole or in part, a rule, regulation or order of the Interstate Commerce Commission shall be brought in the court of appeals as provided by and in the manner prescribed in chapter 158 of this title.

"(b) The procedure in the district courts in actions to enforce, in whole or in part, any order of the Interstate Commerce Commission other than for payment of money or the collection of fines, penalties and forfeitures, shall be as provided in this chapter.

"(c) The orders, writs and process of the district courts may, in the cases specified in subsection (b) and in the cases and proceedings under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat. 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43), run, be served, and be returnable anywhere in the United States."

SEC. 6. The first paragraph of section 2323 of title 28, United States Code, is amended to read as follows:

"The Attorney General shall represent the Government in the actions specified in section 2321 of this title and in actions under section 20 of the Act of February 4, 1887, as amended (24 Stat. 386; 49 U.S.C. 20), section 23 of the Act of May 16, 1942, as amended (56 Stat 301; 49 U.S.C. 23), and section 3 of the Act of February 19, 1903, as amended (32 Stat. 848; 49 U.S.C. 43).

SEC. 7. Sections 2324 and 2325 of title 28, United States Code, are hereby repealed.

SEC. 8. The table of sections of chapter 157 of title 28, United States Code, is amended to read:

"Chapter 157—Interstate Commerce Commission Orders: Enforcement and Review

"Sec.
2321 Judicial review of Commission's orders and decisions; procedures generally; process.
2322 United States as party.
2323 Duties of Attorney General; intervenors."

SEC. 9. The proviso in section 205(h) of the Motor Carrier Act, as amended (49 Stat. 550; 49 U.S.C. 305(g)), is amended by striking "file a bill of complaint with the appropriate District Court of the United States, convened under section 2284 of Title 28" and inserting in lieu thereof "commence appropriate judicial proceedings in a court of the United States under those provisions of law applicable in the case of proceedings to enjoin, set aside, annul or suspend rules, regulations or orders of the Commission".

SEC. 10. This Act shall not apply to any action commenced on or before the last day of the first month beginning after the date of enactment. However, actions to enjoin, set aside, or suspend orders of the Interstate Commerce Commission which are pending when this Act becomes effective, shall not be affected thereby, but shall proceed to final disposition under the law existing on the date they were commenced.

The letter, presented by Mr. HRUSKA, is as follows:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed is a proposed bill "To amend Title 28 of the United States Code with respect to judicial review of decisions of the Interstate Commerce Commission, and for other purposes." The bill would modernize the cumbersome and outdated judicial machinery for review of actions of the Interstate Commerce Commission.

Since Congress adopted the Urgent Deficiencies Act of 1913, orders of the Interstate Commerce Commission, except those for the payment of money, have been reviewed in a United States district court of three judges, at least one of whom is required to be a judge of the court of appeals. The decisions of that statutory three-judge court are then reviewed on direct appeal by the United States Supreme Court. In 1950, Congress enacted the Judicial Review Act (28 U.S.C. 2341 *et seq.*) which transferred to the courts of appeals the jurisdiction of three-judge district courts to review certain orders of the Federal Maritime Commission, the Federal Communications Commission and the Department of Agriculture. Although the Judicial Conference recommended including the ICC among the agencies to which the 1950 statute would apply, the bill as finally enacted did not include the ICC

The existing procedure has imposed a substantial burden on the judiciary which, in this era of mounting caseloads, should no longer be tolerated. In the fiscal year 1968, 51 three-judge courts were convened throughout the country to review ICC orders. This was nearly 30 percent of all three-judge courts empaneled that year, including cases involving serious constitutional, civil rights, and federal-state relations disputes. In fiscal 1966, the 72 three-judge ICC cases represented nearly 45 percent of all cases requiring this special court that year. The number of ICC three-judge cases in each of these years was greater than all the three-judge courts empaneled ten years ago. Many of the judges assigned to these ICC cases—particularly the judges assigned from the courts of appeals—were required to lay aside their regular duties in order to attend these hearings, frequently in distant locations within the circuit because a full complement of three judges was not regularly assigned to the city in which these cases were filed. As far back as 1941, Mr. Justice Frankfurter described the three-judge procedure as "a serious drain upon the federal judicial system particularly in regions where, despite modern facilities, distance still plays an important part in the effective administration of justice. And all but the few great metropolitan areas are such regions." *Phillips* v. *United States,* 312 U.S. 246, 250 (1941).

The burden on the Supreme Court has been comparable. In the 1967 Term, that Court disposed of 16 direct appeals from three-judge courts of decisions reviewing ICC orders. Because of the limited public importance of most of these cases and the large number of cases involving constitutional or other important questions requiring greater attention, the Supreme Court decided all but two of the ICC cases without full briefing and oral argument.

The proposed bill would amend the Judicial Review Act to include the Interstate Commerce Commission within its terms, thereby making ICC orders reviewable in the courts of appeals. To conform other provisions of the Judicial Code to this change, the bill would revise several sections of Title 28 that prescribe the jurisdiction, venue, and procedure applicable to district court review of ICC orders. Appellate review of judgments of the courts of appeals would be to the United States Supreme Court by way of a petition for a writ of certiorari under 28 U.S.C. 1254. By accomplishing this change as an amendment to the Judicial Review Act of 1950, litigants and judges would have the benefit of an established and familiar procedure with a sizeable body of interpretive case law that has served efficiently and with general approval for nearly 20 years.

The change we propose will have several additional desirable consequences. Under present law, multiple suits challenging a single ICC order can be brought at the same time in different locations. The existing venue statute (28 U.S.C. 1398(a)) requires a party to bring suit only in the district in which it resides or has its principal office, and there is no provision for consolidating multiple suits by transferring them into a single district. Serious delay and duplication of effort often result. For example, a major obstacle to expeditious judicial review of the ICC's authorization of the Penn-Central Railroad merger was threatened by separate suits challenging aspects of the merger in New York, Pennsylvania, and Virginia. A serious procedural tangle was averted only because of the cooperation of the judges in Virginia and Pennsylvania in staying proceedings in their courts while the first-filed action in New York was expeditiously heard and decided. See *Penn-Central Merger Cases,* 389 U.S. 486, 497, n. 2 (1968), approving comment of Circuit Judge Friendly in *Erie Lack-*

awanna R. Co. v. *United States*, 279 F. Supp. 316, 323–324 (S.D. N.Y. 1967). The proposed bill would cure this defect by making applicable to such actions the provisions of 28 U.S.C. 2112(a) which require consolidation of all petitions to review an agency order in the circuit in which the first challenge to the order was filed.

A second defect in existing procedure is the absence of any time limitation within which an aggrieved party may challenge an ICC order. Our proposal will make applicable to the ICC the Judicial Review Act provision which requires that a petition for review be filed within 60 days from the date of service of the agency's order.

The shift in jurisdiction to the courts of appeals will ease the procedural and financial burden on private parties challenging ICC orders by requiring the agency, instead of the plaintiff, to file the record of proceedings before the agency with the reviewing court.

The added cost to the government will not be undue, since the new Federal Rules of Appellate Procedure, which govern cases in the courts of appeals, allow the agency to file a certified list of the documents, testimony and exhibits comprising the record rather than reproducing or filing the original papers.

One additional consequence of the proposed legislation would be to permit a quorum of the court of appeals to decide a case challenging an ICC order when one of the assigned judges has become incapacitated. See 28 U.S.C. 46(d). Present law does not include a quorum provision for three-judge district courts, and the Supreme Court has declared that the participation of fewer than three judges in the decision of a case required to be heard by a three-judge district court renders the decision void. See *Ayrshire Collieries Corp.* v. *United States*, 331 U.S. 132 (1947). This becomes a particular hardship in the rare circumstance of the incapacitation or death of a judge after hearing but prior to decision of the case.

In all other material respects, the existing procedure will be retained under the new statute. Actions will be filed against the United States, with the Attorney General managing and controlling the defense of the agency's order. This is in line with existing procedure applicable to the ICC and to agencies already governed by the Judicial Review Act, and simply retains a procedure that was strongly endorsed as critical to the "efficient performance of legal services within the Executive Branch" by the Hoover Commission in 1955. See Commission on Organization of the Executive Branch of the Government, *Report on Legal Services and Procedures*, p. 6 (1955). The ICC will retain its right to participate independently through all stages of judicial review. In addition, the court of appeals will have the same power as do the three-judge courts to issue interlocutory orders to stay the effect of a challenged decision pending review on the merits. The only change would be that applications for interlocutory relief will have to be submitted to a three-judge panel of the court of appeals instead of merely one district judge prior to the empaneling of a three-judge court. In practice, this will not amount to any hardship since comparison applications are routinely referred to a panel of the court regularly assigned to hear motions on an expedited basis.

The legislation also proposes to make specific what is already assumed by litigants and the courts—rules and regulations of the Commission are reviewed in the same judicial tribunal which has jurisdiction to review adjudicated orders of that agency. See *American Trucking* v. *A.T. & S.F.R. Co.*, 387 U.S. 397 (1967). The jurisdictional provisions of existing law make no reference to rules and regulations, even though the procedure and the standards for judicial review of rules and orders differ materially. Despite the practice of the Commission to label the promulgation of a rule as an order, we think parties should not be left with uncertainty as to the nature and jurisdiction for judicial review of the ICC's decisions. For this reason, we propose that the scope of the jurisdiction of the courts of appeals should be made clear by specific statutory reference to rules, regulations and orders, as those terms are defined in section 551 of Title 5, United States Code.

The provisions of existing law repealed by section 7 of the bill apply solely to proceedings by three-judge district courts which would no longer apply in any way to the ICC. The existing jurisdiction and procedure of single-judge district courts as they concern ICC proceedings are in no way altered. However, the language of 28 U.S.C. 2321 making orders, writs, and processes of district courts returnable on a nationwide basis would be eliminated insofar as judicial review proceedings which are being transferred to the courts of appeals are concerned. That language is no longer essential once a 60-day period of limitations is adopted and consolidation of multiple proceedings is required in that court in which the first challenge is filed. However, provision for nationwide process would remain fully in force with respect to those cases remaining in the district courts.

The Bureau of the Budget has advised that there is no obligation to the presentation of this proposed bill from the standpoint of the Administration's program.

Sincerely,

———— ————,
Attorney General.

TRIBUTE TO FREDERICK WOLTMAN

Mr. ALLOTT. Mr. President, America has lost another journalist in the great tradition. I refer to Scripps Howard writer Frederick Woltman, a Pulitzer Prize winner, whose distinguished reporting was respected throughout the Nation.

Mr. Woltman, who passed away March 5 at his home in Sarasota, Fla., was a reporter who took his position seriously and whose record in exposing corruption, enemy infiltration, and political manipulation in Government was nearly unmatched in the 3 decades between 1929 and 1959.

The Washington Daily News of Friday, March 6, 1970, carried an excellent tribute to Mr. Woltman, which details a part of his outstanding journalistic career. Mr. President, I ask unanimous consent that this article be printed in the RECORD at this point.

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

FREDERICK WOLTMAN, PULITZER JOURNALIST

SARASOTA, FLA., March 6.—Frederick E. Woltman, a superb reporter, died here yesterday.

Fred, who would have been 65 years old today, spent his entire professional career with The New York World-Telegram, a Scripps-Howard newspaper, which he joined in 1929 and from which he retired in 1959. Many of his dispatches ran in the Washington Daily News and other Scripps-Howard newspapers.

He won early professional recognition when he collaborated on a series exposing a real estate mortgage and bond racket, which helped The World-Telegram win the 1933 Pulitzer Prize "for most distinguished and meritorious public service."

In 1934 he won honorable mention from the Pulitzer Prize Committee "for clear, exact and understanding writing in reporting the status of various closed banks in suburban areas of New York after the national (bank) holiday."

EXPOSED INFILTRATION

In 1947 he won the Pulitzer Prize for "distinguished example of a reporter's work" in exposing Communist infiltration into labor unions, educational organizations and church groups. From the middle 1930s until ill health compelled him to retire he was a tireless chronicler of Communist activities, winning a place in the Communist demonology with such mortal enemies of Marxism as FBI Director J. Edgar Hoover. In the litany of abuse heaped on him by various Communist publications for 30 years, "Freddie the Fink" was one of the milder examples.

Until his retirement he lived in Greenwich Village, New York, in an apartment that was a mecca for newsmen, labor union intellectuals, apostate Communists, animal trainers and other circus people, politicians, literary lions of greater or lesser magnitude, and various others undistinguished except as bon vivants, a field in which Fred himself also excelled.

LOVED CIRCUS

Fred's affection for the circus and for circus people was legendary, and the friendships he formed in his lifelong romance with the big tent shows led him to choose Sarasota, the former winter quarters of the Ringling Bros., Barnum and Bailey Circus, as a retirement home.

Fred, who was born in York, Pa., was graduated from the University of Pittsburgh in 1927, and taught philosophy and ethics as a graduate assistant until 1929, when he joined The World-Telegram. He quickly became an expert on Tammany Hall and municipal corruption, and one of his exposés of labor racketeering led to the removal and subsequent conviction of Sam Kaplan, czar of Moving Picture Machine Operators Union, Local 306.

One of his most celebrated journalistic coups took place in 1954, when after three months of painstaking work he wrote a scrupulously documented series on the late Sen. Joseph R. McCarthy. The series, titled "The McCarthy Balance Sheet," arraigned the Wisconsin senator as a "major liability to the cause of anti-communism," and created a storm of controversy. Altho Sen. McCarthy had long been the target of liberal writers, Mr. Woltman's impeccable anti-communist credentials gave his series tremendous impact and is credited with being an important factor in Sen. McCarthy's subsequent downfall.

Mr. Woltman was a meticulous craftsman. His files on the old left were enormous, and offered rich veins of information to be worked by students, fellow reporters and government agencies.

Death was caused by a heart attack. He is survived by his wife, Myra Lehman Woltman. Services are to be private, and the family requests that donations be made to Happiness House, in Sarasota, in lieu of flowers.

FREDERICK E. WOLTMAN

Frederick E. Woltman, longtime Scripps-Howard reporter who died yesterday in Sarasota, Fla., was a newspaperman in the great tradition of Lincoln Steffens. (See obituary on page 50.) To describe him as a prize-winning journalist (he won the Pulitzer as well as a host of other awards) is to attempt to capsule an unrivaled career dedicated to the people's right to know.

His exposures of Communist infiltration into labor unions, educational organizations and other groups won for him lasting celebrity 30 years ago. But even without that capstone, his professional achievements would have earned him an enduring place among the great ones in a difficult calling. He was a master craftsman, and an honest and tireless seeker after the truth.

Mr. ALLOTT. Mr. President, America shall miss Frederick Woltman, his honor, his devotion to his beliefs, his unyielding determination to get at the

truth. Mrs. Allott joins me in expressing sympathy to Mrs. Woltman.

THE NATIONAL WILD AND SCENIC RIVERS SYSTEM

Mr. ALLOTT. Mr. President, I am sure that Members of the Senate recall that the Congress approved legislation in the fall of 1968 under Public Law 90–542 to provide for a national wild and scenic rivers system.

It was my good fortune and great delight to receive last week a copy of the February 1970 issue of Parks and Recreation, published by the National Recreation and Park Association, containing a most interesting article concerning wild rivers which I wish to bring to the attention of the Senate. The article was prepared by Mr. G. Douglas Hofe, Jr., Director of the Bureau of Outdoor Recreation in the Department of the Interior.

Mr. Hofe reports on the progress being made at the State, local, and Federal levels of government to establish a national wild and scenic rivers system.

Portions of eight rivers—the Clearwater in Idaho, the Eleven Point in Missouri, the Feather in California, the Rio Grande in New Mexico, the Rogue in Oregon, the St. Croix in Wisconsin and Minnesota, the Salmon in Idaho, and the Wolf in Wisconsin—were initially declared by Congress as components of the system.

Twenty-seven other rivers were designated for study by the Department of the Interior and Department of Agriculture for possible future inclusion in the system.

Truly amazing progress has been made by the States in moving to set aside wild and scenic rivers which will be managed by the States and can be included in the national system.

As of February 1970, 12 States have active scenic river programs. Eleven other States are considering legislation to protect and preserve free-flowing rivers. Study groups have been authorized in eight additional States to investigate the feasibility of creating State and local scenic river programs. Many specific action programs are expected to be recommended. Also, seven of the remaining 19 States have identified State rivers which, in their opinion, merit study for possible inclusion in a future stream preservation program.

Mr. President, I ask unanimous consent that the article and summary of State actions by Director Hofe be printed in the RECORD at this point.

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

WILD RIVERS

(By G. Douglas Hofe, Jr.)

Of the more than three million miles of rivers and tributaries in the United States pouring their waters down to the sea, many have been harnessed for flood control, navigation, hydroelectric power, municipal and industrial water supply and irrigation. Cities, factories and homes have been built on their flood plains. Their banks have become dumping grounds for used and unwanted materials and their waters the recipient of our industrial and municipal wastes. In many ways we have mindlessly destroyed the beauty and purity of these streams. Our affluent society has become an effluent society. It has neglected the very water we drink, as well as the values of fish and wildlife, scenic and recreation resources. President Nixon presented the challenge to conservation when he said:

"Can we have technological progress and also have clean beaches and rivers, great stretches of natural beauty and places where man can go to find the silence and privacy he is unable to find in our increasingly urbanized daily life?

"I say we can have technological advances and natural beauty . . we can have the greatest industrial might in the history of man and have places where man's work seems as distant as the stars."

And Secretary of the Interior, Walter J. Hickel, recently said:

"There is an environmental 'uneasiness' throughout the land—throughout the world. . . . We are our own worst environmental enemy, yet we do not have to be . . . all of our natural resources should be catalogued and inventoried, both in general—and specifically—for various uses, whether for preservation of beauty; or as resources to accommodate people."

Fortunately there are still some rivers which flow wild and free, largely unspoiled by man's handiwork. In October 1968, after some six years of discussion and debate, the Wild and Scenic Rivers Act, P.L. 90–542, became law. That Act established the basic principle that certain selected rivers of the Nation, which, with their immediate environments, possess outstanding remarkable scenic, recreation, geologic, fish and wildlife, historic, cultural, and other similar values, are to be preserved in a free-flowing condition, and protected for the benefit and the enjoyment of present and future generations. The Congress declared: that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

The Wild and Scenic Rivers Act establishes the Wild and Scenic Rivers System composed of eight initial rivers and identifies 27 other rivers to be studied for possible inclusion in the National System. The Act further encourages the inclusion of state rivers into the National System by providing that upon request of the state governor, rivers which have been designated by the state legislature as wild, scenic, or recreation river areas and which meet the criteria set forth by the Congress and any supplemental criteria developed by the Secretary of the Interior, may be protected as part of the National System. In addition, the Act authorized the Secretary of the Interior to provide technical assistance, advice, and encouragement to the states, political subdivisions, and private organizations in their efforts to establish state and local wild, scenic and recreation river areas.

The Act describes a free-flowing river as ". . . any river or section of a river . . . existing or flowing in a natural condition, without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway." For the purposes of this Act, free-flowing was further defined by stating that:

"The existence, however, of low dams, diversion works, or other minor structures at the time any river is proposed for inclusion in the National Wild and Scenic Rivers System shall not automatically bar its consideration."

GUIDELINES FOR INCLUSION IN SYSTEM

Every free-flowing river segment which meets the criteria established by the Act is potentially eligible for inclusion in the National System. Those rivers selected for inclusion in the National System will be classified and managed under one of the following guidelines:

1. Wild river areas.—Those unpolluted rivers or segments of rivers that are free of impoundments, generally inaccessible except by trail, and have essentially primitive shorelines and watersheds. These are vestiges of primitive America.

2. Scenic river areas.—Those rivers or segments of rivers that are free of impoundments, which are accessible in places by roads, but still have shorelines and watersheds that are largely undeveloped and primitive.

3. Recreation river areas.—Those rivers or segments of rivers that have undergone impoundment or diversion in the past, are readily accessible by road or railroad and have some development along the shorelines.

Congress has made it clear that the task of preserving and administering outstandingly remarkable free-flowing streams ". . . is not one that can or should be undertaken solely by the federal government, the states ought to be encouraged to undertake as much of the job as possible. . . ." Congress also identified two rivers which have been protected by action of the states—the Allagash Wilderness Waterway in Maine, and a portion of the Wolf River as it flows through Langlade County, Wisconsin—as potential additions to the National System. These and other rivers similarly protected by state action could be included in the National System with all of the protection afforded to that System and yet remain under state and local control and administration.

STATE SCENIC RIVER PROGRAMS

To date, 12 states have active scenic river programs to enhance the values of free-flowing rivers. Eleven other states are considering legislation to protect and preserve free-flowing rivers. Study groups have been authorized in eight additional states to investigate the feasibility of creating states and local scenic river programs and, in many cases, to recommend a course of action. The remaining 19 states have no specific programs at this time to preserve such river areas at the state level. However, seven of the 19 states have identified state rivers which, in their opinion, would merit study for possible inclusion in some future stream preservation program.

Comprehensive Outdoor Recreation Plans prepared by the states as part of the Land and Water Conservation Fund program consider the need for preserving segments of free-flowing streams. Several such plans have detailed proposals for development of state scenic river systems. Financial assistance under the Land and Water Conservation Fund is available on a 50-50 matching basis to plan, acquire and develop state and local wild, scenic and recreation river areas.

The State of Maine, through a request for Land and Water Conservation Fund moneys, has received to date a $1,250,000 matching grant as part of an estimated $3,000,000 State program to establish the Allagash Wilderness Waterway. Similarly, the Upper Wolf River in Langlade County, Wisconsin, has been preserved as one of that State's wild and scenic rivers through the use of $537,586 from the Land and Water Conservation Fund. Wisconsin also received $181,855 for land acquisition along the Flambeau River. The State of Arkansas used $6,400 from the Land and Water Conservation Fund in the preparation of a Statewide plan for stream preservation as a part of the overall Arkansas Comprehensive Outdoor Recreation Plan.

The Bureau of Outdoor Recreation has been designated to provide assistance and coordinate state and local efforts to maintain and enhance free-flowing rivers. That Bureau also is coordinating a major portion of the study program leading to the addition of rivers to the National Wild and Scenic Rivers System. The Forest Service, Department of Agriculture, has a similar role where national forest lands are involved.

The importance of the wild rivers program at the state and local level is emphasized by the fact that 44 governors have designated personal representatives to work directly with the Bureau of Outdoor Recreation.

The table on this page summarizes the status of state and local wild, scenic and recreation river programs.

The Bureau of Outdoor Recreation in cooperation with the states and other concerned federal agencies is now preparing preliminary guidelines and criteria to evaluate the resources associated with free-flowing river areas which might be recommended for inclusion in the National System.

The Regional Offices of the Bureau of Outdoor Recreation have assembled an up-to-date, nationwide compilation of state and local actions to preserve free-flowing river areas. These offices can provide technical assistance in the creation of state and local river programs. Recommendations for candidates for either the state and local rivers program or for potential additions to the National System will be extremely helpful to the Bureau. At the same time suggestions concerning characteristics which should be used to evaluate free-flowing rivers and their immediate environment will also be appreciated. You should make your views known to your state wild river representative or in the absence of a state representative, to the Bureau of Outdoor Recreation Regional Office in your area.

SUMMARY OF STATE ACTIONS TO ESTABLISH STATE SCENIC RIVER SYSTEMS

State	Drafted	Legislation enacted	Implemented	Nonlegislated programs	Number of rivers [1]	Governor's representative on scenic river programs	Scenic rivers [2]
Alabama		Aug. 7, 1969, resolution.	Designates Little River as wild and scenic river.		11	Joe W. Graham, director, Alabama Department of Conservation.	No.
Alaska				399 miles of scenic canoe trails have been designated.	None	F. J. Kennan, director, Division of Lands	Yes.
Arizona					None	No	Yes.
Arkansas	Yes				34	Harold E. Alexander, Economic Development Program, Office of the Governor.	Yes.
California		1968	California Protected Waterways Act.		35	Paul L. Clifton, Federal resources project coordinator, the Resources Agency.	Yes.
Colorado	Yes			Special ad hoc committee has been established to determine approach State will take toward establishment of State scenic river system.	None	Tom Ten Eyck, executive director, Department of Natural Resources.	No.
Connecticut					3	Joseph N. Gil, commissioner, Department of Agriculture and Natural Resources.	Yes.
Delaware					3	Rudolph F. Jass, director, State Planning Office.	No.
Florida					14	Ney Landrum, Florida Outdoor Recreation Development Council.	Yes.
Georgia		1969	Georgia Scenic Rivers System.		5	George T. Bagby, Game and Fish Commission.	Yes.
Hawaii					None	Dr. Shelley M. Marks, director, Department ment of Planning and Economic Development.	No.
Idaho				Research project to develop methodology for evaluation of wild and scenic rivers in Idaho under contract with University of Idaho.	None	Prof. C. C. Warnick, director, University of Idaho Water Resources Research Institute.	Yes.
Illinois				Department of Conservation has undertaken a study of a portion of the Vermilion River.	1	William L. Rutherford, director, Department of Conservation.	Yes.
Indiana	No legislation needed.			Natural stream preservation program	5	John R. Lloyd, director, Department of Natural Resources.	Yes.
Iowa				State Conservation Department now studying 13 rivers which might compose a future scenic river system.	12	Fred A. Priewert, director Iowa Conservation commission.	Yes.
Kansas				State, with use of Department of Housing and Urban Development "701" funds, now conducting inventory to identify and evaluate potential State scenic rivers.	None	Lynn Burriss, Jr., director, Parks and Resources Authority.	No.
Kentucky				Recently appointed Wild Rivers Commission reviewing streams for inclusion in future system.	50	Frank J. Groschelle, administrator, Kentucky Program Development Office.	Yes.
Louisiana	Yes				34	Lamar Gibson, State Parks and Recreation Commission; Gladney Davidson, Wildlife and Fisheries Commission.	Yes.
Maine		1966	Allagash Wilderness Waterway.		60	Lawrence Stuart, director, State Parks and Recreation Commission.	Yes.
Maryland				Scenic River Review Board established to inventory scenic river sites and recommend legislation.	1	Spencer P. Ellis, director, State Forests and Parks.	Yes.
Massachusetts				Commissioner of Water Resources Board recommending study legislation.	None	No	Yes.
Michigan					None	Ralph MacMullan, director, Department of Natural Resources.	Yes.
Minnesota		1963	Recreational canoe routes.		16	No	Yes.
Mississippi	Yes				68	Spencer E. Medlin, director, State Park Commission.	Yes.
Missouri	Yes			Governor has established a wild rivers advisory commission.	19	Robert L. Dunkeson, executive secretary, Inter-Agency Council for Outdoor Recreation.	Yes.
Montana		Yes		State recreational waterway system	3	Wesley R. Woodgerd, chief, Recreation and Parks Division, Montana Fish and Game Department.	Yes.
Nebraska					None	Melvin O. Steen, director, Game and Parks Commission.	Yes.
Nevada					None	No	Yes.
New Hampshire					None	J. R. Crowley, Department of Resources and Economic Development.	Yes.
New Jersey					1	No	Yes.
New Mexico				State planning office is presently inventorying potential State scenic rivers.	None	Elie Gutierrez, State planning officer	Yes.
New York					1	R. Stewart Kilborne, Conservation Commission.	Yes.
North Carolina	Yes				41	Dr. W. L. Turner, director, Department of Administration.	Yes.
North Dakota					4	John Greenslit, director, State Outdoor Recreation Agency.	Yes.
Ohio		1968	Ohio Scenic Rivers System.		2	Fred E. Morr, director, Department of Natural Resources.	Yes.
Oklahoma	Yes				2	Robert Breeden, director, Industrial Development and Park Department.	No.
Oregon	Yes				3	Kessler Cannon, executive secretary, Committee on Natural Resources.	Yes.
Pennsylvania					None	William C. Forrey, Assistant Director, Bureau of State Parks.	No.
Rhode Island					None	Calvin B. Dunwoody, chief, Division of Planning and Development, Department of Natural Resource.	No.

State	Drafted	Legislation enacted	Implemented	Nonlegislated programs	Number of rivers [1]	Governor's representative on scenic river programs	Scenic rivers [2]
South Carolina					11	John A. May, director, Division of Outdoor Recreation.	Yes.
South Dakota					None	Robert Hodgins, director, Game, Fish, and Parks.	No.
Tennessee		1968	Tennessee Scenic Rivers Act.		10	E. Boyd Garrett, commissioner of conservation.	Yes.
Texas	Yes				15	J. R. Singleton, executive director, Parks and Wildlife.	No.
Utah					None	No	Yes.
Vermont					None	Forrest Orr, Interagency Committee on Natural Resources.	Yes.
Virginia	Yes			University of Virginia School of Architecture, Division of Planning completed statewide survey and appraisal of streams as directed by General Assembly. Legislation is being drafted.	26	Elbert Cox, Commission of Outdoor Recreation.	Yes.
Washington	Yes			An ad hoc interagency committee to study scenic rivers.	None	Lewis A. Bell, chairman, Interagency Committee on Outdoor Recreation.	Yes.
West Virginia		1969	Natural streams preservation system.		3	Dr. B. L. Coffindaffer, director, Federal-State Relations.	Yes.
Wisconsin		1965	Wisconsin Wild and Scenic Rivers.		9	John Brasch, assistant director, Bureau of Fish and Management, Department of Natural Resources.	Yes.
Wyoming					None	Paul Westedt, acting director, Wyoming Recreation Commission.	Yes.

[1] Identified by States for potential inclusion in scenic river programs.

[2] Considered in Statewide Comprehensive Outdoor Recreation Plan.

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. HOLLAND. Mr. President, with reference to the confirmation of the nomination of Judge G. Harrold Carswell to be a Justice of the Supreme Court, I shall not attempt to make any speech today. But I do want other Senators to know something about how Judge Carswell is regarded by the bar of the State of Florida and by some of the leading elected officials of the State.

I, therefore, ask unanimous consent first that there be printed in the RECORD a resolution adopted by the Governor and cabinet of the State of Florida assembled at Tallahassee, Fla., on January 27, 1970, approving the nomination and urging the Senate to confirm Judge Carswell to be a Justice of the Supreme Court.

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

RESOLUTION ADOPTED BY THE GOVERNOR AND CABINET OF FLORIDA ASSEMBLED AT TALLAHASSEE, FLA., JANUARY 27, 1970

Whereas G. Harrold Carswell, Judge for the U.S. Fifth Circuit Court of Appeals in New Orleans, has distinguished himself in the field of law for more than twenty years and

Whereas Judge Carswell received his law degree from the Walter F. George School of Law at Mercer University in 1948 after serving with the U.S. Navy during World War II and

Whereas Judge Carswell, after service as a U.S. Attorney for the Northern District of Florida became at the age of 38 the youngest federal judge in the history of this country and

Whereas Judge Carswell after his appointment to that position by President Dwight D. Eisenhower served with distinction on that court for more than twelve years and

Whereas Judge Carswell was appointed in 1969 to the U.S. Fifth Circuit Court of Appeals and

Whereas Judge Carswell has esteemed himself in the minds of his friends and neighbors, members of the Bench and Bar, and all with whom he has come in contact, because of his natural instinct for the law, his judicial temperament and his ability to quickly define legal issues and

Whereas Judge Carswell's recent appointment by President Richard M. Nixon to the U.S. Supreme Court brings honor not only to him and his family but indeed to Tallahassee and the State of Florida.

Now therefore be it resolved that the Governor and Cabinet of the State of Florida in a meeting assembled in Tallahassee, Florida, do go on record as commending him upon his appointment with all good wishes for a quick confirmation as the first Floridian ever to hold the title of U.S. Supreme Court Justice.

Adopted this 27th Day of January, 1970.

CLAUDE KIRK,
Governor.
TOM ADAMS,
Secretary of State.
EARL FAIRCLOTH,
Attorney General.
FRED O. DICKINSON, JR.,
State Comptroller.
BROWARD WILLIAMS,
State Treasurer.
FLOYD T. CHRISTIAN,
Commissioner of Education.
DOYLE CONNER,
Commissioner of Agriculture.

Mr. HOLLAND. Mr. President, I call attention to the fact that the Governor is a Republican and that the six members of the cabinet other than he, who are all elected statewide, are Democrats.

I ask unanimous consent that there be printed in the RECORD a wire I received today from Mr. Pat Thomas, the chairman of the Democratic Executive Committee of the State of Florida, completely approving and urging the confirmation of Judge Carswell and stating what he had to say in a press release recently given by him and carried statewide, and stating likewise that he had had nothing but approval from leading members of his party throughout the State.

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

QUINCY, FLA.,
March 16, 1970.

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

DEAR SENATOR HOLLAND: As active debate now approaches on the confirmation of Judge G. Harrold Carswell and in view of your probable role of leading the floor debate on behalf of his confirmation I thought I should apprise you of my response as chairman of the Democratic Party of Florida when asked by the Associated Press what posture did we of the official party take on this nomination. This inquiry was prompted pursuant to the appearance of our distinguished former Democratic Governor Leroy Collins, before the Senate Judiciary Committee; I related to the press that while no poll had been conducted and that I could not render an official endorsement of Judge Carswell, I felt that most Florida Democratic officials would favor the confirmation and heartily endorse the testimony rendered by Governor Collins. I did report that I knew of no party or public official in Florida opposing this confirmation and have observed that he had been an outstanding member of the judiciary, a credit to our State, and was at all times recognized as a jurist of great fairness to all who came before him. These comments were carried statewide February 5 by the AP. I also called attention to the assistance given this nomination by other Democrats in addition to that of Governor Collins, principally yourself, Congressmen Sikes and Fuqua and others from the delegation. I further mentioned Comptroller Fred Dickinson's offer to testify on behalf of the Florida cabinet. The interviewer quizzed me to ascertain if we were then not critical of the intense efforts of examinations by Senators KENNEDY and BAYH to which I responded in the negative and expressed belief that such a fine tooth investigation should be expected of those who would sit on the nation's high courts. These statements received healthy airing in Florida's press and I have been gratified at the positive response and approval which I have received from our Democrats throughout the State. As a matter of fact not one single protest or criticism have I received from any of the 7000 precinct workers as well as several thousand Democratic office holders. This would certainly indicate that this fine American is worthy of the very diligent stewardship you now render on his behalf, and is consistent with the leadership which you have always directed in the fashion that best serves your State and Nation; you exemplify great statesmanship as you champion issues such as this which should be far removed from the field of partisan battle.

Very sincerely,

PAT THOMAS.

Mr. HOLLAND. Mr. President, I ask unanimous consent that there be printed

at this point in the RECORD a wire which I received from Honorable W. May Walker, a circuit judge, who is the senior circuit judge of Florida, living now at Tallahassee.

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

TALLAHASSEE, FLA.,
March 16, 1970.

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

As a Florida Circuit judge and as the senior judge in point of service of all judges of Florida, appellate or otherwise and as a Democratic office holder, I strongly urge confirmation of Judge G. Harrold Carswell as Supreme Court Justice. Having known him for many years both socially and professionally, I deem him eminently qualified in every respect to capably and creditably discharge the duties of this high office.

W. MAY WALKER,
Circuit Judge.

Mr. HOLLAND. Mr. President, I ask unanimous consent that there be printed at this point in the RECORD, a wire I have received from the two presiding circuit court judges of the 19th Judicial Circuit of Florida, who were holding court today at Vero Beach, Fla.

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

VERO BEACH, FLA.,
March 16, 1970.

Hon. SPESSARD L. HOLLAND,
Hon. EDWARD J. GURNEY,
U.S. Senate, Capitol Building,
Washington, D.C.:

Judge G. Harrold Carswell is known to be an able jurist and a man of excellent character. If his nomination to the Supreme Court of the United States is confirmed, he will serve the Court and his country well.

D. C. SMITH,
WALLACE SAMPLE,
Circuit Judges, 19th Judicial Circuit of Florida.

Mr. HOLLAND. Mr. President, I ask unanimous consent that there be printed in the RECORD a wire which I received yesterday from Judge Tom Barkdull, of Coral Gables, Fla., who is a judge of the district court of appeals, which is next to the highest court we have in our State.

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

MIAMI, FLA.
March 15, 1970.

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

As a member of the Florida bar for over twenty years I heartily endorse Judge Carswell for the Supreme Court.

JUDGE TOM BARKDULL,
Judge, District Court of Appeals.

Mr. HOLLAND. Mr. President, I ask unanimous consent that there be printed in the RECORD a wire from Circuit Judge B. C. Muszynski, of Orlando, Fla., urging that the nomination of Judge Carswell be confirmed.

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

ORLANDO, FLA.,
March 16, 1970.

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

Request your affirmative vote for Judge Carswell appointment to the Supreme Court, United States.

B. C. MUSZYNSKI,
Circuit Judge.

Mr. HOLLAND. Mr. President, I ask unanimous consent that there be printed in the RECORD a wire received from Judge Roger F. Dykes, of Cocoa, Fla., urging the confirmation of the Carswell nomination.

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

COCOA, FLA.,
March 16, 1970.

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

Bench and bar together urge approval Carswell appointment.

Judge ROGER F. DYKES.

Mr. HOLLAND. Mr. President, I ask unanimous consent that there be printed in the RECORD a wire I have received from Judge Ben C. Willis, a circuit judge and a member of the Florida circuit court for 13 years, commenting favorably on the nomination of Judge Carswell and urging his confirmation.

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

TALLAHASSEE, FLA.,
March 16, 1970.

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

As a Florida Circuit judge for thirteen years who is a democratic office holder, I strongly urge confirmation of Judge G. Harrold Carswell as supreme court justice. I have known him well for many years both socially and professionally and I deem him fully qualified by temperament, integrity and scholarship to capably discharge the duties of that office.

BEN C. WILLIS.

Mr. HOLLAND. Mr. President, I ask unanimous consent that there be printed in the RECORD a wire I have received from all five of the sitting judges of the District Court of Appeals of the First Circuit, which covers all of west Florida and most of north Florida, extending from Pensacola to Jacksonville and down, which I say again is an appellate court and the second highest court in our State, unqualifiedly endorsing the nomination and urging confirmation of Judge Carswell.

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

TALLAHASSEE, FLA.,
March 16, 1970.

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

We, the undersigned democratic judges of the first District Court of Appeals of Florida, individually know and have been personally acquainted with G. Harrold Carswell during his period of service both as United State Attorney and Judge of the United States District Court at Tallahassee; as a practitioner, adversary, and presiding judge we have found him to be fair and impartial in the discharge of his official duties which he has performed with a high degree of judicial competence and dispatch; we consider him eminently qualified in every respect for membership on the Supreme Court and unanimously recommend his confirmation.

JOHN T. WIGGINTON,
DONALD K. CARROLL,
DEWEY M. JOHNSON,
JOHN S. RAWLS,
SAM SPECTOR.

Mr. HOLLAND. Mr. President, I ask unanimous consent that a wire I have received from Guyte P. McCord, Jr., a circuit court judge, urging confirmation of the nomination of Judge Carswell be printed at this point in the RECORD.

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

TALLAHASSEE, FLA.,
March 16, 1970.

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

I have known Judge G. Harrold Carswell for many years and strongly recommend him for confirmation to the United States Supreme court. In my opinion he is well qualified for that office by integrity, ability, and temperament. As you know, I am serving my tenth year as a circuit judge of Florida and have been elected each term on the Democratic ticket.

GUYTE P. MCCORD, Jr.

Mr. HOLLAND. Mr. President, I ask unanimous consent to have printed in the RECORD a telegram which I have received from John A. H. Murphree, presiding judge, eighth judicial circuit of Florida, asking for the approval of Judge Carswell's nomination.

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

GAINESVILLE, FLA.
March 16, 1970.

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

I urge the confirmation of Judge Harrold Carswell as Justice of the Supreme Court. I have known him for many years. It is my considered judgment that he possesses the intellectual capacity, the moral fiber, and the innate sense of justice that would fit him for this high position.

JOHN A. H. MURPHREE,
Presiding Judge, Eighth Judicial Court of Florida.

Mr. HOLLAND. Mr. President, I ask unanimous consent to have printed in the RECORD a telegram I have received from George L. Patten, circuit judge, eighth judicial circuit at Gainesville, Fla., asking for the confirmation of Judge Carswell.

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

GAINESVILLE, FLA.
March 16, 1970.

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

Judge Harrold Carswell nomination as Justice of the Supreme Court of the United States is coming up for Senate confirmation this week. I have personally known Judge Carswell since his appointment to the Federal District Bench Northern District of Florida. Have observed him in the discharge of his duties as such judge and have the highest respect for his ability, judgment and integrity. I feel that as a Justice of the Supreme Court he will bring great credit to that court and to the Nation. I respectfully urge the Senate to confirm his appointment.

GEORGE L. PATTEN,
Circuit Judge, Eighth Judicial Circuit.

Mr. HOLLAND. Mr. President, I wish to comment for the RECORD that most of the first district court of appeals lies within the same area in which the northern district of Florida lies, which was presided over for so many years—12 years, as I recall—by Judge Carswell as district judge. I ask unanimous consent that the RECORD show that the circuit court in Gainesville, Fla., which has jurisdiction over several counties that lie in the eastern part of the first Federal judicial district of Florida or the northern district of Florida, was presided over for so many years by Judge Carswell.

Mr. President, I ask unanimous consent to have printed in the RECORD a telegram from Hugh M. Taylor, circuit judge, who describes himself as having served for 30 years as a Democratic officeholder and for the last 25 years as a circuit judge. He recommends the confirmation of Judge Carswell.

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

TALLAHASSEE, FLA.
March 16, 1970.

HON. SPESSARD L. HOLLAND,
Senate Office Building,
Washington, D.C.:

I have been a Democratic officer holder over a span of more than thirty years and a Florida Circuit Judge for twenty-five years. I strongly urge confirmation of Judge Carswell to the U.S. Supreme Court. My observations are that he is fully qualified by maturity, judgment, discretion and knowledge of the law.

HUGH M. TAYLOR.

Mr. HOLLAND. Mr. President, I ask unanimous consent to have printed in the RECORD a telegram from John J. Crews, circuit judge, eighth judicial circuit of Florida, recommending the confirmation of Judge Carswell.

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

GAINESVILLE, FLA.
March 16, 1970.

HON. SPESSARD L. HOLLAND,
Senate Office Building,
Washington, D.C.:

I have been shocked at the nit-picking of otherwise prudent men in opposition to the nomination of Judge G. Harrold Carswell to the Supreme Court. As a prosecutor trial judge and now appellate judge the nominee has served ably, honestly and with distinction. Without reservation I endorse his nomination. Respectfully,

JOHN J. CREWS,
Circuit Judge, Eighth Judicial Circuit of Florida.

Mr. HOLLAND. Mr. President, in closing this brief appearance, and it is necessarily so because I am engaged in hearings and will be engaged in hearings tomorrow, my files show a very large number of other letters and resolutions to the same effect as these which I have just placed in the RECORD, and which I will have a chance to assemble and offer for the RECORD later, including strong letters from such distinguished Americans as a former Governor and an earlier Member of our House of Representatives, later a member of the supreme court of Florida, who lives in Tallahassee, and who has known Judge Carswell throughout his residence there. He strongly recommends the appointment and confirmation of Judge Carswell; as well as others too numerous to mention which I shall have placed in the RECORD at the appropriate time.

ADJOURNMENT TO 11 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment, as in legislative session, until 11 o'clock tomorrow morning.

The motion was agreed to; and (at 5 o'clock and 25 minutes p.m.) the Senate adjourned, as in legislative session, until tomorrow, Tuesday, March 17, 1970, at 11 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 16, 1970:

AMBASSADORS

Stuart W. Rockwell, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

Findley Burns, Jr., of Florida, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Ecuador.

Albert W. Sherer, Jr., of Illinois, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Guinea.

Clarence Clyde Ferguson, Jr., of New Jersey, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Uganda.

OFFICE OF ECONOMIC OPPORTUNITY

Albert E. Abrahams, of Maryland, to be an Assistant Director of the Office of Economic Opportunity.

EXTENSIONS OF REMARKS

GOOD PLACE TO START: POLLUTION DRIVE

HON. CHESTER L. MIZE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, March 16, 1970

Mr. MIZE. Mr. Speaker, even before his inauguration, many of us were convinced that Richard Nixon was a man—and would be a President—of action and not of words alone.

This belief has been borne out many times in the 14 months since the President has taken office, and we have seen his words of intent transformed into policy almost instantaneously.

One more example of this is the President's drive to end pollution. First he issued a strong statement of this problem, an important starting point—then immediately he set forth an order that the Federal Government would begin first, and a $359 million program would be undertaken to eliminate the pollution caused by Federal agencies or installations.

The President's decisive action toward alleviating this serious problem is praised in a February 6, 1970, editorial from the Kansas City Star. I insert this editorial in the RECORD at this point:

GOOD PLACE TO START THE POLLUTION DRIVE IS U.S. INSTALLATIONS

It occurred to President Nixon that before the federal government began exerting all-out pressure on the nation's cities and industries to clean up pollution, it should first "sweep its own doorstep clean." Hence Wednesday's sternly worded order to all government agencies and installations to get started on a 359-million-dollar program to abate their own air and water pollution, or at least have measures under way, by the end of 1972.

It is not that the government is a deliberate violator, any more than are most cities or industries. Most pollution is inadvertent, the inevitable product of disposing of wastes of various kinds in the ways in which this has always been done. In the case of the one worst single source of pollution, motor vehicle exhausts, it is not even a conscious act on the part of the individual.

Thus it is that Mr. Nixon could accurately refer to the federal government as "one of the worst polluters" without any particular recrimination. It is simply that the government, in the aggregate—military and civilian—has more vehicles, aircraft, sewers, incinerators and so on than possibly any other single entity in this country. And the man at the top of this enormous pyramid reasonably concluded that here was a good place to start to get some of the most early and effective results in the war on pollution.

The White House in this instance has only to pass the word—and the money—and in due course considerable headway can be achieved in pollution abatement just by cleaning up all federal installations, buildings, bases, vehicles, missiles and aircraft. The executive order extends even to public works projects such as flood reservoirs and barge canals, with especially stringent language ordering the secretary of the interior to review the possible pollution effects of any new project for which authorization or funding is being sought.

The Defense department, as might be supposed, was identified as the largest single source of pollution within the government, with West Point's need of more than 3 million dollars for improved treatment of sewage now damaging the Hudson river given as a major example.

Government stocks of fuels and chemicals of various types, with their danger potential in spillage accidents, also were cited for preventive action. There was a word too, on radioactive pollution from atomic materials.

This was not the first federal directive ever put out on the subject. But previous ones, said the Nixon statement, have been "ambiguously worded" and poorly enforced. The timing of the statement was fortuitous, on the eve of a major pollution meeting in Chi-