rectional expenditures begin to approximate those in other Midwestern or Northern states.

The Indiana Criminal Justice Planning Agency has roughly $4 million in federal funds to spend. While little was done for juveniles and emphasis was on strengthening police departments in 1969, William T. Sharp, chairman of that agency, says the thrust in 1970 will be on preventing delinquency and on keeping children out of the state institutions. Proposals for these federally supported projects now are being drafted and are expected to be submitted in April.

Perhaps this is the greatest hope: that these federal funds will be wisely used for programs that will bring about change.

SENATE—*Friday, March 13, 1970*

The Senate met at 10 o'clock a.m. and was called to order by the Vice President.

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

O Thou Shepherd of our lives, the Restorer of our souls, who hast promised to lead us in paths of righteousness for Thy name's sake, lead us this day beyond all doubt and fear, step by step, moment by moment, into the light and truth of Thy kingdom. Thus guided, may goodness and mercy follow us all the days of our lives that we may abide in the house of the Lord forever. Amen.

BOARD OF VISITORS TO THE COAST GUARD ACADEMY AND THE MERCHANT MARINE ACADEMY—APPOINTMENTS BY THE VICE PRESIDENT

The VICE PRESIDENT. The Chair, under the provisions of Public Law 207 of the 81st Congress, appoints the Senator from Connecticut (Mr. DODD) to the Board of Visitors to the Coast Guard Academy, and the Chair announces, on behalf of the chairman of the Committee on Commerce (Mr. MAGNUSON), his appointments of the Senator from Louisiana (Mr. LONG) and the Senator from Vermont (Mr. PROUTY) as members of the same Board of Visitors.

The Chair, under the provisions of Public Law 301 of the 78th Congress, appoints the Senator from California (Mr. CRANSTON) to the Board of Visitors to the U.S. Merchant Marine Academy, and the Chair announces, on behalf of the chairman of the Committee on Commerce (Mr. MAGNUSON), his appointments of the Senator from South Carolina (Mr. HOLLINGS) and the Senator from New York (Mr. GOODELL) to the same Board of Visitors.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, March 12, 1970, be dispensed with.

The VICE PRESIDENT. Without objection, it is so ordered.

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that there be a period, not to exceed 15 minutes, for the transaction of morning business, and that there be a limitation of 3 minutes on statements made therein.

The VICE PRESIDENT. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

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

The VICE PRESIDENT. Without objection, it is so ordered.

TELEGRAM TO PRESIDENT NIXON ON CIVIL RIGHTS POLICY

Mr. BYRD of West Virginia. Mr. President, press reports yesterday stated that a Member of the Senate had criticized the administration for its handling of civil rights problems.

Last evening I sent the following telegram to the President:

MARCH 12, 1970.

THE PRESIDENT,
The White House,
Washington, D.C.:

A member of the Senate has criticized your administration in the press today for having made, in his words, "a cold, calculated political decision" to adopt a negative civil rights policy. This criticism prompts me to commend your administration on its activities in the civil rights field. Too often in recent years the civil rights of the majority have been subordinated to the civil rights of a militant minority in this country. Your administration, it seems to me, has tried to strike a proper balance with respect to the civil rights of all people, Negro and white, in the Nation. I commend your administration on its efforts to promote increased employment of Negroes based on their qualifications. In addition, I commend your administration on its efforts to train and equip Negroes for better jobs.

I also compliment you on your efforts to restructure the Supreme Court which, for too long, has been the haven of activist libertarian judges who have substituted sociological theories for legal precedent and who have subordinated the rights of law-abiding citizens to the imagined rights of seasoned criminals.

I hope that your administration will continue its reasonable approach to civil rights matters and that you will not be deterred by those in this country whose philosophy was rejected at the polls in the last election but who nevertheless continue to make a determined effort to dictate the policies of your administration.

The voters of this country in 1968 indicated a desire for a more conservative orientation in this government's handling of sociological problems. I trust that your administration will continue to heed the voice of the great unorganized majority even though it may not, at times, make itself heard above the dim of organized pressure groups.

ROBERT C. BYRD,
U.S. Senator.

Mr. President, I ask unanimous consent to have printed in the RECORD an article published in yesterday's Washington Post entitled "Brooke Hits Nixon Policy on Rights."

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

BROOKE HITS NIXON POLICY ON RIGHTS

The Senate's only Negro member, Republican Edward W. Brooke, said yesterday that the Nixon administration has made "a cold, calculated political decision" to adopt a negative civil rights policy.

"President Nixon said he wanted to bring us together, but everything he has done so far appears to be designed to push us further apart," the Massachusetts senator said, in his harshest criticism so far of his fellow Republican.

"I have seen very little for Negroes, for black people, to applaud during the Nixon administration," Brooke said in an interview on the CBS radio program "Capitol Cloakroom."

Sen. Brooke, who campaigned for Mr. Nixon, said he was aware during the 1968 presidential campaign that "the Nixon campaign strategy was to sort of ignore the black community." But he said he had expected that the President would abandon that stance after his election.

Instead, Brooke said, the Nixon administration now is following what "you might very well call a suburban strategy as well as a Southern strategy . . . and I think that it's a rather cold, calculated political decision that has been made by the Nixon advisers and by the President to continue along the road they took during the campaign."

Brooke said some of Vice President Agnew's recent statements, which he said disturbed him, could be explained as "support for this cold political decision."

The Massachusetts senator said he was "dismayed" by the administration's stand on desegregation guidelines, voting rights, Supreme Court nominees and other issues.

"I have seen very few deeds which have pleased me during the early stages of the Nixon administration insofar as black people are concerned," he said.

He has not spoken to the President on these matters for almost a year, Brooke said, but has written letters to him about them. "In most instances the answers have not been specific," Brooke said.

Nonetheless, Brooke said, "I support the administration and I'm very proud of my Republicanism, but there is room in the Republican Party for disagreement and I have that disagreement with the President on certain domestic issues."

He said he gave the administration "high marks" for improving the Vietnam war situation and the nation's economy and for cutting defense spending.

RECONVENING THE 1962 GENEVA CONVENTION WOULD NOT SETTLE THE PROBLEMS IN LAOS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may proceed for 8 minutes.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, President Nixon's call for a reconvening of the 1962 Geneva Convention on Laos was a most commendable diplo-

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matic gesture—but, as a peace effort, it does not go far enough.

The 1962 Convention stands as one of the greatest failures ever recorded by international peace talks. Even while the accords were being signed in Geneva on July 23, 1962, they were being violated in practically every part of Laos, by practically every signatory nation.

Under the accords of 1962, the International Control Commission for Laos officially observed the withdrawal of foreign troops from Laotian soil. The three-nation Commission watched as the United States removed 666 men, the Philippines pulled out 403 men, and North Vietnam withdrew 40 men. In November of 1962—less than 4 months after the signing of the accords—the Commission noted that:

. . . reports received from newspapers and broadcasters (indicate) that thousands of foreign troops from various nations still remain in Laos . . .

Six years after the Geneva Convention of 1962, the violations continued to be just as blatant. A situation report on Laos, issued on May 21, 1968, stated that:

Politically, militarily, and economically, the current situation in Laos reflects a failure to realize the purpose of the 1962 Geneva accords. Peace and stability have not come to Laos and the nation has not been isolated from the Southeast Asia theater of conflict.

The situation report concluded that:

Since 1962, the neutrality of Laos has been more of an internationally-accepted myth than a national reality.

Mr. President, any reconvening of the 1962 Convention would serve merely to give substance to that myth. The President would have been better advised to call on the International Control Commission for an up-to-date report on the situation in Laos—and have the Commission turn over its findings, not to the 1962 Convention which dealt solely with Laos, but rather to the 1954 Geneva Convention which examined the problems in all three of the former Indo-China states.

The Commission for Laos consists of India, Poland, and Canada; and there has been evidence recently that India, as Chairman of the ICC, is willing to launch a new study of the struggle in Laos. I urge the President to encourage such an undertaking.

Under chapter 6, article 30, of the 1954 Geneva agreements, it states that the International Control Commission shall:

. . . either on its own initiative, or at the request of the Joint Commission, or of one of the parties, undertake the necessary investigations, both documentary and on the ground.

India's desire to carry out a new investigation under that provision was noted in an article that appeared in the Monday, March 2, edition of the Christian Science Monitor.

Writing from New Delhi, Correspondent Ernest Weatherall notes that:

India's appeal to both sides to end hostilities in Laos is regarded here as perhaps the first step in "reactivating" its role as chairman of the long-dormant International Control Commission.

Mr. Weatherall admits that conflicts exist within the three-nation Commission, and says that some better negotiating bodies may be established in the future. However, he concludes that:

. . . all these peace consortiums appear to be only in the distant future. The only mediator available today is the imperfect International Control Commission, to help end the crisis in Laos. And it may be, New Delhi feels, the last chance of glory for the commission set up by the Geneva powers 14 years ago.

Mr. President, since the three nations forming the ICC for Laos remained the same under both the 1954 and 1962 accords, they could technically submit the findings of their investigation to either convention. For a number of reasons, I would like to see any findings submitted to the 1954 conference.

For one thing, as I mentioned, the 1954 convention discussed the problems in Laos, Cambodia, and Vietnam, while the 1962 convention was restricted to discussions on Laos. As the President himself pointed out, most of our military operations in Laos are directly related to our war effort in Vietnam. It would be sheer folly, then, to think we could settle the current hostilities in Laos without mentioning Vietnam. A broad-scope convention would also enable us to resolve—or try to resolve—several of the disputes that have arisen because of our military activity near the Combodian-Vietnam border.

The section of the 1954 convention that dealt with Laos was most comprehensive—so comprehensive, in fact, that, almost in its entirety, it was carried over as a part of the 1962 proceedings. The protocol of those latter accords takes special note of the fact that it was:

Confirming the principles of respect for the sovereignty, independence, unity and territorial integrity of the Kingdom of Laos and non-interference in its internal affairs which are embodied in the Geneva Agreements of 1954.

I am well aware, Mr. President, that the United States did not sign the final declaration of the 1954 Geneva convention. But, at the conclusion of that conference, we issued a statement in which we promised to abide by the accords reached there. We further stated that:

We share the hope that the agreements will permit Cambodia, Laos, and Viet-Nam to play their part, in full independence and sovereignty, in the peaceful community of nations, and will enable the peoples of that area to determine their own future.

We have used that statement as a basis for calling for the 1954 convention to discuss the situation in Vietnam. And now that the war is in danger of spreading to Laos—now that the Pathet Lao are offering their own terms for peace—it would seem more important than ever to move again for a reconvening of the 1954 conference.

Mr. President, we in the Western World have long labored under the mistaken belief that the problems of Southeast Asia can be attacked by Laotian, Vietnamese, or Cambodian solutions. Yet, Laos is a country whose boundaries were arbitrarily drawn by a French general, and Vietnam is a country which was arbitrarily divided by non-Asian overlords. To attempt to forge solutions according to artificially drawn boundaries is to perpetuate futility. This was what the 1962 convention tried to do, and it failed miserably.

Only in a wide-ranging conference like the 1954 convention do we have the potential for forming an effective settlement.

To be sure, Mr. President, the Soviet Union, as cochairman of both the 1954 and 1962 conventions, can halt any attempts to reconvene either conference. It vetoed our efforts to have the 1954 convention reopened for discussion of Vietnam, and it has thus far ignored the President's call for a reconvening of the 1962 convention—saying, in the latter case, that it will not agree to discuss Laos as long as the United States is at war in Vietnam.

Yet, the situation in Southeast Asia is growing worse almost daily—the war in Vietnam continues, and the hostilities in Laos increase. Under these circumstances, Mr. President, I feel it imperative that we make known our willingness to return to meaningful discussions. And a study of both Geneva Conventions shows clearly that the 1954 conference would be best able to provide a format for those discussions.

Let us call the International Control Commission to investigate the situation and make its findings known both to the world and to the 1954 Convention. And, in light of those findings and in light of the desire of the United States for peace, let the Soviet Union go on record either favoring a settlement of the conflicts in Southeast Asia, or as opposed to peaceful negotiations.

In the call for an honorable peace, Mr. President, we lose nothing. But, in the continuation and escalation of the fighting in Southeast Asia, we lose much.

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

Mr. BYRD of West Virginia. I yield.

Mr. GRIFFIN. Mr. President, I commend the distinguished Senator from West Virginia. I think he has made a very significant statement, one that I hope will receive as much attention as the critical statements we hear and read about with respect to Southeast Asia.

I think the Senator takes a very realistic attitude toward the situation. I am sure that every Senator and everyone in the country wishes very much that we could negotiate away the differences and the problems in that part of the world. However, we would be blind if we did not recognize that some other agreements already reached, as for example the accords which supposedly established neutrality in Laos, were meaningless almost as soon as they were signed.

And, as we seek to negotiate the differences in Vietnam, it is essential to realize that negotiations and agreements must be meaningful and enforceable if they are to be implemented.

The distinguished Senator from West Virginia is approaching this complex, difficult subject in a very statesmanlike way. And I wish to commend him.

Mr. BYRD of West Virginia. I thank the Senator.

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

Mr. BYRD of West Virginia. I yield.

The VICE PRESIDENT. The time of the Senator has expired.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I be recognized for 3 minutes.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I commend the Senator from West Virginia for his factual analysis of the situation which has developed in Laos and, in effect, in all of what used to be called the Associated States of Indochina.

I am pleased with President Nixon's statement in which he, in effect, has asked the Soviet Union and the United Kingdom to be cochairmen in reconvening the Geneva conference affecting Laos, which was agreed to, as the Senator said, in 1962.

I am also encouraged by the fact that the French Government has indicated that it is also available for the use of its good offices to try to bring about a Laotian settlement.

We will recall that the only troops which were allowed to remain in Laos at the time of the Geneva accords of 1962 were about 400 French soldiers for the purpose of training the Laotians.

I understand that since that time that force has been reduced considerably. There are indications of the attitude of the administration, which would like to bring about a reconvening of the Geneva Conference. It has given its support to any conference, I understand, which might take place between Souvanna Phouma and his half brother, Souphanouvong, the leader of the Pathet Lao.

I am hopeful that either through the Geneva Conference, through the good offices of France, the International Control Commission, or through the offer made through Souvanna Phouma, all avenues will be explored, and that out of them will come a definitive settlement for Laos. Even so, it will be awfully hard to settle the Laotian question in isolation because there are rumblings of disturbances in Cambodia, and if we expect a settlement to be achieved in Indochina, it will have to be applied to all three Indochina states—or to be more exact in the four, because of the division of Vietnam.

Mr. President, I thank my majority leader.

Mr. DOLE. Mr. President I have been listening for the last few weeks as some Senators have exposed facts about Laos that really are not news to anyone. And I have watched as part of the press has tried to make it seem as if there were a secret war being fought in Laos involving thousands of CIA agents, battalions of Green Berets and all kinds of other nonsense.

They have ignored the President's disclosures, most of which have been public knowledge to everyone, I guess, except a few of my colleagues, and they have sought in every way to create a credibility gap.

And I must say as inventors of the credibility gap that began with missiles in 1960 and ran through to Vietnam in 1968, they have become master practitioners of the art of blaming others for their own actions and their own failures.

And that, surely, is what is going on here these days. Just as they have tried—and failed—to make the Democrat war in Vietnam Richard Nixon's war, now they are trying to make the war in Laos Richard Nixon's war.

In fact, they are so busy trying to make political profit out of war that they would rather place the blame for these wars on the President of the United States than where they belong—on the backs of the Communist North Vietnamese, and their Communist cohorts in China and Russia.

Two weeks ago in this Chamber the Senator from Arizona—Senator GOLDWATER—asked the question:

> Why don't they—

Meaning those who seek to make a political issue out of Laos—

> Why don't they ask what the Communists are doing there?

I think the answer to the Senator's question is obvious. They know. They knew before the President's statement last Friday that there are over 60,000 Vietnamese troops in Laos. They knew that the North Vietnamese never, from the beginning, lived up to the Geneva accords. They knew that we are supplying materiel and weapons and logistic support to the Laotians.

They knew we are bombing in North Laos and along the Ho Chi Minh Trail. They know we are doing these things because they are vital to the lives of American troops in South Vietnam. They knew because the administration told them. It is in the record of the hearings.

They know—or they should have, since most of them were a part of the administration—that we have been following the same general policy in Laos for nearly a decade.

Yes, we have escalated our air attacks as the Communists have escalated the war—but not with ground troops and not as a matter of adopting new policies.

Yes, we have had casualties in Laos as a result of enemy action, but not because of American combat activities and this administration has admitted those casualties. Where, I might ask, were those who are now decrying all of this when it began, when policy was established, when in fact, the accords were drawn up and promptly violated by the Communists?

Mr. President, they were nowhere to be found. Where was their criticism of the architects of American involvement in Southeast Asia? They were nowhere to be found.

Mr. President, I am tired of the sanctimonious cries of outrage leveled against a Republican President for the blunders and actions of his Democratic predecessors.

If there is blame to be assessed, let us assess it where it belongs—against those who brought it about.

And Mr. President, it should be remembered, if this body is talking about asserting its foreign policy responsibilities under a Republican President; it should talk also about its abdication of those responsibilities under a Democratic President.

When we can be told why those alleged responsibilities were abdicated, then perhaps we will have better grounds on which to demand their return.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The VICE PRESIDENT laid before the Senate the following letters, which were referred as indicated:

REPORT ON REAPPORTIONMENT OF AN APPROPRIATION

A letter from the Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that the appropriation of the Veterans' Administration for "Medical care," for the fiscal year 1970 has been apportioned on a basis which indicates the necessity for a supplemental estimate of appropriations; to the Committee on Appropriations.

PROPOSED LEGISLATION TO AUTHORIZE THE GOVERNMENT OF THE DISTRICT OF COLUMBIA TO FIX CERTAIN FEES

A letter from the Assistant to the Commissioner, transmitting a draft of proposed legislation to authorize the Government of the District of Columbia to fix certain fees (with accompanying papers); to the Committee on the District of Columbia.

PROPOSED EMPLOYEE BENEFITS PROTECTION ACT

A letter from the Secretary of labor, transmitting a draft of proposed legislation to amend the Welfare and Pension Plans Disclosure Act (with accompanying papers); to the Committee on Labor and Public Welfare.

REPORT ON PROGRESS IN THE PREVENTION AND CONTROL OF AIR POLLUTION

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on progress in the prevention and control of air pollution, for the calendar year ended December 31, 1970 (with an accompanying report); to the Committee on Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CANNON, from the Committee on Armed Services, without amendment:

S. 3083. A bill to authorize the disposal of corundum from the national stockpile (Rept. No. 91–721);

S. 3087. A bill to authorize the disposal of chrysotile asbestos from the national stockpile and the supplemental stockpile (Rept. No. 91–722);

S. 3446. A bill to authorize the disposal of refractory grade chromite from the national stockpile and the supplemental stockpile (Rept. No. 91–723);

S. 3451. A bill to authorize the disposal of natural Ceylon amorphous lump graphite from the national stockpile and the supplemental stockpile (Rept. No. 91–724);

S. 3452. A bill to authorize the disposal of molybdenum from the national stockpile (Rept. No. 91–725);

S. 3456. A bill to authorize the disposal of natural battery grade manganese ore from the national stockpile and the supplemental stockpile (Rept. No. 91–726);

S. 3457. A bill to authorize the disposal of Surinam type metallurgical grade bauxite from the national stockpile and the supplemental stockpile (Rept. No. 91–727);

H.R. 12941. An act to authorize the release of 4,180,000 pounds of cadmium from the national stockpile and the supplemental stockpile (Rept. No. 91-728);

H.R. 15021. An act to authorize the release of 40,200,000 pounds of cobalt from the national stockpile and the supplemental stockpile (Rept. No. 91-729);

H.R. 15831. An act to authorize the disposal of bismuth from the national stockpile and the supplemental stockpile (Rept. No. 91-730);

H.R. 15832. An act to authorize the disposal of castor oil from the national stockpile (Rept. No. 91-731);

H.R. 15833. An act to authorize the disposal of acid grade fluorspar from the national stockpile and the supplemental stockpile (Rept. No. 91-732);

H.R. 15835. An act to authorize the disposal of magnesium from the national stockpile (Rept. No. 91-733);

H.R. 15836. An act to authorize the disposal of type B, chemical grade manganese ore from the national stockpile and the supplemental stockpile (Rept. No. 91-734);

H.R. 15837. An act to authorize the disposal of type B, chemical grade manganese ore from the national stockpile and the supplemental stockpile (Rept. No. 91-735);

H.R. 15838. An act to authorize the disposal of shellac from the national stockpile (Rept. No. 91-736);

H.R. 15839. An act to authorize the disposal of tungsten from the national stockpile and the supplemental stockpile (Rept. No. 91-737).

By Mr. BIBLE, from the Committee on Interior and Insular Affairs, with an amendment:

H.R. 3786. An act to authorize the appropriation of additional funds necessary for acquisition of land at the Point Reyes National Seashore in California (Rept. No. 91-738).

SAFEGUARD ON CONSUMERS BY REQUIRING GREATER STANDARDS OF CARE IN THE ISSUANCE OF UNSOLICITED CREDIT CARDS—REPORT OF A COMMITTEE—MINORITY VIEWS (S. REPT. NO. 91-739)

Mr. KENNEDY. Mr. President, on behalf of the Senator from Wisconsin (Mr. PROXMIRE), from the Committee on Banking and Currency, I report favorably, with amendments, the bill (S. 721) to safeguard the consumer by requiring greater standards of care in the issuance of unsolicited credit cards and by limiting the liability of consumers for the unauthorized use of credit cards, and for other purposes, and I submit a report thereon. I ask unanimous consent that the report be printed, together with minority views, and that the committee have until midnight tonight to deliver the copy for printing purposes.

The PRESIDING OFFICER (Mr. COOK). The report will be received and the bill will be placed on the calendar; and, without objection, the report will be printed, as requested by the Senator from Massachusetts.

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

Stuart W. Rockwell, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary to the Kingdom of Morocco;

Findley Burns, Jr., of Florida, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to Ecuador;

Albert W. Sherer, Jr., of Illinois, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary to the Republic of Guinea; and

Clarence Clyde Ferguson, Jr., of New Jersey, to be Ambassador Extraordinary and Plenipotentiary to Uganda.

By Mr. NELSON, from the Committee on Labor and Public Welfare:

Albert E. Abrahams, of Maryland, to be an Assistant Director of the Office of Economic Opportunity.

BILLS INTRODUCED

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

By Mr. JAVITS:

S. 3589. A bill to amend the Welfare and Pension Plans Disclosure Act; to the Committee on Labor and Public Welfare.

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

By Mr. HATFIELD:

S. 3590. A bill for the relief of Leo Lucas; to the Committee on the Judiciary.

By Mr. MONDALE:

S. 3591. A bill for the relief of Maurice Polard; to the Committee on the Judiciary.

By Mr. CURTIS (for himself, Mr. HRUSKA, Mr. BELLMON, Mr. BURDICK, Mr. DOLE, Mr. JORDAN of North Carolina, Mr. PROXMIRE, and Mr. YOUNG of North Dakota):

S. 3592. A bill to amend the Federal Meat Inspection Act, as amended, to clarify the provision relating to custom slaughtering operations; to the Committee on Agriculture and Forestry.

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

By Mr. WILLIAMS of Delaware:

S. 3593. A bill to reduce budget outlays by restructuring or terminating certain outmoded or uneconomic Federal programs; referred to the Committees on Agriculture and Forestry; Commerce; Finance; and Labor and Public Welfare, by unanimous consent.

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

By Mr. SPARKMAN:

S. 3594. A bill to authorize the acquisition of certain property in square 724 in the District of Columbia for the purpose of extension of the site of the additional office building for the U.S. Senate or for the purpose of addition to the U.S. Capitol Grounds; to the Committee on Rules and Administration.

S. 3589—INTRODUCTION OF EMPLOYEE BENEFITS PROTECTION ACT—ADMINISTRATION BILL TO AMEND THE WELFARE AND PENSION PLANS DISCLOSURE ACT

Mr. JAVITS. Mr. President, on behalf of the administration, I introduce, for appropriate reference, a bill to amend the Welfare and Pension Plans Disclosure Act. This bill is the subject of the Presidential message received today and printed later in the RECORD.

The bill I introduce today represents a vast improvement over existing law by greatly strengthening the disclosure requirements for employee benefit plans and establishing stringent fiduciary standards designed to protect the rights of millions of American workers who are covered by employee welfare or pension benefit plans. While, as I shall indicate later, I also favor other types of pension plan reforms, there is no question that the present bill is also vitally needed to remedy serious defects in existing law which have permitted racketeers and other unscrupulous persons to jeopardize the security of thousands of American workers.

Existing law, namely the Welfare and Pension Plans Disclosure Act, is predicated on a philosophy of disclosure: Congress assumed at the time that act was passed in 1958 that given adequate disclosure of the facts related to employee benefit plans, employees adversely affected by the acts of plan fiduciaries would be willing and able to take the necessary steps to protect their rights under State law.

Sadly, the facts which have surfaced in recent years as a result of investigation by the news media and by local, State, and Federal Government bodies, including the Senate Permanent Investigations Subcommittee of which I am a member, have demonstrated that we were too optimistic in 1958 about the sufficiency of disclosure requirements alone to prevent chicanery by plan administrators and other "parties in interest."

Even now, the Senate Labor Subcommittee, of which I am the ranking minority member, is about to undertake an extensive investigation of abuses in the employee benefit plan area—a fact of which the Senate was informed yesterday when it acted to approve the additional funds for the subcommittee to do the thorough job that needs to be done. Coming as it does at the commencement of the subcommittee investigation, the bill I am introducing today is most timely. This bill, together with S. 2167, which I introduced earlier this session, will give our investigation the legislative basis it should have by highlighting the defects of present law and the inadequacy of the disclosure philosophy which underlies it.

Present law is inadequate for the following reasons:

First, the disclosure required is not sufficiently detailed.

Second, aggravating the lack of specificity in the required disclosure is a definition of "party in interest" which fails to include persons who are not nominally parties in interest—for example, employers, trustees, union officers—but really are under the control of such parties. Thus, transactions between employee benefit plans and wholly-owned subsidiaries of contributing employers or relatives of trustees or union officials need not be reported under present law.

Third, under present law, even if the Secretary of Labor suspects misfeasance, he is unable to do anything about it. At most he can investigate and report it, but the burden is left on the participants or beneficiaries to protect their rights under State law. All too often, participants and beneficiaries of plans, out of ignorance or fear or both, have just not been capable of bearing this burden.

Fourth, the State law which applies to employee-benefit plans is usually the common law of trusts, developed over the centuries. These trusts usually involve but a single settlor and, at most, a relatively small, well defined class of beneficiaries. In addition, there is a very serious problem arising from the fact that at common law the definition of "trustee" is quite narrow in scope, while in pension and welfare trust administration, the number of persons who handle and exercise control of the funds is much broader. Further, of course, the multistate operations of many such funds makes the application of a single State's law often unworkable, and in any event, the "conflict of laws" problems which arise in such cases are often a stumbling block to effective enforcement of State law.

Clearly, this body of traditional trust law, vast as it is, must be applied quite differently to employee benefit plans which are the product of collective bargaining and may cover thousands of employees of many different employers. It is not surprising then that a great deal of uncertainty exists today with respect to the duties, rights, obligations of, and remedies against, plan trustees and administrators; especially in connection with jointly administered plans where the trustees actually represent different parties with possibly opposing interests.

Finally, in the case of plans covering employees and beneficiaries in many States service of process, venue, and jurisdictional requirements compound even further the difficulty facing individual employees who might want to institute a suit to protect their rights under present law.

The administration bill which I am introducing today is specifically designed to remedy these defects, as well as to provide additional protections to plan participants.

Much greater specificity of disclosure would be required, particularly with respect to investments in, and transactions with, "parties in interest," which are defined much more broadly than under existing law.

An annual audit by an independent accountant would also be required.

The new definition of "party in interest" includes those, such as administrators, officers, trustees, contributing employers and unions having members covered by the plan and the officers' agents and employees of such employers or unions now included under present law as well as persons controlling or controlled by contributing employers and relatives, partners or joint venturers with persons now included in the definition. "Relatives" is defined to include all ancestors, descendants, spouses and close in-laws. It is to be noted that in thus broadening the definition of "party in interest" this bill goes much further than the bill submitted by the last administration dealing with the same subject matter.

The bill also provides a Federal standard of conduct—the "prudent man" rule—for all employee benefit fund administrators and imposes an obligation on cofiduciaries with joint responsibility to prevent and redress breaches of such responsibility by each other. Fiduciaries who breach their responsibility are made personally liable to make good losses to the fund, and exculpatory provisions are rendered null and void.

The bill further specifies that fiduciaries must discharge their duties "solely in the interests of the participants and their beneficiaries" and also specifically prohibits a wide range of "conflict-of-interest" transactions between the fund and parties in interest subject to certain necessary and reasonable exceptions. In the types of conduct prohibited, the present bill is much more specific than the previous administration's bill. Of particular interest is the provision limiting future investments in contributing employer's stock to a total—when combined with previous holdings—of 10 percent of fund assets—this limitation does not apply to profit sharing, stock bonus and similar types of funds. This 10-percent limit is to be compared with the 20-percent limit contained in the bill reported out by the House Committee on Education and Labor in the 90th Congress. Also to be noted is a provision prohibiting payment of compensation by a fund—except reasonable expenses—to persons receiving full-time pay from contributing employers or unions whose members are participants in the fund. This provision is also included in my bill, S. 2167, and was not included in the previous administration's bill. Another safeguard is the prohibition for 5 years, of persons convicted of certain crimes serving in fiduciary position on employee benefit funds. This is similar to the prohibition on holding union office contained in section 504 of the LMRDA.

The present bill remedies the defect in existing law relating to enforcement by opening the Federal courts to suits by the Secretary of Labor or plan participants—if the amount in controversy exceeds $10,000. The Secretary may enforce any provision of the act, including the fiduciary standards provisions; plan participants or beneficiaries may sue to enforce their right to copies of reports and other documents required to be made available to them, to recover benefits or clarify their right to benefits under a plan, and, as representatives of a class, to redress breaches of fiduciary responsibility by plan administrators. In Federal court actions, process may be served nationwide.

In view of the problems of service of process and jurisdiction involved in maintaining individual suits against funds or their administrators I have some doubts about the desirability of conditioning access to the Federal courts by individuals on at least $10,000 being in controversy, the provisions of the bill permitting counsel fees to be awarded to successful defendants, as well as plaintiffs, and allowing the court to require plaintiffs to post bond to cover such fees.

In summary, those are the highlights of this important bill. I am convinced that it represents a long step in the right direction of providing adequate protection for the rights and expectations of participants and beneficiaries of employee benefit funds.

I would also like to discuss, briefly, some aspects of the relationship between this administration's bill and the broader approach to pension reform which I have taken in my own bill, S. 2167, the Pension Employee and Benefit Act.

The ultimate objective of Federal legislation in this field ought to be to insure that employees who are depending on benefit plans to provide them with help in times of sickness or disability or with retirement security ought to receive that to which they are reasonably and lawfully entitled. At a bare minimum this means that employee benefit funds ought to be protected from outright embezzlement as well as the more subtle, but no less insidious, types of malfeasance and breaches of trust that have occurred and to which the administration's bill is directed. S. 2167 covers this problem and in fact goes beyond the administration bill in certain respects such as requiring all plans to be the subject of a trust instrument, but clearly the administration's bill does a most thorough and complete job in this area.

We must also be concerned with the plan participant who loses his benefits because his plan is not adequately funded, and his employer goes out of business, or the participant whose employment terminates for reasons which may be entirely beyond his control, such as sickness, disability or layoff and who, thereby, is forced to forfeit all of his accrued benefits because he didn't work quite long enough to meet what may be inordinately long vesting requirements?

Every year, some 200,000 employees are affected—we don't know how many actually lose benefits—by pension plan terminations. In addition, the forfeiture ratio under many plans as a result of long vesting requirements and high turnover rates exceeds 75 percent, which means that less than one out of four employees now covered by such pension plans will receive any benefits from them.

S. 2167, my comprehensive bill, attempts to meet these problems by providing what I consider to be reasonable minimum standards for vesting and funding. Vesting would have to commence at 10 percent after 6 years and increase 10 percent per year thereafter until full vesting is achieved after 15 years. New plans would have to be fully funded after 30 years, old ones after 40 years. My bill also provides for a reinsurance plan in the case of premature termination due to cessation of the employer's business, and a mechanism for the creation of true pension portability. It would also provide for administration by an SEC-type commission which would take over the current duties of the Labor Department and the Internal Revenue Service in this area.

It is important to note that the administration's bill I am introducing today does not ignore these problems completely, either. Thus, the new disclosure provisions require a great deal of information concerning vesting and forfeitures to be included in annual reports. Actuarial assumptions must also be set forth in detail. The administration's bill thus implicitly recognizes the importance of vesting and funding provisions to participants. A provision similar to

that contained in S. 2167 requiring a statement of rights to be given to persons upon termination of their participation in a plan which will be prima facie evidence of their rights is also included.

All of these matters will, of course, be explored thoroughly by the Subcommittee on Labor in its forthcoming hearings. I note, in this connection, that the Senator from Kentucky (Mr. COOPER) in his individual views printed in the report of the Rules Committee on Senate Resolution 360, authorizing funds for the Labor Subcommittee's investigation, specifically called attention to the need for the subcommittee to consider the desirability of minimum vesting standards in the law. I assure him that the subcommittee will do so.

Mr. President, I ask unanimous consent that there be printed in the RECORD the full text of the bill, the text of the accompanying letter from the Secretary of Labor, the text of an accompanying explanatory statement, a section-by-section analysis prepared by the administration, and a print of the Welfare and Pension Plans Disclosure Act as it would be amended by this bill.

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

The bill (S. 3589) to amend the Welfare and Pension Plans Disclosure Act, introduced by Mr. JAVITS, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

S. 3589

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to strengthen and improve the protection of participants in and beneficiaries of employee welfare and pension benefit plans under the Welfare and Pension Plans Disclosure Act of August 28, 1958, as amended (92 Stat. 997), such Act is amended as follows:

SEC. 1. Short Title. Immediately following the Table of Contents of such Act is added the title "Short Title", and the following paragraph:

"SEC. 1. This Act may be cited as the 'Employee Benefits Protection Act'."

SEC. 2(a). The title of section 2 of such Act is amended by adding the words "Declaration of" after the word "and".

(b) Subsection (a) of section 2 of such Act is amended by striking out the words "welfare and pension", and by adding the words "that the operational scope and economic impact of such plans is increasingly interstate;" after the word "substantial;" adding the words "and adequate safeguards" after the word "information", and adding the words "and safeguards be provided" after the word "made".

(c) Section 2(b) is amended by striking out the period at its end and inserting in lieu thereof a comma followed by the words "by establishing fiduciary standards of conduct, responsibility and obligation upon all persons who exercise any powers of control, management or disposition with respect to employee benefit funds or have authority or responsibility to do so, and by providing for appropriate remedies and ready access to the Federal courts."

SEC. 3. (a) Subsections 1 through 13 of section 3 of such Act are redesignated by striking out the numbers "1" through "13" and inserting in lieu thereof the letters "a" through "m" respectively.

(b) Sections 3 (a) and (b) are amended by inserting the words "or maintained" after the word "established" in both subsections.

(c) Sections 3 (c), (d), (f), and (g) are amended by striking out the words "welfare or pension" where they appear in each subsection respectively.

(d) Section 3(m) is amended to read as follows: "(m) The term 'party in interest' means any administrator, officer, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization, or a relative, partner or joint venturer of any of the above described persons."

(e) Section 3 is further amended by adding subsections "n" through "x", to read as follows:

"(n) The term 'relative' means a spouse, ancestor, descendant, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law.

"(o) The term 'administrator' means—

"(1) the person specifically so designated by the terms of the plan, collective bargaining agreement, trust agreement, contract, or other instrument, under which the plan is operated; or

"(2) in the absence of such designation (A) the employer in the case of an employee benefit plan established or maintained by a single employer, (B) the employee organization in the case of a plan established or maintained by an employee organization, or (C) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintain the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

"(p) The term 'employee benefit plan' or 'plan' means an employee welfare benefit plan or an employee pension benefit plan or a plan providing both welfare and pension benefits.

"(q) The term 'employee benefit fund' or 'fund' means a fund of money or other assets maintained pursuant to or in connection with an employee benefit plan and includes employee contributions withheld but not yet paid to the plan by the employer. The term does not include: (1) any assets of an investment company subject to regulation under the Investment Company Act of 1940; (2) premiums, subscription charges, or deposits received and retained by an insurance carrier or service or other organization, except for any separate account established or maintained by an insurance carrier.

"(r) The term 'separate account' means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains or losses of the insurance company.

"(s) The term 'adequate consideration' when used in section 14 means either (1) at the price of security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (2) if the security is not traded on such a national securities exchange, at a price not less favorable to the fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer.

"(t) The term 'nonforfeitable pension benefit' means an immediate or deferred pension or other benefit which a participant or his beneficiary would upon proper application be entitled to receive under the provisions of the plan if at the time in question he had terminated his employment, irrespective of any conditions subsequent which could affect receipt of such benefit.

"(u) The term 'accrued benefit' means that benefit which, irrespective of whether such benefit is nonforfeitable, is equal to: (1) in the case of a profit sharing or money purchase type pension plan, the total amount credited to the account of a participant; (2) in the case of a unit benefit type pension plan, the benefit units credited to a participant; or (3) in the case of other types of pension plans, that portion of the prospective benefit of a participant of the plan as the Secretary may by rule or regulation provide constitutes the participant's accrued benefit under the plan.

"(v) The term 'security' has the same meaning as in the Securities Act of 1933, 15 U.S.C. 77(a) et seq.

"(w) The term 'fiduciary' means any person who exercises any power of control, management or disposition with respect to any moneys or other property of an employee benefit fund, or has authority or responsibility to do so.

"(x) The term 'market value' or 'value' when used in this Act means fair market value where available, and otherwise the fair value as determined in good faith by the administrator."

SEC. 4. (a) Subsection (a) of section 4 of such Act is amended by striking out the words "welfare or pension", "or employers", and "or organizations".

(b) Section 4(b) is amended by striking out the words "welfare or pension", and is further amended in paragraph (3) thereof by adding the letter designation "(A)" after the word "administered" the second time it appears, adding a comma after the word "society" the first time it appears, followed by the words "order or association", adding the letter designation "(B)" after the word "or" the first time it appears, striking out the word "and" the second time it appears and adding in lieu thereof the word "or", and by adding a comma after the word "society" the second time it appears, followed by the words "order, association".

(c) Paragraph (4) of section 4(b) is amended by striking out the period at its end and adding in lieu thereof a comma, followed by the words "except that participants and beneficiaries of such plan shall be entitled to maintain an action to recover benefits or to clarify their rights to future benefits as provided in section 9(e)(1)(B)."

SEC. 5. (a) Subsection (a) of section 5 of such Act is amended to read as follows:

"(a) The administrator of an employee benefit plan shall cause to be published in accordance with section 8 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 6 and 7 of this Act in such form and detail as the Secretary shall prescribe and shall be executed, published, and filed in accordance with the provisions of this Act and regulations of the Secretary."

(b) Section 5(b) is amended, and section 5(c) added, to read as follows:

"(b) The Secretary may require the filing of special terminal reports on behalf of an employee benefit plan which is winding up its affairs, so long as moneys or other assets remain in the plan. Such reports may be required to be filed regardless of the number of participants remaining in the plan and shall be on such forms and filed in such manner as the Secretary may by regulation prescribe.

"(c) The Secretary may by regulation provide for the exemption from all or part of the reporting and disclosure requirements of this

Act of any class or type of employee benefit plans, if the Secretary finds that the application of such requirements to such plans is not required in order to effectuate the purposes of this Act."

SEC. 6. Section 6 of such Act is amended to read as follows:

"(a) A description of any employee benefit plan shall be published as required herein within ninety days after the establishment of such plan or when such plan becomes subject to this Act.

"(b) The description of the plan shall be comprehensive and shall include the name and type of administration of the plan; the name and address of the administrator; the schedule of benefits; a description of the provisions providing for non-forfeitable pension benefits (if the plan so provides) written in a manner calculated to be understood by the average participant, and if the plan does not provide such benefits, a statement to this effect; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported in accordance with regulations prescribed by the Secretary."

SEC. 7. (a) Subsection (a) of section 7 of such Act is amended by adding the number "(1)" after the letter "(a)", and by striking out that part of the first sentence which precedes the word "if" the first time it appears and inserting in lieu thereof the words "An annual report shall be published with respect to any employee benefit plan if the plan provides for an employee benefit fund subject to section 14 of this Act or".

(b) Section 7(a)(1) is further amended by striking out the word "investigation" and inserting in lieu thereof the words "notice and opportunity to be heard", by striking out the words "year (or if" and inserting in lieu thereof the words "policy or fiscal year on which", adding a period after the word "kept", and striking out all the words following the word "kept."

(c) Section 7(a) is further amended by adding the following paragraphs:

"(2) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.

"(3) The administrator of an employee benefit plan shall cause an audit to be made annually of the employee benefit fund established in connection with or pursuant to the provisions of the plan. Such audit shall be conducted in accordance with accepted standards of auditing by an independent certified or licened public accountant, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to periodic examination by an agency of the Federal Government or the government of any State. The auditor's opinion and comments with respect to the financial information required to be furnished in the annual report by the plan administrator shall form a part of such report."

(d) Sections 7 (b) and (c) of such Act are amended to read as follows:

"(b) A report under this section shall include:

"(1) the amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets, liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes; the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position or employment he holds with any party in interest;

"(2) A schedule of all investments of the fund showing as of the end of the fiscal year:

"(A) The aggregate cost and aggregate value of each security, by insurer;

"(B) The aggregate cost and aggregate value by type or category, of all other investments, and separately identifying (i) each investment the value of which exceeds $100,000 or three percent (3%) of the value of the fund and (ii) each investment in securities or properties of any person known to be a party in interest.

"(3) a schedule showing the aggregate amount, by type of security, of all purchases, sales, redemptions and exchanges of securities made during the reporting period; a list of the issuers of such securities; and in addition a schedule showing, as to each separate transaction with or with respect to securities issued by any person known to be a party in interest, the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, and in the case of a sale, redemption or exchange, the gross and net proceeds (including a description and the value of any consideration other than money) and the net gain or loss.

"(4) A schedule of purchases, sales or exchanges during the year covered by the report of investment assets other than securities—

"(A) by type or category of asset the aggregate amount of purchases, sales, and exchanges; the aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

"(B) for each transaction involving a person known to be a party in interest and for each transaction involving over $100,000 or three percent (3%) of the fund, an indication of each asset purchased, sold or exchanged (and, in the case of fixed assets such as land, buildings, and leasehold, the location of the asset); the purchase or selling price; expenses incurred in connection with the purchase, sale or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale, and his relationship to the plan, the employer, or any employee organization.

"(5) A schedule of all loans made from the fund during the reporting year or outstanding at the end of the year, and a schedule of principal and interest payments received by the fund during the reporting year, aggregated in each case by type of loan, and in addition a separate schedule showing as to each loan which

"(A) was made to a party in interest, or

"(B) was in default or

"(C) was written off during the year as uncollectible, or

"(D) exceeded $100,000 of three percent (3%) of the value of the fund,

the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral and other material terms), the amount of principle and interest overdue (if any) and as to loans written off as uncollectible an explanation thereof.

"(6) a list of all leases with

"(A) persons other than parties in interest who are in default, and

"(B) any party in interest,

including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leaseholds, etc., the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, and with respect to any such leases in default, their identity, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

"(7) a detailed list of purchases, sales, exchanges or any other transactions with any party in interest made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the net gain or loss, the identity of the other party to the transactions and his relationship to the plan;

"(8) If some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the report shall include a statement of assets and liabilities and a statement of receipts and disbursements of such common or collective trust or separate account and such of the information required under section 7(b) (2), (3), (4), (5), (6), and (7), with respect to such common or collective trust or separate account as the Secretary may determine appropriate by regulation. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information determined by the Secretary to be necessary to enable the plan administrator to comply with the requirements of this Act.

"(9) In addition to reporting the information called for by this subsection 7(b), the administrator may elect to furnish other information as to investment or reinvestment of the fund as additional disclosures to the Secretary.

"(c) If the only assets from which claims against an employee benefit plan may be paid are the general assets of the employer or the employee organization, the report shall include (for each of the past five years) the benefits paid and the average number of employees eligible for participation."

(e) Section 7(d) is amended by striking out the capital "T" in the word "The" the first time it appears in paragraphs (1) and

(2) and inserting in lieu thereof a lower case "t".

(f) Section 7(e) is amended to read as follows:

"(e) Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:

"(1) the type and basis of funding,

"(2) the number of participants, both retired and nonretired, covered by the plan,

"(3) the amount of all reserves or net assets accumulated under the plan,

"(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,

"(5) the ratios of the market value of the reserves and assets described in (3) above to the liabilities described in (4) above,

"(6) a copy of the most recent actuarial report, and

"(A) (i) the actuarial assumptions used in computing the contributions to a trust or payments under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this section 7(e), insofar as any such actuarial assumptions are not included in the most recent actuarial report,

"(B) (i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments than are used for any other purpose, a statement explaining same,

"(7) a statement showing the number of participants who terminated service under the plan during the year, whether or not they retain any nonforfeitable rights, their length of service by category, the present value of the total accrued benefits of said participants and the present value of such benefits forfeited, and,

"(8) such other information pertinent to disclosure under this section 7(e) as the Secretary may by regulation prescribe."

(g) Section 7 is further amended by striking out in their entirety subsections (f), (g) and (h).

SEC. 8. (a) Section 8 of such Act is amended by striking out subsections (a) and (b) in their entirety and by redesignating subsection (c) as subsection (a).

(b) The subsection redesignated as subsection (a) is further amended by striking out the words "of plans" after the word "descriptions", striking out the word "the" before the word "annual" and adding the word "plan" before the word "descriptions".

(c) Section 8 is further amended by adding subsections (b), (c), (d) and (e), to read as follows:

"(b) The administrator of any employee benefit plan subject to this Act shall file with the Secretary a copy of the plan description and each annual report. The Secretary shall make copies of such descriptions and annual reports available for inspection in the public document room of the Department of Labor.

"(c) Publication of the plan descriptions and annual reports required by this Act shall be made to participants and beneficiaries of the particular plan as follows:

"(1) the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement, contract, or other instrument under which the plan was established and is operated available for examination by any plan participant or beneficiary in the principal office of the administrator;

"(2) the administrator shall furnish to any plan participant or beneficiary so requesting in writing a fair summary of the latest annual report;

"(3) the administrator shall furnish to any plan participant or beneficiary so requesting in writing a complete copy of the plan description (including all amendments or modifications thereto) or a complete copy of the latest annual report, or both. He shall in the same way furnish a complete copy of the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established and operated. In accordance with regulations of the Secretary, an administrator may make a reasonable charge to cover the cost of furnishing such complete copies.

"(d) The administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary so requesting in writing a statement indicating (1) whether or not such person has a nonforfeitable right to a pension benefit, (2) the nonforfeitable pension benefits, if any, which have accrued or the earliest date on which benefits will become nonforfeitable, (3) and the total pension benefits accrued.

"(e) Upon the termination of service under the plan of a participant having a right to a benefit, payable at a later date, the plan administrator shall furnish to the participant or his surviving beneficiary a statement setting forth his rights and privileges under the plan. The statement shall be in such form, be furnished and filed in such manner, and shall contain such information, including but not limited to the nature and amount of benefits to which he is entitled, the name and address of the entity responsible for payment, the date when payment shall begin and the procedure for filing his claim, as the Secretary may by regulation prescribe. The statement furnished to the participant or his surviving beneficiary or a true copy shall be prima facie evidence of the facts, rights and privileges set forth therein."

SEC. 9. (a) Subsection (a) of section 9 of such Act is amended by adding the words "sections 5 through 13 of" before the word "this".

(b) Section 9 is further amended by striking out in their entirety subsections (b) through (i) and inserting in lieu thereof subsections (b) through (k), to read as follows:

"(b) Any plan administrator who fails or refuses to comply with a request as provided in section 8 within thirty days (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $50 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

"(c) The Secretary shall have power, when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act, to make an investigation and in connection therewith he may require the filing of supporting schedules of the financial information required to be furnished under section 7 of this Act and may enter such places, inspect such records and accounts, and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

"(d) For the purposes of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

"(e) Civil actions under this Act may be brought;

"(1) by a participant or beneficiary—

"(A) for the relief provided for in section 9(b), or

"(B) to recover benefits due him under the terms of his plan or to clarify his rights to future benefits under the terms of the plan;

"(2) by the Secretary or by a participant or beneficiary (as a representative party on behalf of all participants or beneficiaries similarly situated where the requirements for maintaining a class action are met) for appropriate relief, legal or equitable, to redress a breach of any responsibility, obligation or duty of a fiduciary, including the removal of a fiduciary who has failed to carry out his duties or who is serving in violation of section 15 of this Act; or

"(3) by the Secretary, to enjoin any act or practice which appears to him to violate any provision of this Act.

"(f)(1) Civil actions under this Act brought by a participant or beneficiary may be brought in any court of competent jurisdiction, State or Federal.

"(2) Where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

"(3) Notwithstanding any other law, the Secretary shall have the right to remove an action from a State court to a district court of the United States, if the action is one seeking relief of the kind the Secretary is authorized to sue for herein. Any such removal shall be prior to the trial of the action and shall be to a district court where the Secretary could have initiated such an action.

"(g) The district courts of the United States shall have jurisdiction without respect to the amount in controversy, to grant the relief provided for in sections 9(e) (2) and (3) in any action brought by the Secretary. In any action brought under section 9(e) by a participant or beneficiary the jurisdiction of the district court shall be subject to the requirement contained in 28 U.S.C. 1331.

"(h)(1) In any action by a participant or beneficiary, the court in its discretion may

"(A) allow a reasonable attorney's fee and costs of the action to any party;

"(B) require the plaintiff to post security for payment of costs of the action and reasonable attorney's fees.

"(2) A copy of the complaint in any action by a participant or beneficiary shall be served upon the Secretary by certified mail who shall have the right, in his discretion, to intervene in the action.

"(i) In any civil action authorized to be brought by the Secretary by this Act, or to enjoin any act or practice, or to collect any penalty assessed by the Secretary, the Attorney general shall represent the Secretary, unless the Attorney General delegates all or part of this authorization to the Secretary.

"(j) Except as provided in this Act, nothing contained herein shall be construed or applied to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan.

"(k) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the functions of any such agency as he may find to be practicable and consistent

with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this Act. The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this Act which may warrant consideration for criminal prosecution under the provisions of this Act or other Federal Law."

SEC. 10. Section 13 of such Act is amended by striking out the word "welfare" after the word "employee" the second time it appears in subsection (a), striking out the words "or of any employee pension benefit plan" after the word "plan" the first time it appears in subsection (a), striking out the words "welfare benefit plan or employee pension" after the word "employee" the second time it appears in subsection (b) and striking out the words "welfare benefit plan or of an employee pension" after the word "employee" the first time it appears in subsection (d).

SEC. 11. Such Act is further amended by renumbering sections 14 through 18 as sections 16 through 20, respectively, and by adding the following new sections:

"FIDUCIARY RESPONSIBILITY

"SEC. 14. (a) Every employee benefit fund shall be deemed to be a trust and shall be held for the exclusive purpose of (1) providing benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan.

"(b)(1) A fiduciary shall discharge his duties with respect to the fund—

"(A) solely in the interests of the participants and their beneficiaries;

"(B) with the care under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

"(C) in accordance with the documents and instruments governing the fund insofar as is consistent with this Act.

"(2) Except as permitted hereunder, a fiduciary shall not—

"(A) lease or sell property of the fund to any person known to be a party in interest;

(B) lease or purchase on behalf of the fund any property known to be property of any party in interest;

"(C) deal with such fund in his own interest or for his own account;

"(D) represent any other party with such fund, or in any way act on behalf of a party adverse to the fund or to the interests of its participants or beneficiaries;

"(E) receive any consideration from any party dealing with such fund in connection with a transaction involving the fund;

"(F) loan money or other assets of the fund to any person known to be a party in interest;

"(G) furnish goods, service or facilities to any person known to be a party in interest, or

"(H) permit the transfer of any property of the fund to, or its use by, or for the benefit of any person known to be a party in interest.

The Secretary may by rule or regulation provide for the exemption of any fiduciary or transaction from all or part of the proscriptions contained in this subsection 14 (b)(2), when the Secretary finds that to do so is consistent with the purposes of this Act and in the interest of the fund and its participants and beneficiaries; *Provided, however,* That any such exemption shall not relieve a fiduciary from any other applicable provisions of this Act.

"(c) Nothing in this section shall be construed to prohibit any fiduciary from:

"(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established;

"(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund: *Provided,* That no person so serving who already receives full-time pay from an employer or an association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed;

"(3) serving in such position in addition to being an officer, employee, agent or other representative of a party in interest;

"(4) engaging in the following transactions:

"(A) purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the plan under which the fund was established or a corporation controlling, controlled by, or under common control with such employer: *Provided,* That the purchase of any security is for no more than adequate consideration in money or money's worth; *Provided further,* that if an employee benefit fund is one which provides primarily for benefits of a stated amount, or an amount determined by an employe's compensation, an employee's period of service, or a combination of both, or money purchase type benefits based on fixed contributions which are not geared to the employer's profits, no investment shall be made subsequent to the enactment of this amendment by a fiduciary of such a fund in securities of such an employer or of a corporation controlling, controlled by, or under common control with such employer, if such investment, when added to such securities already held, exceeds 10 per cent of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 10 per cent limitation shall not apply to profit sharing plans, nor to stock bonus, thrift and savings or other similar plans which have the requirement that some or all of the plan funds shall be invested in securities of such employer;

"(B) purchasing on behalf of the fund any security other than one described in (A) immediately above, or selling on behalf of the fund any security which is acquired or held by the fund, to a party in interest, *Provided,* (i) That the security is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission, (ii) that no brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with such transaction, and (iii) that adequate consideration is paid;

"(5) making any loan to participants or beneficiaries of the plan under which the fund was established where such loans are available to all participants or beneficiaries on a non-discriminatory basis and are made in accordance with specific provisions regarding such loans set forth in the plan;

"(6) contracting or making reasonable arrangements with a party in interest for office space and other services necessary for the operation of the plan and paying reasonable compensation therefor;

"(7) following the direction in the trust instrument or other document governing the fund insofar as consistent with the specific prohibitions listed in subsection 14(b)(2);

"(8) taking action pursuant to an authorization in the trust instrument or other document governing the fund, provided such action is consistent with the provisions of subsection 14(b).

"(d) Any fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this Act shall be personally liable to make good to such fund any losses to the fund resulting from such breach, and to restore to such fund any profits of such fiduciary which have been made through use of assets of the fund by the fiduciary.

"(e) When two or more fiduciaries undertake jointly the performance of a duty or the exercise of a power or where two or more fiduciaries are required by any instrument governing the fund to undertake jointly the performance of a duty or the exercise of a power, but not otherwise, each of such fiduciaries shall have the duty to prevent any other such cofiduciary from committing a breach of a responsibility, obligation or duty of a fiduciary or to compel such other co-fiduciary to redress such a breach; *Provided,* That no fiduciary shall be liable for any consequence of any act or failure to act of a co-fiduciary who is undertaking or is required to undertake jointly any duty or power if he shall object in writing to the specific action and promptly file a copy of his objection with the Secretary.

"(f) Each employee benefit plan shall contain specific provisions for the disposition of its fund assets upon termination. In the event of termination, whether under the express terms of the plan or otherwise, such fund, or any part thereof, shall not be expended, transferred or otherwise disposed of, except for the exclusive benefit of the plan participants and their beneficiaries. Notwithstanding the foregoing, after the satisfaction of all liabilities with respect to the participants and their beneficiaries under an employee pension benefit plan in accordance with the Internal Revenue Code and regulations promulgated thereunder, any remaining fund assets may be returned to any person who has a legal or equitable interest in such assets by reason of such person or his predecessor having made financial contribution thereto.

"(g) No fiduciary may be relieved from any responsibility, obligation or duty under this Act by agreement or otherwise. Nothing herein shall preclude any agreement allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries, but no such agreement shall restrict the obligations of any fiduciary to a plan or to any participant or beneficiary.

"(h) No action, suit, or proceeding based on a violation of this section shall be maintained unless it be commenced within three years after the filing with the Secretary of a report, statement or schedule with respect to any matter disclosed by such report, statement or schedule, or, or with respect to any matter not so disclosed, within three years after the complainant otherwise has notice of the facts constituting such violation, whichever is later: *Provided, however,* That no such action, suit or proceeding shall be commenced more than six years after the violation occurred. In the case of a willfully false or fraudulent statement or representation of a material fact or the willful concealment of, or willful failure to disclose, a material fact required by this Act to be disclosed, a proceeding in court may be brought at any time within ten years after such violation occurs.

"(i) A fiduciary shall not be liable for a violation of this Act committed before he became a fiduciary or after he ceased to be a fiduciary.

"PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE

"SEC. 15. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of: robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, kidnapping, perjury, assault with intent to kill, assault which inflicts grievous bodily injury, any crime described in section 9(a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-9(a)(1), or a violation of any provision of this Act, or a violation of section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, as amended, 29 U.S.C. 186, or a violation of Chapter 63 of Title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, as amended, 29 U.S.C. 401, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve—

"(1) as an administrator, officer, trustee, custodian, counsel, agent, employee (other than as an employee performing exclusively clerical or janitorial duties) or other fiduciary position of any employee welfare or pension benefit plan, or

"(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, County, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) in violation of this subsection.

"(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

"(c) For the purposes of this section, any person shall be deemed to have been 'convicted' and under the disability of 'conviction' from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this section.

"(d) For the purposes of this section, the term 'consultant' means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan."

SEC. 12. (a) Subsection (b) of section 16 of such Act, as renumbered by this Act, is amended by striking out the word "such" the second time it appears and by inserting in lieu thereof the word "the", and striking out the word "calendar" the second time it appears and inserting in lieu thereof the word "fiscal".

(b) Renumbered section 16(d) is amended by striking out the words "rate of $50 per diem" and inserting in lieu thereof the words "maximum per diem rate authorized in the current Department of Labor Apppropriation Act for consultants and experts", adding the words "such members are" after the word "when" the first time it appears, and striking out the designation "73b-2" after "5 U.S.C." and inserting in lieu thereof the designation "5703".

(c) Renumbered section 16 is further amended by striking out in its entirety subsection (e).

SEC. 13. (a) Renumbered section 17 is amended by adding a comma after the word "Act" the first time it appears in subsection (a), followed by the designation "5 U.S.C. 551 et seq.,", and by adding at the end of subsection (a) the following sentence: "The Secretary, or his delegate, in consultation with the Secretary of the Treasury or his delegate, shall prescribe all necessary rules and regulations for the administration and enforcement of this Act, except that all rules and regulations issued with respect to Section 14 shall be prescribed by the Secretary of Labor or his delegate with the concurrence of the Secretary of Treasury or his delegate."

(b) Renumbered section 17 is further amended by deleting in their entirety subsections (c) and (d).

SEC. 14. Renumbered section 18 is amended to read as follows:

"SEC. 18. It is hereby declared to be the express intent of Congress that except for actions authorized by section 9(e)(1)(B) of this Act, the provisions of this Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the fiduciary, reporting and disclosure responsibilities of persons acting on behalf of employee benefit plans provided that nothing herein shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary. Nothing herein shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States (other than the Welfare and Pension Plans Disclosure Act of 1958 as amended (92 Stat. 994)) or any rule or regulation issued under any such law."

SEC. 15. Renumbered section 20 is amended to read as follows:

"SEC. 20(a) The provisions of paragraph (b)(3), (4) and (5) of section 7 relating to the aggregating of items reported shall become effective two years after enactment hereof.

"(b) The amendments made by this Act to the reporting requirements of the Welfare and Pension Plan Disclosure Act shall become effective upon the promulgation of revised report forms by the Secretary.

"(c) All other provisions of this Act shall become effective thirty days after enactment hereof.

"(d) In order to provide for an orderly disposition of any investment, the retention of which would be deemed to be prohibited by this Act, and in order to protect the interest of the fund and its participants and its beneficiaries, the fiduciary may in his discretion effect the disposition of such investment within three years after the date of enactment of this Act or within such additional time as the Secretary may by rule or regulation allow, and such action shall be deemed to be in compliance with this Act."

SEC. 16. The Table of Contents of such Act is amended to read as follows:

"TABLE OF CONTENTS

EMPLOYEE BENEFITS PROTECTION ACT

Sec. 1. Short Title.
Sec. 2. Findings and declaration of policy.
Sec. 3. Definitions.
Sec. 4. Coverage.
Sec. 5. Duty of disclosure and reporting.
Sec. 6. Description of the plan.
Sec. 7. Annual reports.
Sec. 8. Publication.
Sec. 9. Enforcement.
Sec. 10. Reports made public information.
Sec. 11. Retention of records.
Sec. 12. Reliance on administrative interpretation and forms.
Sec. 13. Bonding.
Sec. 14. Fiduciary responsibility.
Sec. 15. Prohibition against certain persons holding office.
Sec. 16. Advisory Council.
Sec. 17. Administration.
Sec. 18. Effect of other laws.
Sec. 19. Separability of provisions.
Sec. 20. Effective date."

SEC. 17. (a) Sections 664, 1027 and 1954 of title 18, United States Code, are amended by striking out the words "Welfare and Pension Plans Disclosure Act" wherever they appear and inserting in lieu thereof the words "Employee Benefits Protection Act".

(b) Subsection (a) of section 1954 of title 18, United States Code, is further amended by striking out the words "3(3) and 5(b)(1) and (2)" and inserting in lieu thereof the words "3(c) and 3(o)".

The material presented by Mr. JAVITS is as follows:

U.S. DEPARTMENT OF LABOR,
Washington, D.C., March 13, 1970.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I am transmitting herewith draft legislation entitled "Employee Benefits Protection Act", as recommended by the President in his message today. I am also forwarding an analysis of the bill's major objectives and other supporting material.

The proposal will amend the Welfare and Pension Plans Disclosure Act to impose fiduciary responsibility on persons who exercise power of control, management or disposition over employee benefit funds. Additional amendments require disclosure of further information concerning the financial operations of such funds. The proposed legislation will provide basic protection for the vast sums now being handled through welfare and pension funds.

I urge that early and favorable consideration be given to this bill.

Sincerely,

GEORGE P. SHULTZ,
Secretary of Labor.

EXPLANATORY STATEMENT OF AMENDMENTS TO THE WELFARE AND PENSION PLANS DISCLOSURE ACT

The fundamental purpose of the proposed amendments to the Welfare and Pension Plans Disclosure Act is the broadening and strengthening of the protection of rights and interests of participants and beneficiaries of employee welfare and pension benefit plans. This aim is accomplished in three ways. First, by the addition of two new sections: one setting forth responsibilities and proscriptions applicable to persons occupying a fiduciary relationship to employee benefit plans, including a "prudent man" standard for evaluating the conduct of all fiduciaries; the other barring from responsible fiduciary position in such plans for a period of five years all persons convicted of certain listed criminal offenses. Second, by additions to and changes in the reporting requirements designed to disclose more significant information about plans and the transactions engaged in by those controlling plan operations and to provide specific data to participants and beneficiaries concerning the rights and the benefits they are entitled to under their plans. Third, by providing remedies through either State or Federal courts to insure that the protections provided by the Act can be effectively enforced.

I. FIDUCIARY RESPONSIBILITY

A fiduciary is one who occupies a position of confidence or trust. As defined by the amendments, a fiduciary is a person who exercises any power of control, management or disposition with respect to monies or other property of an employee benefit fund, or who has authority or responsibility to do so. The fiduciary responsibility section, in essence, codifies and makes applicable to these fiduciaries certain principles developed in the evolution of the law of trusts. The section was deemed necessary for several reasons.

First, a number of plans are structured in such a way that it is unclear whether the traditional law of trusts is applicable. Predominantly, these are plans, such as insured plans, which do not use the trust form as their mode of funding. Administrators and others exercising control functions in such plans under the present Act are subject only to minimal restrictions and the applicability of present State law to employee benefit plans is sometimes unclear. Second, even where the funding mechanism of the plan is in the form of a trust, reliance on conventional trust law often is insufficient to adequately protect the interests of plan participants and beneficiaries. This is because trust law had developed in the context of testamentary and inter vivos trusts (usually designed to pass designated property to an individual or small group of persons) with an attendant emphasis on the carrying out of the instructions of the settlor. Thus, if the settlor includes in the trust document an exculpatory clause under which the trustee is relieved from liability for certain actions which would otherwise constitute a breach of duty, or if the settlor specifies that the trustee shall be allowed to make investments which might otherwise be considered imprudent, the trust law in many States will be interpreted to allow the deviation. In the absence of a fiduciary responsibility section in the present Act, courts applying trust law to employee benefit plans have allowed the same kinds of deviations, even though the typical employee benefit plan, covering hundreds or even thousands of participants, is quite different from the testamentary trust both in purpose and in nature.

Third, even assuming that the law of trusts is applicable, without provisions (lacking in the present Act) allowing ready access to both detailed information about the plan and to the courts, and without standards by which a participant can measure the fiduciary's conduct (also lacking in the present Act), he is not equipped to safeguard either his own rights or the plan assets. Furthermore, a fiduciary standard embodied in Federal legislation is considered desirable because it will bring a measure of uniformity in an area where decisions under the same set of facts may differ from State to State. It is expected that courts will interpret the prudent man rule and other fiduciary standards bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act.

Finally, it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying State laws.

Section 14(a), when read in connection with the definition of the term "employee benefit fund", makes it clear that the fiduciary responsibility provisions apply only to those plans which have assets at risk. Thus an unfunded plan, such as one in which the only assets from which benefits are paid are the general assets of the employer, is not covered. However, if the plan does not have assets at risk, the form in which those assets are held is deemed to be a trust, whether or not a trust agreement exists, and the trust assets may be used only for the two stated purposes: providing benefits for participants and defraying reasonable administrative expenses.

The next two subsections (14 (b) and (c)) incorporate the core principles of fiduciary conduct as adopted from existing trust law, but with modifications appropriate for employee benefit plans. These salient principles place a twofold duty on every fiduciary: to act in his relationship to the plan's fund as a prudent man in a similiar situation and under like conditions would act, and to act solely in the interest of the participants and beneficiaries of the plan; that is, to refrain from involving himself in situations or transactions where his personal interests might conflict with the interests of the participants and beneficiaries for whom the fund was established. Thus, section 14(b)(1) sets out the prudent man standard and the attendant affirmative duties to discharge responsibilities in conformance with instructions (as set out in the governing plan documents) and solely in the interest of the plan's participants and beneficiaries. There follows a list of proscriptions (section 14(b)(2)) which represent the most serious type of fiduciary misconduct which in one way or another has occurred in connection with some welfare or pension plans. Some of these situations have been found in the administration of the WPPDA. Others have been discovered by congressional investigations, newspaper reporters, audits, and miscellaneous sources. While the magnitude of these improper practices is small in relation to the total number of plans in existence, the seriousness of the improper practices disclosed indicates the need for additional precautions to insure that these specific examples do not become general conditions. The list of proscriptions is intended to provide this essential protection.

The exemption provision which follows the listed proscriptions has been included in recognition of established business practices, particularly of certain institutions, such as commercial banks, trust companies and insurance companies which often perform fiduciary functions in connection with employee benefit plans. The Secretary will provide, by individual or class exemptions, exceptions so that the established practices of these institutions and others are not unduly disrupted, so long as they are consistent with the purposes of the Act.

Next, there are listed transactions in which fiduciaries are expressly allowed to engage. This listing is necessary for reasons similar to those which required inclusion of the exemption provision. That is, the breadth of the proscriptions, while considered necessary for the reasons stated above, would operate in some cases to prohibit transactions which are deemed desirable to the sound, efficient functioning of employee benefit plans. It was therefore necessary to specify that certain transactions, likely to be engaged in by fiduciaries of virtually all plans, will be allowed notwithstanding the proscriptions. It is emphasized, however, that even with respect to the transactions expressly allowed, the fiduciary's conduct must be consistent with the prudent man standard unless the trust instrument specifically directs investments.

Especially significant among the expressly allowed transactions is that which permits, in most types of plans, investment of up to ten percent of the fund assets in securities issued by the employer of employees who are participants in the plan. Since such an employer will often be an administrator of his plan, or will function as a trustee or in some other fiduciary capacity, this provision creates a limited exception to the listed proscription against self-dealing. The exception is made in recognition of the symbiotic relationship existing between the employer and the plan covering his employees. Such investments are commonly made under provisions in a trust agreement expressly allowing them. The ten percent limitation is prospective only, and does not require divestiture by funds already holding more than that percentage. Furthermore, the limitation does not apply to profit sharing plans, which, by their very nature, require greater investment in the employer's securities. Subsection 14(c) also recognizes the practice of including in trust instruments various authorizations governing the handling of the fund. Many such authorizations have been inserted by legal draftsmen because of questions in their judgment as to authority and are generally recognized as appropriate.

The next two subsections (14(d) and (e)) are intended to codify, with respect to employee benefit fund fiduciaries, rules developed under the law of trusts. Thus a fiduciary is made personally liable for his breach of any responsibility, duty or obligation owed to the fund, and must reimburse the fund for any loss resulting from such a breach. He must also pay over to the fund any personal profit realized through use of fund assets. Where two or more fiduciaries manage a fund, each must use care to prevent a co-fiduciary from committing a breach or to compel a co-fiduciary to redress a breach. Plan business is to be conducted by joint fiduciaries in accordance with the governing instruments of the plan, or in the absence of such provisions, majority of fiduciaries and a fiduciary who objects in writing to a specific action and files a copy of his objection with the Secretary is not liable for the consequences of such action.

The requirement (subsection 14(f)) that every plan contain specific provisions for the disposition of fund assets upon termination is necessary to avoid confusion on the part of fiduciaries and participants and beneficiaries alike as to the proper disposition of the fund assets upon termination of the plan. It is essential at such a time that the plan administrator (who is still, notwithstanding the termination, a fiduciary subject to the Act) know how assets remaining in the plan's fund must be distributed and it is important that the distribution plan be specified so that participants and beneficiaries can assess the property of the fiduciary's actions when the plan terminates. The requirement that liabilities to participants and beneficiaries be satisfied before claims on the fund by contributing parties will be heard is inserted to insure that the interests of participants and beneficiaries will be fully protected.

Exculpatory and similar clauses which purport to relieve a fiduciary from any responsibility, obligation or duty when the Act is expressly prohibited and made void as against public policy. Whatever the validity such provisions might have with respect to testamentary trusts, they are inappropriate in the case of employee benefit plans. The large numbers of people and enormous amounts of money involved in such plans coupled with the public interest in their financial soundness, as expressed in the Act, require that no such exculpatory provision be permitted.

It is noted that the basic three year statute of limitations (subsection 14(h)) for suits to enforce the fiduciary provisions or redress a fiduciary's breach may be extended up to an additional three years where the breach is not discovered earlier. In no event can a suit be maintained more than six years after the violation occurred. Where there has been a willfully false or fraudulent misstatement or concealment of a material fact, an action may be brought any time within ten years after the violation occurs.

Finally, by subsection (i) a fiduciary is specifically made not liable for violations committed before he became or after he ceased to be a fiduciary.

The second all new section, section 15,

prohibits persons convicted of certain listed crimes from serving, for a period of five years after conviction or the end of imprisonment for such conviction, in a responsible position in connection with an employee benefit plan. The prohibition is considered necessary because of the large funds involved and the attendant great risk of a loss affecting a large number of persons. Section 15 is modeled after section 504 of the Labor-Management Reporting and Disclosure Act (LMRDA) which bars persons convicted of certain crimes from serving as union officers. The presence of the LMRDA prohibition is another reason for including a similar provision in the Protection Act. Without such a provision, persons barred from serving as union officers might take positions with employee benefit plans. The danger inherent in such a transfer is especially great where elements of organized crime are involved.

The crimes listed have been chosen with reference to three kinds of criminal activity. These are (1) activities which involve a wrongful taking of property, (2) activities which are related to, and often occur in connection with the efforts of organized crime elements in the labor-management and securities fields, and (3) activities of a nature so vicious that involvement in them casts grave doubt on the individual's responsibility. Thus, in addition to the specifically named crimes the list includes crimes described in section 9(a)(1) of the Investment Company Act of 1940 (involving misconduct in the securities field), violations of section 302 of the Labor-Management Relations (Taft-Hartley) Act, certain violations of the LMRDA, violations of chapter 63 of Title 18, United States Code (mail fraud) and violation of sections 874 (kickbacks from public works employees), 1027 (false statements in documents required by the Welfare and Pension Plans Disclosure Act), 1954 (offer, acceptance or solicitation to influence operations of employee benefit plan), 1503 (jury tampering), 1505 (obstruction of government agency proceedings), 1506 (theft or alteration of court record or process; false bail), 1510 (obstruction of criminal investigations) and 1951 (interference with commerce by threats or violence), of Title 18, United States Code. The section contains its own criminal penalty, with a higher fine than that provided for other criminal violations of the Act. It is the same penalty as that specified in section 504, LMRDA.

II. REPORTING AND DISCLOSURE

The underlying theory of the Welfare and Pension Plans Disclosure Act to date has been that reporting of generalized information concerning plan operations to plan participants and beneficiaries and to the public in general would, by subjecting the benefit plans to the light of public scrutiny, insure that the plan would be operated according to instruction and in the best interests of the participants and beneficiaries. The Secretary's role in this scheme was minimal. Disclosure has been seen as a device to impart to participants and beneficiaries sufficient information to enable them to know whether the plan was financially sound and being administered as intended. It was expected that the knowledge thus disseminated would enable participants to police their plans. But, experience has shown that the limited data available under the present Act is insufficient even though the burden of enforcement has been partly assumed by the Secretary. The Amendments therefore are designed to increase the data required in the reports, both in scope and in detail. Experience has also demonstrated a need for a more particularized form of reporting, so that the individual participant knows exactly where he stands with respect to his plan—what benefits he is entitled to and what steps he must follow to secure his benefits. Moreover, the addition of fiduciary responsibility provisions has increased the need for both generalized and particularized data. On one hand, participants will be able to ascertain whether the plan's fiduciaries are observing the rules set out in the fiduciary responsibility section only if they have access to sufficient data about plan transactions. On the other hand, the prophylactic effect of the fiduciary responsibility section will operate efficiently only if fiduciaries are aware that the details of their dealings will be open to inspection, and that individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general.

There are three significant changes designed to impart more information about the plan and its operations in general. First, the annual report must include the opinion of an independent accountant based upon the results of an annual audit. Such information will allow better assessment of the plan's financial soundness by administrators and participants alike (the exemption for the books of institutions providing investment, insurance and related functions and subject to periodic examination by a government agency will prevent duplicative audit examinations of these institutions). Second, plans except those which are unfounded must include in their reports information pertaining to leases, party in interest transactions and investment assets other than securities in addition to information about securities, investments and loans. Finally, actuarial information is now required so that participants and beneficiaries can judge the progress of the plan's funding scheme and its overall financial soundness.

Amendments to provide particularized information to individual participants and beneficiaries are found in section 8. In addition to the obligation to make available copies of the plan description and latest annual report, the administrator will be required to furnish to a participant or beneficiary so requesting in writing a fair summary of the annual report or a statement of what benefits (including nonforfeitable benefits, if any) have accrued in his favor or both. This will enable a participant to find out where he stands with respect to the plan at any given time. The statement which must be supplied to a participant (or his survivor) having a right to a pension benefit upon his termination of service under the plan, is designed to insure that the participant or survivor will know exactly what procedures must be followed to secure his benefits.

Further, the administrator must furnish to participants and beneficiaries upon request copies of the plan description, annual report, or bargaining agreement, trust agreement, contract or instrument under which the plan is established and operated. He may make a reasonable charge to cover the cost of such copies.

III. ENFORCEMENT

The changes in the enforcement provisions have been made so that the rights given to participants and beneficiaries elsewhere in the Act will be enforceable in an appropriate forum. The enforcement section reflects the addition of the fiduciary responsibility provisions and provides remedies of two kinds; those designed to rectify fiduciary breaches and those to insure that participants and beneficiaries, and the Secretary, will receive the information required by the reporting and disclosure provisions. Suits to redress breaches of duty by a fiduciary may be brought by a participant or beneficiary only as a representative in a class action. Certification by an accountant as a prerequisite to the Secretary's investigation is no longer necessary because the annual audit requirement allows an assumption that the plan report is accurate.

Participants and beneficiaries may sue in any State court of competent jurisdiction.

For actions in Federal courts, nationwide service of process is provided in order to remove a possible procedural obstacle to having all proper parties before the court. Federal and State courts are given discretion to award attorney's fees and court costs to any party in actions brought by a participant or a beneficiary. The court also has discretion to require the plaintiff to post security for court costs and reasonable attorney's fees.

Fiduciary breaches may be rectified through civil suits only. Criminal penalties for such breaches are inconsistent with the principles established under the common law of trusts. However, criminal penalties remain available in cases of reporting violations, and, under Title 18, United States Code, in cases of embezzlement, false statements, bribery and kickbacks in connection with employee benefit plans.

IV. EFFECT OF OTHER LAWS

The Act provides for a uniform source of law for evaluating the fiduciary conduct of persons acting on behalf of employee benefit plans and a singular reporting and disclosure system in lieu of burdensome multiple reports. States may require the filing with a State agency of copies of reports required under the Act. State courts as well as Federal courts are available to provide remedies under the Act. Furthermore, the Act expressly authorizes cooperative arrangements with State agencies as well as other Federal agencies and provides that State laws regulating banking, insurance and securities remain unimpaired.

SECTION-BY-SECTION ANALYSIS OF AMENDMENTS TO THE WELFARE AND PENSION PLAN DISCLOSURE ACT

TITLE

The amendment changes the title of the Act from "Welfare and Pension Plans Disclosure Act" to "Employee Benefits Protection Act." The underlying purpose of the Act has always been the protection of the benefit plan interests of employees and the newly added fiduciary responsibility provisions will broaden the scope of this protection, making the use of the word in the title appropriate. The descriptive title is amended to read simply "An act to amend the Welfare and Pension Plans Disclosure Act."

TABLE OF CONTENTS

The table of contents reflects the addition of the two wholly new sections; section 14, entitled "Fiduciary Responsibility" and section 15, entitled "Prohibition Against Certain Persons Holding Office." It also reflects the change in the title of section 2 from "Findings of Policy" to "Findings and Declaration of Policy."

SHORT TITLE—SECTION 1

Section 1 provides that the Act may be cited as the Employee Benefits Protection Act.

FINDINGS AND DECLARATION OF POLICY—SECTION 2

Section 2, presently titled "Findings and Policy" has been retitled "Findings and Declaration of Policy." Language has been added to subsection (a) in recognition of the increasing impact of employee benefit plans on interstate commerce and to stress the intent of the amendments to provide greater safeguards in the protection of participants' and beneficiaries' rights under employee benefit plans. Subsection (b) contains a new clause reflecting the broadened policies of the Act.

DEFINITIONS—SECTION 3

The definitions of "employee welfare benefit plan" and "employee pension benefit plan" have been modified to make it clear that a plan will fall within the definition not only if it is established by an employer or an employee organization, but also when it is maintained by such an entity.

The definition of "party in interest" has been broadened and the definition of "administrator" has been removed from section 5 and added, in changed form, to section 3. Definitions of the following words and terms have also been included: relative, employee benefit plan, employee benefit fund, separate account, adequate consideration, nonforfeitable pension benefit, accrued benefit, security, fiduciary and market value.

Since the term "employee benefit plan", which means either a plan providing pension benefits or a plan providing welfare benefits or a plan providing both, has been added to the definition section, the term "employee welfare or pension benefit plan", and the term "employee welfare benefit plan or employee pension benefit plan" have been deleted from the Act wherever feasible and the term "employee benefit plan" has been substituted. These changes are not referred to elsewhere in this analysis.

COVERAGE—SECTION 4

Subsection (a) no longer contains the words "or employers" and "or organizations." There is no change in substance, since the singular is read to include the plural. 1 U.S.C § 1.

Paragraph (3) of subsection (b) now contains subparagraph headings (A) and (B) and the words "order or association" have been added to subparagraph (A) and to the proviso. The word "or" has been substituted for the word "and" in subparagraph (B) for the sake of clarity. The changes conform the language more closely to the Internal Revenue Code to which the language refers.

Paragraph (4) of subsection (b) specifies that participants or beneficiaries of plans covering less than 26 participants may bring actions to recover benefits or to protect a contingent interest in benefits, even though the plan is not otherwise covered by the Act.

DUTY OF DISCLOSURE AND REPORTING—SECTION 5

The second sentence of subsection (a) has been changed slightly to achieve greater clarity.

The definition of the term "administrator" has been changed and added, as noted above, to section 3. Subsection (b) authorizes the Secretary to require special terminal reports. Subsection (c) contains a simplified and more flexible version of an exemption power than the "variation" power currently in subsection (a).

DESCRIPTION OF THE PLAN—SECTION 6

Subsection (a) has been updated. Subsection (b) has been modified to require that the plan description include an easily understood explanation of any plan provision dealing with nonforfeitable pension benefits or a statement, if applicable, that the plan does not provide such benefits. The current requirement that all plan description changes be filed within 60 days has been modified to allow flexibility in accordance with the Secretary's regulations. Subsection (b) has also been modified to eliminate the requirement that the bargaining agreement, trust agreement, contract or other instrument under which the plan was established or is operated be included in the plan description; such full documents are made available for inspection by a participant or his representative, or he may obtain copies of such documents upon request and payment of reasonable charges pursuant to section 8(c).

ANNUAL REPORTS—SECTION 7

Section 7 has been rearranged and broadened. Paragraph (1) of subsection (a) sets forth the basic reporting requirements for all plans. Notice and opportunity to be heard rather than an investigation, is now the prerequisite to the Secretary's requiring a report from a covered plan with less than 100 participants. Paragraph (2) requires the carriers, in the case of an insured plan, to certify necessary information to the plan administrator within 120 days after the end of the plan year, and is identical to section 7(g) of the present Act. Paragraph (3) requires each plan to be audited annually by an independent accountant and the auditor's report with respect to financial information required to be filed under section 7 must accompany the plan's annual report. An exemption is included for the books of banks and insurance companies, if subject to periodic examination by Federal or State agencies.

Subsection (b) sets forth the kinds of information and transactions which must be reported by all plans, save those which are unfunded. Paragraph (1) covers general information, and requires identification of all fiduciaries. Paragraph (2) calls for data concerning all plan investments and paragraph (3) requires information with respect to transactions in securities.

Paragraph (4) deals with transactions involving property other than securities. Loans are covered in paragraph (5) and leases in paragraph (6). Paragraph (7) calls for a list of all party in interest transactions. Paragraph (8) contains special instructions where plan assets are held in a common or collective trust or in a separate account by an insurance carrier and allows the Secretary to prescribe rules for reporting in such situations. Paragraph (9) permits the administrator to furnish additional investment information if he desires to do so.

Subsection (c) deals with unfunded plans—plans in which the benefits are paid out of the general assets of the employer or the employee organization.

Subsection (d) sets forth the reporting requirements for insured plans and is identical to section 7(d)(1) and (2) of the present Act.

Subsection (e) elicits actuarial information, to the extent applicable from all plans.

PUBLICATION—SECTION 8

Subsections (a) and (b) provide for the preparation of forms for plan descriptions and annual reports by the Secretary and for inspection of completed descriptions and reports in the public document room of the Department of Labor.

Subsection (c) restates the current requirements of disclosure to participants: copies of the plan description and most recent annual report and the bargaining agreement, trust agreement, contract, or instrument under which the plan is established or maintained must be made available for examination by participants and beneficiaries at the administrator's principal office and a summary of the annual report must be furnished to any participant or beneficiary so requesting in writing. Copies of the plan description or annual report or agreement or instrument under which the plan is established must be furnished on request but a reasonable charge may be made to cover the cost.

Subsection (d) provides that upon written request, the administrator must furnish to a participant or beneficiary a statement of information concerning nonforfeitable pension benefits accrued, and total accrued pension benefits.

Subsection (e) provides that upon termination of service, each participant or his surviving beneficiary is entitled to receive a statement of his rights and privileges under the plan. The Secretary is authorized to prescribe the manner in which the statement must be furnished, its form, and its content beyond the mandatory content requirements stated in the subsection. Such statement is prima facie evidence of the facts, rights and privileges set forth therein.

ENFORCEMENT—SECTION 9

Subsection (a) restates the current criminal penalty for wilful violations of sections 5 through 13 of the Act.

Subsection (b) provides for liability, in the court's discretion, of up to $50 a day in the event of an administrator's failure or refusal to comply with the written request of a participant or beneficiary for a plan description, annual report, statement of accrued benefits (section 8(d)) or the bargaining agreement, trust agreement or contract under which the plan was established and is operated.

Subsection (c) gives the Secretary the authority to investigate when he believes it necessary to determine whether any person has violated or is about to violate the Act. Subsection (d) incorporates the subpoena provisions of the Federal Trade Commission Act and makes them applicable in an investigation by the Secretary.

Subsection (e) deals with civil actions. Suits may be brought by participants and beneficiaries individually for (1) the relief provided for in subsection (b), (2) to recover benefits due or clarify his rights to future benefits and (3) as representatives of a class to redress a breach of fiduciary duty. The Secretary may sue to enjoin any act which violates the Act and to redress a fiduciary breach.

Subsection (f) allows participants and beneficiaries to bring any action authorized in subsection (e) in any court of competent jurisdiction, State or Federal. Authorization for broad service of process is provided for suits in Federal district courts by participants and beneficiaries to recover benefits due or clarify his rights to future benefits and by participants and beneficiaries or the Secretary to redress a fiduciary breach. The Secretary is allowed to bring any other action authorized in subsection (e) in the proper Federal district court.

Subsection (g) vests Federal district courts with jurisdiction in any action brought by the Secretary to grant any of the relief provided for in subsection (e) without respect to the amount in controversy or the citizenship of the parties. Actions brought by participants or beneficiaries must meet the jurisdictional amount requirement applicable to the Federal district courts.

Subsection (h) gives the court discretion to allow reasonable attorney's fees and costs to any party and also gives the court discretion to require the posting of security by the plaintiff for those fees and costs. A copy of the complaint must be sent to the Secretary.

Subsection (i) prohibits the Secretary from interfering with the management of, or otherwise regulating any plan, except as authorized in the Act.

Subsection (j) authorizes the Secretary to make arrangements with other government agencies, State or Federal, for cooperation in performing his functions under the Act. Provision is made for the transmission of evidence from the Secretary to the Attorney General in cases of criminal violations of the Act.

REPORTS MADE PUBLIC INFORMATION—SECTION 10

Remains identical in substance and form to present Act.

RETENTION OF RECORDS—SECTION 11

Remains identical in substance and form to present Act.

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS AND FORMS—SECTION 12

Remains identical in substance and form to present Act.

BONDING—SECTION 13

Remains identical in substance to present Act.

FIDUCIARY RESPONSIBILITY—SECTION 14

This section is entirely new. Subsection (a) states that all employee benefit funds shall be deemed trust funds which may be used only to provide benefits and defray reasonable administrative costs.

Subsection (b) sets forth a non-inclusive list of fiduciary responsibilities and proscriptions. The listed responsibilities relate to the fiduciary's duties. They must be discharged solely in the interest of the participants and beneficiaries, as a prudent man under like circumstances would do and in accordance with the documents governing the plan insofar as they are consistent with the Act. The listed proscriptions provide that a fiduciary may not lease or knowingly sell fund property to a party in interest, lease or knowingly purchase property on behalf of the fund from a party in interest, deal with the fund on his own account, represent another party dealing with the fund or act on behalf of a party adverse to the fund or the interests of the participants or beneficiaries, receive consideration from a party dealing with the fund in connection with a transaction involving the fund, loan fund assets to any party in interest, furnish goods, services or facilities to any party in interest, or permit transfer of property of the fund to a party in interest, or permit its use for his benefit. The Secretary is authorized to exempt from any or all of the listed proscriptions, individually or by class, such fiduciaries or transactions as he finds to be sufficiently regulated by State or Federal authorities to effectuate the purposes of section 14.

Subsection (c) lists transactions in which fiduciaries may not be barred from engaging: receiving benefits as a participant or beneficiary of the plan, receiving reasonable compensation or reimbursement for services performed with respect to his duties in connection with the fund, serving as a fiduciary in addition to being a party in interest, purchasing on behalf of the fund securities issued by the employer of employees who are plan participants up to a 10% limit, purchasing or selling securities on behalf of the fund to a party in interest under certain conditions, lending to participants or beneficiaries on a non-discriminatory basis, making arrangements for office space with a party in interest, or following directions in a trust instrument insofar as they are consistent with the prohibitions listed in section 14(b)(2). Subsection (c) also provides that a fiduciary is not barred from taking action pursuant to an authorization in the trust instrument if such action is consistent with subsection 14(b).

Subsection (d) provides that a fiduciary shall be personally liable to make good to the fund for any loss due to his breach of any responsibility imposed by the Act and must pay over to the fund any profit he makes through use of fund assets.

Subsection (e) sets out the rules for fiduciaries acting jointly. Under subsection (f), each plan is required to make provision for disposition of fund assets upon termination of the plan. All liabilities and obligations must be satisfied with respect to participants and beneficiaries before any party who has contributed to a pension plan can partake.

Subsection (g) makes exculpatory provisions void as against public policy insofar as such provisions purport to relieve from obligations under the Act and subsection (h) contains a statute of limitations for suits to redress fiduciary breaches. Subsection (i) provides that a fiduciary shall only be liable for violations committed while he is a fiduciary.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE—SECTION 15

This new section, which bars persons convicted of certain crimes from holding administrative or fiduciary positions in connection with employee benefit plans is modeled after a similar provision in the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959.

Subsection (a) lists the crime conviction of which shall constitute a bar. Included within the bar are conspiracies or attempts to commit the crimes, as well as crimes in which any of the listed crimes is an element. Persons so convicted are barred for a period of five years from the date of conviction or the end of a period of imprisonment for such a conviction from serving in any fiduciary position, including but not limited to an administrator, officer, trustee, custodian, counsel, agent or employee of an employee benefit plan or a consultant to such a plan. Persons performing exclusively janitorial or clerical duties are exempted, as are persons whose citizenship rights have been fully restored and persons whose service in connection with the plan has been determined by the Parole Board of the Department of Justice not to be contrary to the purposes of the Act.

Subsection (b) states the criminal penalty for violation of the section. Subsection (c) clarifies the meaning of "convicted" for purposes of determining the beginning of the five year period and subsection (d) defines the word "consultant."

ADVISORY COUNCIL—SECTION 16

This section is virtually identical to the corresponding section, section 14, in the present Act. Subsection (b) of the amendment provides that the Secretary's report to Congress of his activities under the Act shall be based on the past fiscal, rather than calendar, year. Subsection (d) changes the rate of compensation of Advisory Council members from $50 per diem, to the maximum per diem rate for consultants authorized by the Department of Labor Appropriations Act. Subsection (e) has been rendered obsolete by changes in Title 18, United States Code and has therefore been deleted.

ADMINISTRATION—SECTION 17

Subsection (a) now includes that citation of the United States Code for the Administrative Procedure Act and provides that the Secretary or his delegate in consultation with the Secretary of the Treasury or his delegate shall have the authority to prescribe rules and regulations necessary for the administration and enforcement. All rules and regulations issued under section 14 are to be prescribed by the Secretary in concurrence with the Secretary of the Treasury.

Subsections (c) and (d) are no longer applicable and have been deleted.

EFFECT OF OTHER LAWS—SECTION 18

Section 18 designates the Act as the exclusive form of regulation for employee benefit plans within the areas covered, but provides that State laws which otherwise regulate insurance, banking or securities shall remain operative. It provides further that States may require the filing with State agencies of reports required by the Act to be filed with the Secretary.

SEPARABILITY OF PROVISIONS—SECTION 19

Remains identical in substance and form to the corresponding section, section 17, of the present Act.

EFFECTIVE DATE—SECTION 20

Subsection (a) provides that the provision of paragraph (b)(3) of section 7 shall become effective two years after enactment. Subsection (b) provides that amendments to the reporting requirement of the WPPDA shall be effective upon promulgation of revised reporting forms by the Secretary. Subsection (c) makes all other provisions effective 30 days after enactment.

Subsection (d) permits a fiduciary to take up to a year after enactment to dispose of prohibited investments. A longer period may be allowed by the Secretary by rule or regulation.

AMENDMENTS TO TITLE 18, UNITED STATES CODE

The language of sections 664, 1027, and 1954 of Title 18, United States Code, which set forth penalties for criminal offenses involving embezzlement, false statements, and bribery and kickbacks in connection with employee benefit plans, has been changed where necessary to conform to the amendments made by the Act. No substantive changes have been made in these sections.

[Existing law proposed to be deleted is bracketed; proposed new matter is italicized.]

EMPLOYEE BENEFITS PROTECTION ACT

PRINT SHOWING HOW THE PROPOSED BILL WOULD AMEND THE WELFARE AND PENSION PLANS DISCLOSURE ACT

An act [to provide for registration, reporting, and disclosure of employee welfare and pension benefit plans.] *To amend the Welfare and Pension Plans Disclosure Act.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. [That this Act may be cited as the "Welfare and Pension Plans Disclosure Act."] *That, in order to strengthen and improve the protection of the interests of participants in and beneficiaries of employee welfare and pension benefit plans, under the Welfare and Pension Plans Disclosure Act of August 28, 1958, as amended (72 Stat. 997), such Act is amended as follows:*

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[Welfare and Pension Plans] *Employee Benefits* [Disclosure] *Protection Act*
Sec. 1. Short title.
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Sec. 3. Definitions.
Sec. 4. Coverage.
Sec. 5. Duty of disclosure and reporting.
Sec. 6. Description of the plan.
Sec. 7. Annual reports.
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Sec. 10. Reports made public information.
Sec. 11. Retention of records.
Sec. 12. Reliance on administrative interpretation and forms.
Sec. 13. Bonding.
Sec. 14. *Fiduciary responsibility.*
Sec. 15. *Prohibition against certain persons holding office.*
Sec. 16. [Sec. 14.] Advisory Council.
Sec. 17. [Sec. 15.] Administration.
Sec. 18. [Sec. 16.] Effect of other laws.
Sec. 19. [Sec. 17.] Separability of provisions.
Sec. 20. [Sec. 18.] Effective date.

Short title

Sec. 1. This Act may be cited as the "Employee Benefits Protection Act."

[FINDINGS-AND-POLICY]

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress finds that the growth in size, scope and numbers of employee welfare-and-pension benefit plans in recent years has been rapid and substantial; *that the operational scope and economic impact of such plans is increasingly inter-*

state; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organization, and other entities by which they are established or maintained; that owing to the lack of employee information *and adequate safeguards* concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made *and safeguards be provided* with respect to the operation and administration of such plans.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee welfare and pension benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, *by establishing fiduciary standards of conduct, responsibility and obligation upon all persons who exercise any powers of control, management or disposition with respect to employee benefit funds or have authority or responsibility to do so, and by providing for appropriate remedies and ready access to the federal courts.*

DEFINITIONS

Sec. 3. When used in this Act—

[(1)] *(a)* The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established *or maintained* by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment.

[(2)] *(b)* The term "employee pension benefit plan" means any plan fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established *or maintained* by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.

[(3)] *(c)* The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning an employee [welfare or pension] benefit plan, or other matters incidential to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

[(4)] *(d)* The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee [welfare or pension] benefit plan, and includes a group or association of employers acting for an employer in such capacity.

[(5)] *(e)* The term "employee" means any individual employed by an employer.

[(6)] *(f)* The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee [welfare or pension] benefit plan, or whose beneficiaries may be eligible to receive such benefit.

[(7)] *(g)* The term "beneficiary" means a person designated by a participant or by the terms of an employee [welfare or pension] benefit plan who is or may become entitled to a benefit thereunder.

[(8)] *(h)* The term "person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

[(9)] *(i)* The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

[(10)] *(j)* The term "commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place outside thereof.

[(11)] *(k)* The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

[(12)] *(l)* The term "Secretary" means the Secretary of Labor.

[(13)] *(m)* The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee welfare benefit plan [or employee pension benefit plan], or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan *or any person controlling, controlled by, or under common control with, such employer* or officer or employee or agent of such employer *or such person, or an employee organization having members covered by such plan,* or an officer or employee or agent of such an employee organization havthe members covered by such plan, *or a relative, partner or joint venturer of any of the above described persons.*

(n) The term "relative" means a spouse, ancestor, descendant, brother, sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law.

(o) The term "administrator" means—

(1) the person specifically so designated by the terms of the plan, collective bargaining argeement, trust agreement, contract, or other instrument, under which the plan is operated; or

(2) in the absence of such designation, (A) the employer in the case of an employee benefit plan established or maintained by a single employer, (B) the employee organization in the case of a plan established or maintained by an employee organization, or (C) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintain the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

(p) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan providing both welfare and pension benefits.

(q) The term "employee benefit fund" or "fund" means a fund of money or other assets maintained pursuant to or in connection with an employee benefit plan and includes employee contributions withheld but not yet paid to the plan by the employer. The term does not include: (1) any assets of an investment company subject to regulation under the Investment Company Act of 1940; (2) premiums, subscription charges, or deposits received and retained by an insurance carrier or service or other organization, except for any separate account established or maintained by an insurance carrier.

(r) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(s) The term "adequate consideration" when used in section 14 means either (1) at the price of the security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (2) if the security is not traded on such a national securities exchange, at a price not less favorable to the fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer.

(t) The term "nonforfeitable pension benefit" means an immediate or deferred pension or other benefit which a participant or his beneficiary would upon proper application be entitled to receive under the provisions of the plan if at the time in question he had terminated his employment, irrespective of any conditions subsequent which could affect receipt of such benefit.

(u) The term "accrued benefit" means that benefit which, irrespective of whether such benefit is nonforfeitable, is equal to: (1) in the case of a profit sharing or money purchase type pension plan, the total amount credited to the account of a participant; (2) in the case of a unit benefit type pension plan, the benefit units credited to a participant; or (3) in the case of other types of pension plans that portion of the prospective benefit of a participant of the plan as the Secretary may by rule or regulation provide constitutes the participant's accrued benefit under the plan.

(v) The term "security" has the same meaning as in the Securities Act of 1933, 15 U.S.C. §77(a) et seq.

(w) The term "fiduciary" means any person who exercises any power of control, management or disposition with respect to any moneys or other property of an employee benefit fund, or has authority or responsibility to do so.

(x) the term "market value" or "value" when used in this Act means fair market value where available, and otherwise the fair value as determined in good faith by the administrator.

SEC. 4. (a) Except as provided in subsection (b), this Act shall apply to any employee [welfare or pension] benefit plan if it is established or maintained by any employer [or employers] engaged in commerce or in any industry or activity affecting commerce or by any employee organization [or organizations] representing employees engaged in commerce or in any industry or activity affecting commerce or by both.

(b) This Act shall not apply to an employee [welfare or pension] benefit plan if—

(1) such plan is administered by the Federal Government or by the government of a State, by a political subdivision of a State, or by an agency or instrumentality of any of the foregoing;

(2) such plan was established and is maintained [solely] for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws;

(3) such plan is administered by an or-

ganization which is exempt from taxation under the provisions of section 501(a) of the Internal Revenue Code of 1954 and is administered (*A*) as a corollary to membership in a fraternal benefit society, *order or association* described in section 501(c)(8) of such Code or (*B*) by organizations described in sections 501(c)(3) [and] *or* 501(c)(4) of such Code; *Provided* That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society, *order, association* or organization which represents its members for purposes of collective bargaining; or

(4) such plan covers not more than twenty-five participants, *except that participants and beneficiaries of such a plan shall be entitled to maintain an action to recover benefits or to clarify their rights to future benefits as provided in section 9(e)(1)(B).*

DUTY OF DISCLOSURE AND REPORTING

SEC. 5. (a) The administrator of an employee [welfare] benefit plan [or an employee pension benefit plan] shall [publish] *cause to be published* in accordance with section 8 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 6 and 7 of this Act in such form and detail as the Secretary shall [by regulations] prescribe and [copies thereof] shall be executed, published, and filed in accordance with the provisions of this Act and [the Secretary's] regulations [thereunder] *of the Secretary.* [No regulation shall be issued under the preceding sentence which relieves any administrator of the obligation to include in such description or report any information relative to his plan which is required by section 6 or 7. Notwithstanding the foregoing, if the Secretary finds, on the record after giving interested persons an opportunity to be heard, that specific information on plans of certain kinds or on any class or classes of benefits described in section 3(1) and 3(2) which are provided by such plans cannot, in the normal method of operation of such plan, be practically ascertained or made available for publication in the manner or for the period prescribed in any provision of this Act, or that the information if published in such manner or for such period would be duplicative or uninformative, the Secretary may by regulations prescribe such other manner or such other period for the publication of such information as he may determine to be necessary and appropriate to carry out the purposes of this Act.

[(b) The term "administrator" whenever used in this Act, refers to—

[(1) the person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

[(2) in the absence of such designation, the person or persons actually responsible for the control, disposition, or management of the money received or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.]

(b) *The Secretary may require the fixing of special terminal reports on behalf of an employee benefit plan which is winding up its affairs, so long as moneys or other assets remain in the plan. Such reports may be required to be filed regardless of the number of participants remaining in the plan and shall be on such forms and filed in such manner as the Secretary may by regulation prescribe.*

(c) *The Secretary may by regulation provide for the exemption from all or part of the reporting and disclosure requirements of this Act of any class or type of employee benefit plans, if the Secretary finds that the application of such requirements to such plans is not required in order to effectuate the purposes of this Act.*

DESCRIPTION OF THE PLAN

SEC. 6. (a) [Except as provided in section 4, the] *A* description of any employee [welfare or pension] benefit plan shall be published as required herein within ninety days [of the effective date of this Act or within ninety days] after the establishment of such plan *or when such plan becomes subject to the Act.* [whichever is later.]

(b) [The description of the plan shall be published, signed, and sworn to by the person or persons defined as the "administrator" in section 5, and shall include their names and addresses, their official positions with respect to the plan, and their relationship, if any, to the employer or to any employee organization, and any other offices, positions, or employment held by them.] *The description of the plan shall be comprehensive and shall include* the name, [address and description of the plan] and type of administration *of the plan; the name and address of the administrator;* the schedule of benefits; *a description of the provisions providing for nonforfeitable pension benefits (if the plan so provides) written in a manner calculated to be understood by the average participant, and if the plan does not provide such benefits, a statement to this effect;* [the names, titles and addresses of any trustee or trustees (if such persons are different from those persons defined as the "administrator"); whether the plan is mentioned in a collective bargaining agreement; copies of the plan or of the bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated;] the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported [to the Secretary within sixty days after the change has been effectuated] *in accordance with regulations prescribed by the Secretary.*

(NOTE.—Section 7, dealing with annual reporting requirements, has been rearranged to effect a more rational structure. Thus, sec. 7(a) now sets out the general requirements for all plans with respect to the *manner* of reporting and secs. 7(b), (c), (d) and (e) state requirements for the *content* of annual reports. Sec. 7(b) gives the requirements applicable to all plans except those which are unfunded, sec. 7(c) deals with unfunded plans, sec. 7(d) with additional requirements for insured plans, and sec. 7(e) with additional requirements for all pension plans, whether insured or trusteed. Due to this rearrangement and because of the addition of new material, it was not possible in every case to set amended provisions next to the WPPDA provisions from which they were derived. To aid in comparison, however, marginal cross-references have been included.)

ANNUAL REPORTS

SEC. 7. (a)(*1*) [The administrator of any employee welfare or pension benefit plan a description of which is required to be published under section 6 shall also publish an annual report with respect to such plan] *An annual report shall be published with respect to any employee benefit plan if the plan provides for an employee benefit fund subject to section 14 of this Act or* if it covers one hundred or more participants. However, the Secretary after [investigation] *notice and opportunity to be heard,* may require the administrator of any plan otherwise covered by the Act to publish such report when necessary and appropriate to carry out the purposes of the Act. Such report shall be published as required under section 8, within one hundred and fifty days after the end of the calendar, *policy or fiscal year on which* [year (or if] the records of the plan are kept. [on a policy or other fiscal year basis within one hundred and fifty days after the end of such policy or fiscal year).]

(2) *If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.*

(3) *The administrator of an employee benefit plan shall cause an audit to be made annually of the employee benefit fund established in connection with or pursuant to the provisions of the plan. Such audit shall be conducted in accordance with accepted standards of auditing by an independent certified or licensed public accountant, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to periodic examination by an agency of the Federal Government or the government of any State. The auditor's opinion and comments with respect to the financial information required to be furnished in the annual report by the plan administrator shall form a part of such report.*

(b) A report under this section shall [be signed by the administator and such report shall] include [the following]:

(*1*) [T]he amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets[, specifying the total amount in each of the following types of assets: cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets: a statement of,] liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes; [The Secretary, when he has determined that an investigation is necessary in accordance with section 9(d) of this Act, may require the filing of supporting schedules of assets and liabilities. The information required by this section shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to examination by an agency of the Federal Government or the government of any State In the case of reports sworn to, but not certified, the Secretary, when he determines that it may be necessary to investigate the plan in accordance with section 9(d) of this Act, shall, prior to

investigation by the Department of Labor, require certification of the report by an independent certified or licensed public accountant,] *the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position or employment he holds with any party in interest;*

(2) A schedule of all investments of the fund showing as of the end of the fiscal year:

(A) The aggregate cost and aggregate value of each security, by issuer;

(B) The aggregate cost and aggregate value, by type or category, of all other investments,

And separately identify (i) each investment the value of which exceeds $100,000 or three percent (3%) of the value of the fund and (ii) each investment in securities or properties of any person known to be a party in interest.

(3) a schedule showing the aggregate amount, by type of security, of all purchases, sales, redemptions and exchanges of securities made during the reporting period; a list of the issuers of such securities; and in addition a schedule showing, as to each separate transaction with or with respect to securities issued by any person known to be a party in interest, the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, and, in the case of a sale, redemption or exchange, the gross and net proceeds (including a description and the value of any consideration other than money) and the net gain or loss.

(4) A schedule of purchases, sales or exchanges during the year covered by the report of investment assets other than securities.

(A) by type or category of asset the aggregate amount of purchases, sales, and exchanges; the aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

(B) for each transaction involving a person known to be party in interest and for each transaction involving over $100,000 or three percent (3%) of the fund, an indication of each asset purchased, sold or exchanged (and, in the case of fixed assets such as land, buildings, and leasehold, the location of the asset); the purchase or selling price; expenses incurred in connection with the purchase, sale or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale, and his relationship to the plan, the employer, or any employee organization.

(5) a schedule of all loans made from the fund during the reporting year or outstanding at the end of the year, and a schedule of principal and interest payments received by the fund during the reporting year, aggregated in each case by type of loan, and in addition a separate schedule showing as to each loan which

(A) was made to a party in interest, or

(B) was in default or

(C) was written off during the year as uncollectible, or

(D) exceeded $100,000 or three percent (3%) of the value of the fund.

the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral and other material terms), the amount of principal and interest overdue (if any) and as to loans written off as uncollectible an explanation thereof.

(6) a list of all leases with

(A) persons other than parties in interest who are in default, and

(B) any party in interest,

including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, etc., the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during party in interest made during the year, in the reporting period, the net receipts from the lease, and with respect to any such leases in default, their identity, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(7) a detailed list of purchases, sales, exchanges or any other transactions with any party in interest made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the net gain or loss, the identity of the other party to the transaction and his relationship to the plan;

(8) If some or all of the assets of a plan or plans are held in a common or cellective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the report shall include a statement of assets and liabilities and a statement of receipts and disbursements of such common or collective trust or separate account and such of the information required under section 7(b)(2), (3), (4), (5), (6), and (7) with respect to such common or cellective trust or separate account as the Secretary may determine appropriate by regulation. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information determined by the Secretary to be necessary to enable the plan administrator to comply with the requirements of this Act.

(9) In addition to reporting the information called for by this subsection 7(b), the administrator may elect to furnish other information as to investment and reinvestment of the fund as additional disclosures to the Secretary.

(c) [If the plan is unfunded, the report shall include only the total benefits paid and the average number of employees eligible for participation, during the past five years, broken down by years, and a statement, if applicable, that the only assets from which claims against the plan may be paid are the general assets of the employer] *If the only assets from which claims against an employee benefit plan may be paid are the general assets of the employer or the employee organization, the report shall include (for each of the past five years) the benefits paid and the average number of employees eligible for participation.*

(d) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization such report shall include with respect to such plan (in addition to the information required by subsection (b)) the following:

(1) [T]he premium rate or subscription charge and the total premium or subscription charges paid to each such carrier or organization and the approximate number of persons covered by each class of such benefits;

(2) [T]he total amount of premium received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carrier or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs, paid by such carrier or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose: Provided, That if any such carrier or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the carrier or other organization and (B), if such carrier or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

(e) [Detail relative to the manner in which any funds held by an employee welfare benefit plan are held or invested shall be reported as provided under paragraphs (B), (G), and (D) of subsection (f) (1)] *Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:*

(1) the type and basis of funding,

(2) the number of participants, both retired and nonretired, covered by the plan,

(3) the amount of all reserves or net assets accumulated under the plan,

(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,

(5) the ratios of the market value of the reserves and assets described in (3) above to the liabilities described in (4) above,

(6) a copy of the most recent actuarial report, and

(A) (i) the actuarial assumptions used in computing the contributions to a trust or payments under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this section 7(e), insofar as any such actuarial assumptions are not included in the most recent actuarial report,

(B) (i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments than are used for any other purpose, a statement explaining same,

(7) a statement showing the number of participants who terminated service under the plan during the year, whether or not they retain any nonforfeitable rights, their length of service by category, the present value of the total accrued benefits of said participants and the present value of such benefits forfeited, and,

(8) such other information pertinent to disclosure under this section 7(e) as the Secretary may be regulation prescribe.

[(f) Reports on employee pension benefit plans shall include in addition to the applicable information required by the foregoing provisions of this section, the following:

[(1) If the plan is funded through the medium of a trust, the report shall include—

[(A) the type and basis of funding, actuarial assumptions used, the amount of cur-

rent and past service liabilities, and the number of employees, both retired and nonretired covered by the plan;

[(B) a statement showing the assets of the fund as required by section 7(b). Such assets shall be valued on the basis regularly used in valuing investments held in the fund and reported to the United States Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the United States Treasury Department;

[(C) a detailed list, including information as to cost, present value, and percentage of total funds, of all investments in securities or properties of the employer or employee organization, or any other party in interest, but the identity of all securities and the detail of brokerage fees and commissions incidental to the purchase or sale of such securities need not be revealed if such securities are listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or securities in an investment company registered under the Investment Company Act of 1940, or securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, and the statement of assets contains a statement of the total investments in common stock, preferred stocks, bonds and debentures, respectively, valued as provided in subparagraph (B).

[(D) a detailed list of all loans made to the employer, employee organization, or other party in interest, including the terms and conditions of the loan and the name and address of the borrower: *Provided*, That if the plan is funded through the medium of a trust invested, in whole or in part, in one or more insurance or annuity contracts with an insurance carrier, the report shall include, as to the portion of the funds so invested, only the information required by paragraph (2) below.

[(2) If the plan is funded through the medium of a contract with an insurance carrier, the report shall include—

[(A) the type and basis of funding, actuarial assumptions used in determining the payments under the contract, and the number of employees, both retired and nonretired, covered by the contract; and

[(B) except for benefits completely guaranteed by the carrier, the amount of current and past service liabilities, based on these assumptions, and the amount of all reserves accumulated under the plan.

[(3) If the plan is unfunded, the report shall include the total benefits paid to retired employees for the past five years, broken down by year.

[(g) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.

[(h) The Secretary shall prescribe by general rule simplified reports for plans which he finds that by virtue of their size or otherwise a detailed report would be unduly burdensome, but the Secretary may revoke such provisions for simplified forms for any plan if the purposes of the Act would be served thereby.]

PUBLICATION

SEC. 8. [(a) Publication of the description of the plan and the latest annual report required under this Act shall be made to the participants and the beneficiaries covered by the particular plan as follows:

[(1) The administrator shall make copies of such description of the plan (including all amendments or modifications thereto upon their effective date) and of the latest annual report available for examination by any participant or beneficiary in the principal office of the plan.

[(2) The administrator shall deliver upon written request to such participant or beneficiary a copy of the description of the plan (including all amendments or modifications thereto upon their effective date) and an adequate summary of the latest annual report, by mailing such documents to the last known address of the participant or beneficiary making such request.

[(b) The administrator of any plan subject to the provisions of this Act shall file with the Secretary two copies of the description of the plan and each annual report thereon. The Secretary shall make available for examination in the public document room of the Department of Labor copies of descriptions of plans and annual reports filed under this subsection.]

[(e)] *(a)* the Secretary shall prepare forms for the *plan* descriptions [of plans] and [the] annual reports required by the provisions of this Act, and shall make such forms available to the administrators of such plans on request.

(b) The administrator of any employee benefit plan subject to this Act shall file with the Secretary a copy of the plan description and each annual report. The Secretary shall make copies of such descriptions and annual reports available for inspection in the public document room of the Department of Labor.

(c) Publication of the plan descriptions and annual reports required by this Act shall be made to participants and beneficiaries of the particular plan as follows:

(1) the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement, contract, or other instrument under which the plan was established and is operated available for examination by any plan participant or beneficiary in the principal office of the administrator;

(2) the administrator shall furnish to any plan participant or beneficiary so requesting in writing a fair summary of the latest annual report;

(3) the administrator shall furnish to any plan participant or beneficiary so requesting in writing a complete copy of the plan description (including all amendments or modifications thereto) or a complete copy of the latest annual report, or both. He shall in the same way furnish a complete copy of the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established and operated. In accordance with regulations of the Secretary, an administrator may make a reasonable charge to cover the cost of furnishing such complete copies.

(d) The administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary so requesting in writing a statement indicating (1) whether or not such person has a nonforfeitable right to pension benefits, (2) the nonforfeitable pension benefits, if any, which have accrued or the earliest date on which benefits will become nonforfeitable and (3) the total pension benefits accrued.

(e) Upon the termination of service under the plan of a participant having a right to a benefit payable at a later date, the plan administrator shall furnish to the participant or his surviving beneficiary a statement setting forth his rights and privileges under the plan. The statement shall be in such form, be furnished and filed in such manner, and shall contain such information, including but not limited to the nature and amount of benefits to which he is entitled, the name and address of the entity responsible for payment, the date when payment shall begin and the procedure for filing his claim, as the Secretary may by regulation prescribe. The statement furnished to the participant or his surviving beneficiary, or a true copy, shall be prima facie evidence of the facts, rights and privileges set forth therein.

ENFORCEMENT

SEC. 9. (a) Any person who willfully violates any provision of *sections 5 through 13* of this Act shall be fined not more than $1,000, or imprisoned not more than six months, or both.

[(b) Any administrator of a plan who fails or refuses, upon the written request of a participant or beneficiary covered by such plan, to make publication to him within thirty days of such request, in accordance with the provisions of section 8, of a description of the plan or an annual report containing the information required by sections 6 and 7, may in the court's discretion become liable to any such participant or beneficiary making such request in the amount of $50 a day from the date of such failure or refusal.

[(c) Action to recover such liability may be maintained in any court of competent jurisdiction by any participant or beneficiary. The court in such action may in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

[(d) The Secretary may, after first requiring certification in accordance with section 7(b), upon complaint of violation not satisfied by such certification, or on his own motion, when he continues to have reasonable cause to believe investigation may disclose violations of this Act, make such investigations as he deems necessary, and may require or permit any person to file with him a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.

[(e) For the purposes of any investigation provided for this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act of September 16, 1941, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

[(f) Whenever it shall appear to the Secretary that any person is engaged in any violation of the provisions of this Act, he may in his discretion bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted.

[(g) The United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have jurisdiction, for cause shown, to restrain violations of this Act.

[(h) Nothing contained in this Act shall be so construed or applied as to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan, except that the Secretary may inquire into the existence and amount of investments, actuarial assumptions, or accounting practices only when it has been determined that investigation is required in accordance with section 9(d) of this Act.

[(i) The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this Act which may warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.]

(b) Any plan administrator who fails or refuses to comply with a request as provided in section 8 within thirty days (unless such

failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $50 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(c) The Secretary shall have power, when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act, to make an investigation and in connection therewith he may require the filing of supporting schedules of the financial information required to be furnished under section 7 of this Act and may enter such places, inspect such records and accounts, and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation. The Secretary may report to interested persons or officials concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(d) For the purposes of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

(e) Civil actions under this Act may be brought;

(1) by a participant or beneficiary—

(A) for the relief provided for in section 9(b), or

(B) to recover benefits due him under the terms of his plan or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant or beneficiary (as a representative party on behalf of all participants or beneficiaries similarly situated where the requirements for maintaining a class action are met) for appropriate relief, legal or equitable, to redress a breach of any responsibility, obligation or duty of a fiduciary, including the removal of a fiduciary who has failed to carry out his duties or who is serving in violation of section 15 of this Act; or

(3) by the Secretary, to enjoin any act or practice which appears to him to violate any provision of this Act. (f)(1) Civil actions under this Act brought by a participant or beneficiary may be brought in any court of competent jurisdition, state or federal.

(2) Where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) Notwithstanding any other law, the Secretary shall have the right to remove an action from a State court to a district court of the United States, if the action is one seeking relief of the kind the Secretary is authorized to sue for herein. Any such removal shall be prior to the trial of the action and shall be to a district court where the Secretary could have initiated such an action.

(g) The district court's of the United States shall have jurisdiction, without respect to the amount in controversy to grant the relief provided for in section 9(e) (2) and (3) in any action brought by the Secretary. In any action brought under section 9(e) by a participant or beneficiary, the jurisdiction of the district court shall be subject to the requirements contained in 28 U.S.C. 1331.

(h)(1) In any action by a participant or beneficiary, the court in its discretion may—

(A) allow a reasonable attorney's fee and costs of the action to any party;

(B) require the plaintiff to post security for payment of costs of the action and reasonable attorney's fees. (2) A copy of the complaint in any action by a participant or beneficiary shall be served upon the Secretary by certified mail who shall have the right, in his discretion, to intervene in the action.

(i) In any civil action authorized to be brought by the Secretary by this Act, or to enjoin any act or practice, or to collect any penalty assessed by the Secretary, the Attorney General shall represent the Secretary, unless the Attorney General delegates all or part of this authorization to the Secretary.

(j) Except as provided in this Act, nothing contained herein shall be construed or applied to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan.

(k) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary shall make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this Act. The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this Act which may warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

REPORTS MADE PUBLIC INFORMATION

SEC. 10. The contents of the descriptions and regular annual reports filed with the Secretary pursuant to this Act shall be public information, and the Secretary, where to do so would protect the interests of participants or beneficiaries of a plan, may publish any such information and data. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

RETENTION OF RECORDS

SEC. 11. Every person required to file any description or report or to certify any information therefor under this Act shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and date from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS AND FORMS

SEC. 12. In any action or proceeding based on any act or omission in alleged violation of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with any provision of this Act if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Secretary, or (2) publish and file any information required by any provision of this Act if he pleads and proves that he published and filed such information in good faith, on the description and annual report forms prepared by the Secretary and in conformity with the instructions of the Secretary issued under this Act regarding the filing of such forms. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publications or filings is determined by judicial authority not to be in conformity with the requirements of this Act.

BONDING

SEC. 13. (a) Every administrator, officer, and employee of any employee benefit plan subject to this Act who handles funds or other property of such plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers and employees of such plan shall be exempt from the bonding requirements of this section. The amount of such bond shall be fixed at the beginning of each calendar, policy, or other fiscal year, as the case may be, which constitutes the reporting year of such plan. Such amount shall be not less than 10 per centum of the amount of funds handled, determined as herein provided, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000; Provided, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C. 6–13). Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any administrator, officer, or employee to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any administrator, officer, or employee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company through any agent or broker in whose business operations such plan or any party in interest in such plan as any significant control or financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee [welfare-benefit plan or of an employee pension] benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding requirements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

FIDUCIARY RESPONSIBILITY

Sec. 14. (a) Every employee benefit fund shall be deemed to be a trust and shall be held for the exclusive purpose of (1) providing benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan.

(b)(1) A fiduciary shall discharge his duties with respect to the fund—

(A) solely in the interests of the participants and their beneficiaries;

(B) with the care under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

(C) in accordance with the documents and instruments governing the fund insofar as is consistent with this Act, (2) Except as permitted hereunder, a fiduciary shall not—

(A) lease or sell property of the fund to any person known to be party in interest;

(B) lease or purchase on behalf of the fund any property known to be property of any party in interest;

(C) deal with such fund in his own interest or for his own account;

(D) represents any other party dealing with such fund, or in any way act on behalf of a party adverse to the fund or to the interests of its participants or beneficiaries;

(E) receive any consideration from any party dealing with such fund in connection with a transaction involving the fund;

(F) loan money or other assets of the fund to any person known to be a party in interest;

(G) furnish goods, service or facilities to any person known to be a party in interest, or

(H) permit the transfer of any property of the fund to, or its use by, or for the benefit of any person known to be a party in interest.

The Secretary may by rule or regulation provide for the exemption of any fiduciary or transaction from all or part of the proscriptions contained in this subsection 14(b)(2), when the Secretary finds that to do so is consistent with the purposes of this Act and in the interest of the fund and its participants and beneficiaries; Provided, however, that any such exemption shall not relieve a fiduciary from any other applicable provisions of this Act.

(c) Nothing in this section shall be construed to prohibit any fiduciary from:

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund: provided that no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed;

(3) serving in such position in addition to being an officer, employee, agent or other representative of a party in interest;

(4) engaging in the following transactions:

(A) purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the plan under which the fund was established, or a corporation controlling, controlled by, or under common control with such employer; Provided that the purchase of any security is for no more than adequate consideration in money or money's worth; provided, further, that if an employee benefit fund is one which provides primarily for benefits of a stated amount, or an amount determined by an employee's compensation, an employee's period of service, or a combination of both, or money purchase type benefits based on fixed contributions which are not geared to the employer's profits, no investment shall be made subsequent to the enactment of this amendment by a fiduciary of such a fund in securities of such an employer or of a corporation controlling, controlled by, or under common control with such employer, if such investment, when added to such securities already held, exceeds 10 per cent of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 10 per cent limitation shall not apply to profit sharing plans, nor to stock bonus, thrift and savings or other similar plans which have the requirement that some or all of the plan funds shall be invested in securities of such employer;

(B) purchasing on behalf of the fund any security other than one described in (A) immediately above, or selling on behalf of the fund any security which is acquired or held by the fund, to a party in interest, Provided (i) that the security is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission, (ii) that no brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with such transactions and (iii) that adequate consideration is paid;

(5) making any loan to participants or beneficiaries of the plan under which the fund was established where such loans are available to all participants or beneficiaries on a non-discriminatory basis and are made in accordance with specific provisions regarding such loans set forth in the plan;

(6) contracting or making reasonable arrangements with a party in interest for office space and other services necessary for the operation of the plan and paying reasonable compensation therefor.

(7) following the direction in the trust instrument or other document governing the fund insofar as consistent with the specific prohibitions listed in subsection 14(b)(2);

(8) taking action pursuant to an authorization in the trust instrument or other document governing the fund, provided such action is consistent with the provisions of subsection 14(b).

(d) Any fiduciary who breaches any of the responsibilities, obligations or duties imposed upon fiduciaries by this Act shall be personally liable to make good to such fund any losses to the fund resulting from such breach, and to restore to such fund any profits of such fiduciary which have been made through use of assets of the fund by the fiduciary.

(e) When two or more fiduciaries undertake jointly the performance of a duty or the exercise of a power or where two or more fiduciaries are required by any instrument governing the fund to undertake jointly the performance of a duty or the exercise of a power, but not otherwise, each of such fiduciaries shall have the duty to prevent any other such co-fiduciary from committing a breach of a responsibility, obligation or duty of a fiduciary or to compel such other co-fiduciary to redress such a breach; Provided that no fiduciary shall be liable for any consequence of any act or failure to act of a co-fiduciary who is undertaking or is required to undertake jointly any duty or power if he shall object in writing to the specific action and promptly file a copy of his objection with the Secretary.

(f) Each employee benefit plan shall contain specific provisions for the disposition of its fund assets upon termination. In the event of termination, whether under the express terms of the plan or otherwise, such fund, or any part thereof, shall not be expended, transferred or otherwise disposed of, except for the exclusive benefit of the plan participants and their beneficiaries. Notwithstanding the foregoing, after the satisfaction of all liabilities with respect to the participants and their beneficiaries under an employee pension benefit plan in accordance with the Internal Revenue Code and regulations promulgated thereunder, any remaining fund assets may be returned to any person who has a legal or equitable interest in such assets by reason of such person or his predecessor having made financial contribution thereto.

(g) No fiduciary may be relieved from any responsibility, obligation or duty under this Act by agreement or otherwise. Nothing herein shall preclude any agreement allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries, but no such agreement shall restrict the obligations of any fiduciary to a plan or to any participant or beneficiary.

(h) No action, suit, or proceeding based on a violation of this section shall be maintained unless it be commenced within three years after the filing with the Secretary of a report, statement or schedule with respect to any matter disclosed by such report, statement or schedule, or, with respect to any matter not so disclosed, within three years after the complainant otherwise has notice of the facts constituting such violation, whichever is later, provided, however, that no such action, suit or proceeding shall be commenced more than six years after the violation occurred. In the case of a willfully false or fraudulent statement or representation of a material fact or the willful concealment of, or willful failure to disclose, a material fact required by this Act to be disclosed, a proceeding in court may be brought at any time within ten years after such violation occurs.

(i) A fiduciary shall not be liable for a violation of this Act committed before he became a fiduciary or after he ceased to be a fiduciary.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE

Sec. 15. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of: robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, kidnapping, perjury, assault with intent to kill, assault which inflicts grievous bodily injury, any crime described

in section 9(a)(1), of the Investment Company Act of 1940, 15 U.S.C. 80a—9(a)(1), or a violation of any provision of this Act, or a violation of section 302 of the Labor Management Relations Act of 1947, 61 Stat. 157, as amended, 29 U.S.C. 186, or a violation of Chapter 63 of Title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, as amended, 29 U.S.C. 401, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve—

1. as an administrator, officer, trustee, custodian, counsel, agent, employee (other than as an employee performing exclusively clerical or janitorial duties) or other fiduciary position of any employee welfare or pension benefit plan or

2. as a consultant to any employee benefit plan, during or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, County, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) in violation of this subsection.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) For the purposes of this section, any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this section.

(d) For the purposes of this section, the term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

ADVISORY COUNCIL

SEC. [14.] *16.* (a) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the "Council") which shall consist of thirteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, two from management, four from labor, and two from other interested groups, all appointed by the Secretary from among persons recommended by organizations in the respective groups; and three representatives of the general public appointed by the Secretary.

(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least twice each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the Act for [such] *the* preceding [calendar] *fiscal* year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the Act's operation and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d) Appointed members of the Council shall be paid compensation at the [rate of $50 per diem] *maximum per diem rate authorized in the current Department of Labor Appropriation Act for consultants and experts* when *such members are* engaged in the work of the Council, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. [73b–2] *5703*) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

[(e)(1) Any member of the Council is hereby exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99), except as otherwise specified in paragraph (2) of this subsection.

[(2) The exemption granted by paragraph (1) of this subsection shall not extend—

[(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

[(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.]

ADMINISTRATION

SEC. [15.] *17.* (a) The provisions of the Administrative Procedure Act, *5 U.S.C. sec. 551 et seq.*, shall be applicable to this Act. *The Secretary, or his delegate, in consultation with the Secretary of the Treasury or his delegate, shall prescribe all necessary rules and regulations for the administration and enforcement of this Act, except that all rules and regulations issued with respect to Section 14 shall be prescribed by the Secretary of Labor or his delegate with the concurrence of the Secretary of Treasury or his delegate.*

(b) No employee of the Department of Labor shall administer or enforce this Act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

[(c) No more than 260 employees shall be employed by the Department of Labor to administer or enforce this Act for the first two years after the enactment of the Welfare and Pension Plans Disclosure Act Amendments of 1962.

[(d) No more than two million two hundred thousand dollars per year is authorized to be appropriated for the administration and enforcement of this Act for the first two years after the enactment of the Welfare and Pension Plans Disclosure Act Amendments of 1962.]

EFFECT OF OTHER LAWS

SEC. [16.] *18.* (a) In the case of an employee welfare or pension benefit plan providing benefits to employees employed in two or more States, no person shall be required by reason of any law of any such State to file with any State agency (other than an agency of the State in which such plan has its principal office) any information included within a description of the plan or an annual report published and filed pursuant to the provisions of this Act if copies of such description of the plan and of such annual report are filed with the State agency, and if copies of such portion of the description of the plan and annual report, as may be required by the State agency, are distributed to participants and beneficiaries in accordance with the requirements of such State law with respect to scope of distribution. Nothing contained in this subsection shall be construed to prevent any State from obtaining such additional information relating to any such plan as it may desire, or from otherwise regulating such plan.

[(b) The provisions of this Act, except subsection (a) of this section and section 13, and any action taken hereunder, shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State effecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law.] *It is hereby declared to be the express intent of Congress that except for actions authorized by section 9(e)(1)(B) of this Act, the provisions of this Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter related to the fiduciary, reporting and disclosure responsibilities of persons acting on behalf of employee benefit plans provided that nothing herein shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary. Nothing herein shall be construed to alter, amend, modify, invalidate, impair or supersede any law of the United States (other than the Welfare and Pension Plans Disclosure Act of 1958 as amended (92 Stat. 994) or any rule or regulation issued under any such law.*

SEPARABILITY OF PROVISIONS

SEC. [17.] *19.* If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

EFFECTIVE DATE

SEC. [18.] *20.* [The provisions of this Act shall become effective January 1, 1959.] *Sec. 20(a) The provisions of paragraph (b)(3), (4) and (5) of section 7 relating to the aggregating of items reported shall become effective two years after enactment hereof.*

(b) The amendments made by this Act to the reporting requirements of the Welfare and Pension Plan Disclosure Act shall become effective upon the promulgation of revised report forms by the Secretary.

(c) All other provisions of this Act shall become effective thirty days after enactment hereof.

(d) In order to provide for an orderly disposition of any investment, the retention of which would be deemed to be prohibited by this Act, and in order to protect the interest of the fund and its participants and its beneficiaries, the fiduciary may in his discretion effect the disposition of such investment within three years after the date of enactment of this Act or within such additional time as the Secretary may by rule or

regulation allow, and such action shall be deemed to be in compliance with this Act.

S. 3592—INTRODUCTION OF A BILL TO AMEND THE FEDERAL MEAT INSPECTION ACT TO CLARIFY THE PROVISION RELATING TO CUSTOM SLAUGHTERING OPERATIONS

Mr. CURTIS. Mr. President, I am pleased today to present to the Senate a long-awaited, revised bill to amend the Wholesome Meat Act of 1967.

I am introducing this bill as a replacement for S. 2983, a much broader bill which I introduced last year and which is currently pending in the Agriculture Committee.

Some of the problems which last year's measure sought to correct were solved without legislative action. For example, Secretary of Agriculture Clifford Hardin, exercising his authority under the law, granted a 1-year extension to 45 of the 50 States in order to give them time to get in compliance with the Federal standards.

This extension was necessary, Mr. President, simply because it took longer than anyone had anticipated to draft and promulgate the administrative regulations for implementing the new meat inspection law. It was necessary because the law intended that States be given full opportunity to adopt equally tough State standards and crank up their inspection machinery to enforce those standards as an alternative to Federal inspection of intrastate meat processing plants, or those not previously subject to Federal inspection.

The bill which I am offering today actually is a technical amendment designed to clarify the provisions of the 1967 act with respect to custom slaughtering operations.

This bill is not designed to permit anything that was not intended by the principal sponsors and supporters of the present law. I want to make that clear.

The language has been worked out and reworked painstakingly over a period of several months to make certain that it does not create loopholes or do violence in any way to the intent of the Wholesome Meat Act.

I am indebted to a group of Senate and House Members who had a major part in writing the 1967 act for helping to draft and check the language of this bill to make certain that it will do what is intended without relaxing or loosening the protection being provided to consumers under the present law.

In short, Mr. President, this bill would permit custom slaughtering of livestock to be done for farmers and ranchers in the same establishment where meat is cut and sold at retail. It would prescribe strict requirements which would have to be met in order for these two types of activities to be conducted in the same establishment.

First, the Secretary of Agriculture would promulgate regulations assuring that the custom-slaughtering operations and all of the products thereof "are separated at all times" from the meat which is handled for sale at retail.

Second, the containers or packages containing custom-slaughtered meat would have to be plainly labeled "Not for Sale" immediately after being prepared, and kept so identified until delivered to the owner.

Third, the establishment conducting custom operations would have to be "maintained and operated in a sanitary manner" as prescribed by the Secretary of Agriculture.

Finally, all meat processed and sold at retail in such an establishment must come from a slaughter plant which is inspected under the regular standards prescribed in the Wholesome Meat Act as it exists today.

Those are the principal provisions, Mr. President. They provide important and essential safeguards for consumers. At the same time, they would permit a type of activity to continue in the rural areas of our Nation that is essential to the economic life of those areas.

Many small locker and meat processing plants in rural areas cannot continue to operate economically without conducting both custom-slaughtering and retail meat-cutting activities. The Department of Agriculture has ruled that the law as presently written does not permit this. The measure being introduced today will permit such operations and clearly spells out the necessary requirements.

The 1967 law permits custom-processing of game animals in the same establishment where meat is cut and sold commercially. It does not spell out conditions for such processing. The same permission should be extended to farmers and ranchers who want to have their livestock slaughtered and processed for their own use, and it is important to prescribe conditions for such processing for game as well as domestic animals.

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

The bill (S. 3592) to amend the Federal Meat Inspection Act, as amended, to clarify the provision relating to custom slaughtering operations, introduced by Mr. CURTIS (for himself and other Senators), was received, read twice by its title, and referred to the Committee on Agriculture and Forestry.

ADDITIONAL COSPONSORS OF BILLS

S. 3388

Mr. MURPHY. 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. COOK). Without objection, it is so ordered.

S. 3503

Mr. MANSFIELD. Mr. President, at the request of the Senator from Wisconsin (Mr. PROXMIRE), I ask unanimous consent that, at the next printing, the name of the Senator from Nevada (Mr. CANNON) be added as a cosponsor of S. 3503, to reduce mortgage interest rates charged middle-income families, and for other purposes.

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

NOTICE OF HEARING ON TRUST TERRITORY OF THE PACIFIC ISLANDS

Mr. BURDICK. Mr. President, for the information of Members of the Senate and others, I wish to announce that the Subcommittee on Territories of the Committee on Interior and Insular Affairs has scheduled a hearing for Wednesday, March 18, to consider S. 3479, to amend section 2 of the act of June 30, 1954, as amended, providing for the continuance of civil government for the Trust Territory of the Pacific Islands, and S. 3153, to authorize the Secretaries of Interior and the Smithsonian Institution to expend certain sums, in cooperation with the territory of Guam, the territory of American Samoa, the Trust Territory of the Pacific Islands, other U.S. territories in the Pacific Ocean, and the State of Hawaii, for the conservation of their protective and productive coral reefs.

The hearing will begin at 10:30 a.m. in room 3110, New Senate Office Building. Anyone who wishes to be heard in connection with the legislation should contact the committee staff in order that a witness list may be prepared.

NOTICE OF HEARINGS ON "CROWN OF THORNS" STARFISH

Mr. MANSFIELD. Mr. President, at the request of the junior Senator from Washington (Mr. Jackson), I ask unanimous consent that a statement by him relating to an important hearing by his committee 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 JACKSON

Mr. President, on Wednesday, March 18, the Subcommittee on Territories and Insular Affairs of the Senate Interior Committee will conduct hearings on S. 3153, a measure to provide for research and control of the devastating "Crown of Thorns" starfish. The hearings will be held in Room 3110 of the New Senate Office Building at 10:30 A.M.

This measure would provide the means to control the "Crown of Thorns" starfish that currently threatens the economic livelihood of Guam and the Trust Territory of the Pacific Islands. Although relatively little is known about the intensity of starfish infestations in other areas of the Pacific under the jurisdiction of the United States, this menacing creature has been noted in American Samoa and the State of Hawaii.

The "Crown of Thorns" starfish is not just a menace to the insular possessions of the United States and a potential threat to the State of Hawaii. It has now become a matter of concern to all nations and territories of the South Pacific. The starfish has already destroyed about 100 square miles of the Great Barrier Reef off Australia.

Last summer, the Westinghouse Ocean Research Laboratory, under contract to the Department of Interior, organized and carried out a survey by ten teams of scientists to determine the severity of the "Crown of Thorns" starfish problem in certain parts of the South Pacific. This report which was

published last October revealed that if something is not done soon to control this starfish which feeds on the living parts of coral, it could have long-range economic repercussions, particularly since many of the islanders are dependent upon the reefs and their fisheries resources for subsistence. Evidence now indicates that following the destruction of the living parts of the coral by the starfish, the dead coral becomes encrusted with algae and the resident fishes diminish in total numbers because their food supply has been eliminated.

In addition to providing a habitat and food source for fish, the living coral reefs offer protection to the islands during tropical storms. If the coral dies, and begins to erode, the islands become susceptible to erosion and other damage caused by typhoons.

NOTICE OF POSTPONEMENT OF HEARINGS ON THE DRAFT LOTTERY

Mr. KENNEDY. Mr. President, last December, shortly after Congress removed the ban on random selection, the Selective Service System held the first draft lottery since World War II. The purpose of this drawing was to select an induction sequence for draft-eligible young men, unguided by considerations of race, education, income or connections; pure chance was to determine who was or was not chosen. Soon after the lottery, however, it became evident that the sequence was not all that might be expected from a random drawing. I began to receive letters from statisticians who pointed out that birthdates from the end of the year were disproportionately among the first numbers drawn. I heard increasing criticism that the mechanics of the fishbowl drawing had been allowed to inject bias into the selection process.

I was disturbed by these charges, since the lottery, which I had supported for several years, was designed to avoid completely any semblance of prejudice.

On December 18, I wrote to Dr. Philip Handler, President of the National Academy of Sciences, to ask for his analysis of the randomness of the drawing and his recommendations for insuring completely random selection in the future. In that letter I voiced concern that the lottery, as it was held, might "cause a further erosion in public confidence in the fairness of the draft," and might "generate further distrust and cynicism about the processes of government."

Dr. Handler replied on January 14. After a preliminary determination that the December 1 drawing did not have the properties of a random selection, he offered to make "a presentation on random processes with special reference to the problems posed by the selective service lottery."

I requested such a presentation from Dr. Handler as chairman of the Subcommittee on Administrative Practice and Procedure. I felt it was important for us to consider what steps might be taken administratively to insure that the next lottery could avoid any criticism.

Dr. Handler and Professor John Tukey of Princeton University were to appear before the subcommittee on March 18, to offer the recommendations of the National Academy of Sciences on an improved lottery. I had intended to use this opportunity to discuss as well other aspects of the lottery which have troubled a great many young men.

One goal of the lottery was to afford to registrants at an early age and with a minimum of disruption of their lives the knowledge of whether they would be required to serve. While it is true that 7 years of uncertainty have been telescoped into 1 year, nevertheless a great deal of confusion remains. I believe that the Selective Service System could take further steps to enable young men to interpret the meaning of their lottery number.

After discussions the other day with Senator STENNIS of Mississippi, chairman of the Committee on Armed Services, I have determined that a hearing by the Subcommittee on Administrative Practice and Procedure will not be necessary at this time. Senator STENNIS, agreeing with me that these issues merit full consideration, has assured me that Dr. Handler and Professor Tukey will be invited to make their presentation when the Senate Armed Services Committee begins its hearings on draft legislation early in April. Since this committee will be considering a number of pieces of draft legislation at this time, he and I felt that this would provide the most appropriate way of studying the lottery in its fuller context.

The administration of the lottery is an integral part of the present draft system, and I feel confident that Senator STENNIS will examine it fully in the upcoming hearing. I am therefore postponing indefinitely the planned hearing by my subcommittee.

ADDITIONAL STATEMENTS OF SENATORS

VICE PRESIDENT AGNEW

Mr. DOLE. Mr. President, on February 26, the Vice President addressed the National Governors' Conference in Washington, D.C. In his remarks, Mr. AGNEW presented a concise summary of the administration's broad program to preserve and restore our Nation's environment and natural resources. He also spoke of the obligations of leadership falling on high Federal and State elected officials.

Today's turbulent affairs and events make unique demands on those who have been chosen by the electorate to provide guidance, leadership and direction for the States and the Nation. The Vice President's remarks contain some cogent observations on the obligations of leadership. I ask unanimous consent that his remarks be printed in the RECORD.

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

ADDRESS BY THE VICE PRESIDENT, NATIONAL GOVERNORS' CONFERENCE, WASHINGTON, D.C., FEBRUARY 26, 1970

Yesterday, the President spoke to you briefly and specifically about a few facets of the Administration's domestic program. I believe you could easily detect in his remarks an awareness of the difficult financial burdens that State government faces. At no other level of government have built-in program increases left less resources for the implementation of new programs. And notwithstanding the rigid disciplines which had to be imposed on the federal budget to brake runaway inflation, the President has moved to commit more federal assistance, and federal assistance in a more flexible form, to State government than ever before.

The beginnings in revenue sharing, in the fight against pollution, and in the welfare reform await the action of Congress. Whether these programs are passed as offered or whether they're modified, they will have an effect on your ability to finance the growing burdens of State government.

But the Administration's recognition of the formidable difficulties faced by the States has a mirror image—the Governors' recognition of the equally difficult problems faced by the Administration.

I want you to know that we are very grateful for your cooperation in our fight against inflation. In September, when we met last, the Administration sought your aid through a voluntary cutback in non-essential construction. Your response was prompt and substantial. The States collectively have reduced or deferred $1,084,000,000 of planned highway construction. Other deferred capital construction has exceeded $1,009,000,000. So you have shared in cooling inflation by putting a potential $2 billion multiplier on ice.

Obviously, you merit and have the plaudits of this Administration and the gratitude of the nation. With this one responsible act you've done more than your share in the war against inflation. You've given life and proof to the federal precept. You've demonstrated that State governments are willing and capable of disciplining themselves and of cooperating in the nation's interest. And you have proven that those who would counsel for federal supremacy, or advocate the by-passing of State governments because they are careless and insensitive about problems outside of Statehouse politics, are totally wrong. In one act, you have put down four decades of slander about State government.

In terms of our nation's history, I believe your prompt, voluntary policing of your own spending will be remembered both as a blow struck to restore a balanced federal system and as a pivotal factor in a year-long crusade to combat inflation.

Yesterday, you heard the President touch briefly on the environment and reiterate the Administration's commitment to the fight against water pollution. We will never be able to clean up our waters without adequate waste water treatment facilities. Our proposed new $10 billion joint Federal-State program for the construction of such facilities represents one of the most important direct steps we can take to begin the restoration of our environment. This new program proposes to allot federal matching funds of $1 billion per year for four years, and is expected to induce the expenditure on a local level of $6 billion in that same period.

I want to emphasize several points from Secretary Hickel's statement of yesterday to your Committee on Natural Resources and Environmental Management.

First, $10 billion is the amount of funding we can look forward to. It should be enough to do the job. If it proves inadequate, the President has said that he will seek more.

Second, the Federal Government will meet its reimbursement commitments. I want to make it clear that for the fiscal year 1970, the States will receive $800 million as a total appropriation—out of which they will have the option of using their monies for new projects or reimbursement of old projects if they are at least 25 percent complete. In succeeding years beginning with fiscal 1971, 20 percent of the amount of money totally authorized will be allocated for reimbursement by regulation of the Secretary of In-

terior until all of the reimbursable commitments have been met.

Third, for those municipalities unable to finance their share of waste water treatment facilities, a new environmental financing authority will be structured to help meet that need.

Fourth, the new program will permit allocation of federal matching funds on both population density and pollution density.

Fifth, and this is a much desired innovation, we will provide in the program the highly significant reform of comprehensive river basin planning.

Thus, the three R's of restoration, reform and renewal described by the President are all evidenced in our new water pollution control program.

In addition to capital construction deferrals and the financing of the difficult battle against water pollution, there are probably a hundred other matters of specific executive decision which I might move to and discuss with you at this time. They'd all be familiar to you, they'd all be controversial, they'd all have been discussed many times before. Basically, the solution to these problems depends on a constant search for modification and adaptation by professional governmental administrators such as yourselves.

After the long working sessions at this and other Governors' Conferences, you do not need me to preach about subjects you thoroughly understand and which you will eventually solve by hard work, patience and the long process of compromise. Rather than weary you further with recitals geared less to your enlightenment than to the display of what ex-Governors such as I like to think of as accumulated gubernatorial wisdom, I would like to touch briefly on a generality that I feel is of vital importance, even though often lost in the specific frenzies of modern government.

I refer to the most solemn unwritten obligation of a Governor—that of leading the people of his State, and through his statements, molding opinion. Somewhere amid the sometimes exciting, sometimes tedious intricacies of the sophisticated governmental structure of a modern state, the elected leader must disengage from the manipulation of *things* and consider the *spirit of the people* he is elected to serve.

At no time in our history have we seen a greater preoccupation with the machinery of government, a greater fascination with the ideas of the "In-Group" of bureaucrats and professional experts, and less attention to the true functions of leadership, which form the only real reason for the people of a sovereign State to designate one citizen to give them direction and hope.

It's easy to mistake great activity and a proliferation of high-sounding programs for leadership. No one knows better than a Governor how tempting it is to spend hour after hour in staff level meetings discussing tax formulas, Federal-State contributive ratios, education and health budgets and other important details—not to mention all the varieties of unimportant trivia which wash through the sands of the great departments, propelled by the pumps of countless career public servants dependent on activity more than progress to justify their existence.

No one knows better than a Governor, who digs his way through reams of paper—through memoranda ad nauseum—through studies and consultants reports ponderously redundant—how easy it is to get caught in the "make work" climate of modern government. I used to sit in my office in Annapolis and occasionally look up at a portrait of some ancient predecessor and wonder what it was like before the typewriter and the duplicating machine visited these miserable torrents of minutia upon us—before committees and study groups and lobbies, convinced of their unique knowledge and the originality of ideas born and discarded from the time of George Washington down, thrust themselves upon us. I'd suspect that these early executives had more time than we to devote to creative thought and the assessment of the direction of their constituents.

Today, we have a dangerous delusion—words masquerading as decisions, activity masquerading as progress, and nonproductive dissent masquerading as constructive debate. It is easy to be deceived into thinking that because we are busy we are making progress. To the contrary, I would suggest that the destructive forces gathering strength in the country today are equivalent to enormous headwinds on the nose of the ship of state. Our engines are flailing, but we're not getting very far very fast. Until we accept the necessity of facing our leadership obligations and stating a direction for our people, we will continue to lose ground.

What is the greatest issue today? It's not the war in Vietnam, it's not inflation, nor the environment. It is not an issue that you even hear discussed in its stark and simple enormity. But it is, nonetheless, the overriding and compelling issue in the United States today. Simply stated, it is: "Will the government of this country remain in the hands of its elected officials or will it descend to the streets?"

It is not unusual, nor should it be distressing, that individuals of monumental ego among the failures of our society should attack everything fundamental to our free culture. They're simply lashing out in all directions because they cannot bear to face their individual inadequacies. Neither should it overly concern us that certain brilliant but sequestered academicians are criticizing the government. This has always been so, and probably will always be so. Sometimes it even does some good. Also, we should not seem surprised that the neophyte political ambitious loudly champion all causes of the least affluent. That works beautifully until they get elected and have to represent all the people.

Why then, if this political phenomena are standard to a democratic government, should we be disturbed about them today?

The answer lies not in the fear of the kooks or demagogues themselves, but in their current respectability. Never in our history have we paid so much attention to so many odd characters. Twenty-five years ago the tragicomic antics of such social misfits would have brought the establishment running after them with butterfly nets rather than television cameras. It's in this inordinate attention to the bizarre, this preoccupation with the dramatic, this rationalization of the ridiculous, that we threaten the progress of our nation.

It's time for the political, business and academic leaders of this country to lead a figurative march back to normalcy. There are, and always have been, political risks in speaking out; but the silence of our leaders when confronted with outrage is being construed in the country as uncertainty and even in some areas as sympathy for these assaults on the fundamental nature of our culture.

Courts are becoming carnivals; laws are flouted. Criminals commit their despicable acts against society in the name of political activity.

Gentlemen, I propose that all of us elected to positions of governmental responsibility should speak out forcefully and directly against the outrageous patterns of conduct which have become so fashionable of late. Whether or not one agrees with every ruling that the judge made in the recent Chicago trial is not the point. The point is that a handful of oddballs deliberately set out to politicize a simple criminal proceeding and to disrupt the most basic protection of our society—the dignity of the courts. The point is that the new technique of judicial disruption is spreading like wildfire throughout the country. The tactic is to provoke and inflame in the hope that overreaction will obliterate the true nature of the proceeding.

The spread of revolutionary conduct, as you are well aware, is not limited to the courtrooms of this nation. We find it in our educational systems and, in fact, beginning to spread from college to high school to junior high school. We find it invading every governmental body that depends upon constructive citizen participation. The purpose is clear and obvious—to immobilize and incapacitate the normal procedures of our constitutional government.

What can we do? We can exert our governmental authority to protect the people who placed us in these positions of responsibility. This requires firm decisive action and a willingness to withstand the criticisms of the liberal community who are presently so blinded by total dedication to individual freedom that they cannot see the steady erosion of the collective freedom that is the capstone of a law-abiding society. This, of course, means acting within the law.

Of equal importance, we can begin to lead American opinion. I am convinced that the overwhelming majority of Americans will follow the lead of their Governors and other elected officials if we will just launch a campaign to exert the force of public opinion to drive these bizarre extremists from their preemptive positions on our television screens and on the front pages of our newspapers. There are more valuable subjects to be covered in the public interest.

Let us move vigorously to deeply involve our citizens in the traditional American fashion. Let us establish constructive dialogue and debate to replace then non-productive disengagement and dissent. Above all, let us react automatically, briskly and effectively against the threat of violent revolution and recognize it for the clear and present danger it constitutes.

THE SELECTION OF JUSTICES OF THE U.S. SUPREME COURT: UNFINISHED CONSTITUTIONAL BUSINESS

Mr. ERVIN. Mr. President, the Trial Judges' Journal for January 1970 contains an article written by me and bearing the title, "The Selection of Justices of the U.S. Supreme Court: Unfinished Constitutional Business."

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

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

THE SELECTION OF JUSTICES TO THE U.S. SUPREME COURT: UNFINISHED CONSTITUTIONAL BUSINESSS

(By SENATOR SAM J. ERVIN, Jr., North Carolina)

During the last session of Congress the Senate was called upon to perform one of its most important constitutional functions—the consideration of the President's nominations to the Supreme Court. Our deliberations on the qualifications of these nominees, once again, focused attention on what I feel is a primary weakness in the Court. That is, the method for selecting a new Justice.

Because of the present Court's easy willingness to depart from precedents and the plain meaning of the Constitution, I feel that today our federal system stands in great jeopardy, and I believe we must begin now to devise some means which would ensure that only the best qualified people serve on the Court. Rather than continuing the present method which often results in appointments for political purposes and not for judicial excellence, we should try to find some way to complete the job begun by the

Constitution of having a truly qualified and independent judiciary.

Changing the methods of selecting the members of our three branches of government is not a novel idea. Both the executive and legislative branches have undergone perfecting changes through the years. For example, a person now cannot be elected President more than twice, and the Vice-Presidency is no longer filled by the person having the second largest number of votes in a presidential election. Women are no longer denied the right to vote and no longer is the ballot denied to any person on account of race. In the legislative branch, Senators used to be elected by the legislatures of the States. This is no longer true.

But the method of selecting the Supreme Court Justices continues unchallenged just at is was in the 18th Century, and I feel, that it is even more important to ensure careful selection of the judiciary than the other two branches. As Alexis de Tocqueville, one of the most perceptive observers of American institutions and life, said:

"The President, who exercises a limited power, may err without causing grave mischief in the State. Congress may decide amiss without destroying the union, because the electoral body in which Congress originates may cause it to retract its decisions by changing its members. But if the Supreme Court is ever composed of imprudent men or bad citizens, the Union may be plunged into anarchy or civil war."

This quotation takes on particular significance at this time in our Nation's history when the judgment of just five men has been allowed, with increasing frequency, to seriously change the economic, social, and political direction of our Nation and to do so by overriding our written Constitution and the prerogatives of the States and our Federal Legislature.

The drafters of the Constitution undertook to free Supreme Court Justices from all personal, political, and economic ambitions, fears, and pressures which harass the occupants of other public offices by stipulating that they should hold office for life, and receive for their service a compensation which no authority on earth could reduce. They undertook to impose upon each Supreme Court Justice a personal obligation to interpret the Constitution according to its true intent by requiring him to make an affirmation to support the Constitution. The Founding Fathers did these things because they wished Supreme Court Justices to be independent of everything except the Constitution which was to be the only rule for the government of their official actions. It causes me great pain to observe that the actions of the present Supreme Court lead to the inescapable conclusion that the Founding Fathers did not devise a method of selecting Justices comparable to the trust they placed in them.

Early in this session of Congress I offered a constitutional amendment designed to insure, as far as humanly possible, the appointment of the best qualified people to the Supreme Court. In order to afford greater protection to the judicial branch, my amendment proposes a three-step method of approving a Supreme Court Justice.

The procedure is as follows:

First. Whenever a vacancy occurs in the office of Chief Justice of the United States or Associate Justice of the Supreme Court, the President shall convene a conference which shall be attended by the presiding judge of the highest appellate court of each State, and the chief judge of each judicial circuit of the United States. The senior chief judge of a judicial circuit of the United States shall preside at the conference. By majority vote the conference shall designate, and the presiding officer of the conference shall transmit to the President in writing, the names of five or more persons deemed by the conference to be qualified to fill the vacancy.

Second. The President shall nominate one of the persons so designated to fill the vacancy.

Third. If the Senate advises and consents to the appointment of such person, such person shall be appointed to fill the vacancy. If the Senate does not advise and consent to the appointment of any person so nominated, the President shall nominate another person so designated to fill the vacancy.

My proposal removes the President's unbridled discretion to propose any person he chooses as a member of the Court. This proposal will not substitute one evil for another. The chief judges of the judicial circuits and the chief justices of the state supreme courts are and will be men and women of the most diverse outlooks and perspectives. They will have no common political ideology. They will know few people in common. No one may claim a debt from more than one or two of them at a time. And, most importantly, they will be performing in the public eye a duty of supreme public interest.

Lacking common ideology, common friends, lacking the power to reward supporters, indeed, lacking all but the common design to select exemplary choices for appointment to the High Court, the members of this commission will, because it is their duty and because they in fact must, look more carefully at the judicial qualifications and temperament of possible nominees. Though we may find it difficult to enunciate fully what these qualities should be, it seems clear to me that the members of this commission would recognize them and act on them.

Out of diverse interests and perspectives of my commission would inevitably come the selection of men and women based on merit, on a considered and developed view that they possessed characteristics demanded of good Justices. Cardozo and Stone and Holmes would undoubtedly have emerged from such a group. And so would, to bring up an old injustice, Learned Hand who was more qualified over a longer period of time than innumerable others who were appointed

Out of the operation of competing views would come, I firmly believe, Justices who reflect Felix Frankfurter's concept of "the real judicial temper, that is, detachment from political or personal considerations, a disregard of motives other than those wholly relevant to a judge's job."

I hope that Congress will give early consideration to the problem and will support my proposed solution. Only by acting along the lines I have proposed will we make it as certain as possible that Members of the Supreme Court will not be chosen on the basis of personal friendship with the President, political service rendered to the poltical party in power, or past association with politically potent groups.

NATIONAL ECONOMIC EQUITY BOARD

Mr. HARRIS. Mr. President, it is apparent that the administration is continuing to try to stop inflation by driving more people out of work.

The latest unemployment figures, released last week, showed the percent of the total work force unemployed was 4.2 percent, up 0.9 percent in the past year. Even worse, the figure was 7.7 percent for unskilled workers, and 6 percent for the semiskilled, while for technical professionals it was only 1.7 percent, and for business administrators an almost unbelievably low 1 percent. This uneven burden of rising unemployment is even more graphically shown by the fact that white unemployment was 3.8 percent, while that for nonwhites was nearly double, or 7 percent, and men were unemployed at a 2.8-percent rate while for women the figure was 4.1 percent.

Contrary to administration expectations, this rise in unemployment has not been accompanied by a reduction in inflation, but by an increase. An acceleration in the Consumer Price Index of 6.1 percent was recorded in 1969, as opposed to 4.7 percent in 1968. In the last 3 months, it has been even worse—a yearly rate of 7.2 percent. The public is losing at both ends—inflation and unemployment are both going up at the same time.

I can only conclude that the steps taken by the administration are insufficient and that prompt and effective further action is very much needed.

To that end I have proposed the creation of a National Economic Equity Board, which would be empowered to set evenhanded, equitable guidelines across the board on prices and wages and institute freezes for up to 6 months if necessary to stem our continued decline toward an inflationary recession.

As the second part of a two-pronged attack, I am drafting legislation which would provide for a comprehensive manpower program for job training and for expanded public and private employment Each rise of 1 percent in unemployment can be translated as the loss of 800,000 jobs. Thus, the increase of 1 percent in the overall unemployment rate since the Nixon administration assumed office means that 800,000 people who held jobs 14 months ago are now in the ranks of the unemployed. Against this figure, the 75,000 positions available under the workfare program presented by the administration appear woefully inadequate. If, as many economists believe the unemployment rate is going to increase another 1 percent in the next year, only 75,000 position will exist for training 1.6 million citizens who will have lost jobs, and this does not even include those additional citizens who have been unable to find work during the entire period. If we want to meet the goal of finding an adequate job for every able-bodied man, a manpower program which is greater by several orders of magnitude must be begun, and the training provided must be keyed to the existing jobs which even now are unfilled because those with the needed skills are not available. Such a program would save substantially on the cost of welfare.

Many of our economic problems are linked together, and only by developing a multifaceted and innovative program can we hope to improve the condition of all our citizens. This I am attempting to do.

As John Maynard Keynes has written

The difficulty lies not in the new ideas but in escaping from the old ones.

We must escape from the old idea that greater unemployment is necessary for price stability. We must question the old dogmas, so that we may move into a new era of price and employment stability which will benefit us all.

ORSON BEAN

Mr. DOLE. Mr. President, on Wednesday morning, March 12, Orson Bean was interviewed on the "Today Show" by Edwin Newman. Perhaps I agreed with many of Mr. Bean's comments because he shares my view that liberal legislators care more about theory than practicalities.

There has long been a feeling in Congress and other areas of America that equality and opportunity can be legislated and that those who oppose such an approach are anti-civil-rights or extremist.

The interview was particularly interesting because Bean indicated, and I agree, that labels are really meaningless, but that at one time he considered himself a liberal.

I am not personally acquainted with Mr. Bean, but I would hazard a guess that he speaks for millions of Americans, black and white.

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

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

ORSON BEAN INTERVIEWED—THE TODAY SHOW, MARCH 12, 1970

EDWIN NEWMAN. Orson Bean is an extremely versatile man—a second cousin to Calvin Coolidge, actor, comedian, magician, producer of avant garde plays, director of an experimental school for children, and lately, social commentator. He's obviously a man of many parts.

We've invited him to appear on the Today Program because we want to hear his point of view. And after Mr. Bean's remarks, we'll talk with him about them.

Orson Bean.

ORSON BEAN. There is an interesting theory that a social group always feels threatened by the group directly beneath it.

The rich dowager in Newport feels threatened by the upper middle class club woman who tries to imitate her manners and way of life.

The middle class accountant feels threatened by the lower middle class Lithuanian American construction worker, whose income is pushing him up towards middle class.

And the lower middle class construction worker, in turn, is threatened by the black, who has his eye on a construction job, and a formerly all Lithuanian American neighborhood.

Each of these groups, according to the theory, feels an unconscious alliance with the group two notches down, which is trying to unseat the group in the middle.

For instance, John Lindsay was elected Mayor of New York by a coalition of well to do whites and poor blacks and Puerto Ricans. The in between group of lower middle class whites voted for Proccaccino (?).

With all of these social groups, from Newport society on down, what they're after, and what protected their life, is the great American dream; status.

When the rich account executive, living in an all white suburb of Chicago, tells the struggling white lower middle class worker, who has just managed to uplift his family into a better neighborhood, that he has to move over and make room for the blacks, he's living in a dream world.

And that dream world is exactly what liberal legislators have been living in for the past 15 years, every time they have passed laws about housing.

The average black cares no more about racial solidarity, or any other slogan, than the average white does. What he wants is a better apartment.

Every law passed in recent years that was intended to help him get one, has done the opposite. Because the well meaning, confused liberal legislators have refused to come to grips with the need for status of the group directly about the blacks—the lower middle class whites.

Now, here is a hard headed plan to achieve integration in housing: pass a law that would enable the governor of a state to go to the owner of, say, a hundred unit apartment house in a white neighborhood, and say, in this coming year we require you to rent X percent of your apartments, as they become available, to qualified blacks. You may check their financial and credit references the same as you would any white, and accept only qualified tenants.

You may tell your existing tenants that the blacks will be limited percentage wise this year, with the full support of the state. And this will squelch any rumors about block busting and panic moving due to fears of the neighborhood becoming a ghetto.

Now, I don't assume that all land lords and tenants will go ahead with a plan like this without a struggle. But a lot of them would because it would protect their property values and their need for status, at least in large degree.

And, where it had to be, the law could be enforced, because it's a reasonable law. The laws we currently have on the books are unreasonable, because they say, in effect, you may not notice the color of a man's skin, and then you must not act in any way to protect the hard earned status you have achieved with your social group.

Such unrealistic laws result in what they always have: shifty-eyed real estate men who say to a negro, oops, I just rented that apartment.

The use of quota systems could put hundreds of thousands of negro families into formerly all white housing within a very short period of time without jeopardizing property values, or social status systems.

Current housing laws prohibit quota systems. We've got to choose between the concept of integration—a fantasy world where everybody loves everybody—and actual integration, where the government faces the fact that among the things which all Americans share in common, regardless of race, creed, or color, are envy, greed, and compulsive keeping up with the Jones'.

NEWMAN. We'll be back to talk with Orson Bean about the ideas he just put forward. This is Today on NBC.

* * * * *

NEWMAN. Orson, you're really advocating a quota system—you say as much—for blacks. How far would you carry it? What other fields would you carry it into?

BEAN. Well, I don't know that I would use a quota system anywhere else. But, *what I'm against is the people who always deal in theory.*

For instance, in theory, rent control helps the poorer tenants. In practice, rent control causes abandonment of buildings because the only reason a slum lord is going to keep a building open is so he can make a buck on it.

And the poor people are going to live in buildings owned by slum lords. They are the ones who are being adversely affected by rent controls, rather than the other way around—in practice.

NEWMAN. It seems to me, I don't want to overstate this, but it does seem to me that there is one hole in your theory.

You want to have a quota system, which you say in effect will have *X* percent black people in the—an expensive apartment building, *X* percent in the middle income, *X* percent in the lower income—same percentage.

By and large, since black people are somewhat lower than white people economically, you can't have the same quota in the lower income that you have in the middle income and the high income, because there aren't that many blacks to go into the middle income and the high income. Therefore, pressure inevitably is on the lower income group.

BEAN. Sure it is, Edwin. But again, that's only an objection in theory. Because *in practice, the ghettos are going to remain where they are anyway.* It isn't as if you're going to move 80% of the blacks out of the ghetto and stick whites in there. Those are going to stay the same anyway, and all you are doing is opening up entire other areas.

NEWMAN. Well, what—assuming your idea were adopted, what percentage of the negro population would be affected, do you think?

BEAN. Anyone who could afford it. There are hundreds and hundreds of black families who can afford better, and can't get it—at least can't get it without a hell of a struggle.

Now, I say that if you have a black family living next door, your life is suddenly changed in a very dramatic way, because you find out that he's not much different from you. That he cuts the grass, or he doesn't cut the grass; and that he has the same needs and avarices that you do. And this really changes your life.

Going into the Army changes your life if you happen to be in an outfit with blacks, and you've never lived with them before. It changes your life dramatically, and it's not a theoretical thing.

I am for anything that will get black families into formerly all white housing. I don't give a damn if it's a quota or anything else.

And the other approach hasn't worked. The average black man is in exactly the same position as he was 15 years ago. It is true that Super Negro gets a job as an account exec with a big company, and the average black man sees blacks in commercials selling detergents, but his life is the same.

So I want to affect—I want to get to these people, and I will use a quota system or anything else to do it. At least I would if I were a king.

Joe GARAGIOLA. Orson, let's get to you personally. You were a liberal, now you're labeled as a conservative. But, how do you classify yourself? Because it's liberal thinking you're talking about now.

BEAN. I decided that what I am is a moderate radical.

GARAGIOLA. A moderate radical?

BEAN. Yes, whatever that is. Really, the labels, as you know, don't mean anything.

One of my best friends in the world is Paul Krasner, who is one of the founders of the Yippies. I would rather sit and talk all night with Paul, even though we don't agree, than anyone else. I find my mind works like his. He's really a sane fellow, and so am I. So are you, Joe. But the labels really don't mean anything.

What—I mean, when I grew up, the liberals fought for the little individual against the large corporations, against big government, against big anything.

NEWMAN. The large corporation is going to crush you right now by saying station break.

BEAN. Alright.

IS INDEPENDENT RHODESIA A THREAT TO WORLD PEACE?

Mr. ALLEN. Mr. President, on March 9, 1970, Secretary of State William P. Rogers announced that the United States will discontinue protection of American Nationals and American interests heretofore provided by our Consulate-General

Office in Salisbury, Rhodesia. We are to close this office next week.

Such drastic action is usually resorted to only in cases involving overt hostilities by the host nation. It is of such an extreme measure as to constitute in the eyes of many a type enmity approaching covert hostility and it is clearly calculated to create ill will among the nations and peoples thereby affected.

Mr. President, I find this hostile act on the part of our Government almost incredible.

Just a few months ago, on December 12, 1969, this Nation told the world through a NATO alliance agreement that we championed the cause of noninterference in the internal affairs of other nations. In a chest thumping proclamation of self-righteousness, we joined other NATO nations in denouncing intervention in the internal affairs of any state by another state, whatever the difference in their political or social systems.

This Nation intended to be bound by this declaration or it did not. If we were bound by it, why have we abandoned that policy with respect to Rhodesia? I want to know. The American people have a right to know.

The President announced in the Far East that we were not concerned with the political or social systems of those nations. In view of our interference in the internal affairs of Rhodesia, all nations are called upon to reevaluate this administration's policy with respect to nonintervention. Where do we stand?

This question has to be answered. If we look to the President's recent foreign affairs address to Congress, we find a statement which may offer a clue. The President said:

> American policy toward Africa, then, will illustrate our general approach to building an enduring peace.

What is the general approach?

The President said: "Clearly there is no question of the United States condoning, or acquiescence in the racial policies of the white-ruled regimes" of southern Africa. Is this repudiation of nonintervention in the internal affairs of nations the President's approach to world peace?

But what of the racial policies of the black-ruled regimes of southern Africa? Shall we interfere there too? Are these internal policies of a nation a proper concern and object of our foreign policies? Are we going to condone or acquiesce in racial policies of blacks and not those of white regimes in Africa, or shall we intervene in both?

Mr. President, what right have we to tell any nation that we shall not condone a single one or all of its internal policies? I deny that we have such a right. We do not claim such a right of interference when we acquiesce in, condone, and encourage Communist domination and control of nation after nation.

With respect to Communist nations, our State Department does not talk about intervention, it talks only of bridge-building and detente, expanded trade, and cultural exchanges. But in the case of a tiny, proud, and independent nation, of Rhodesia, we assume the role of arrogant world dictator and tell them we will not acquiesce in or condone their Declaration of Independence unless Rhodesia bows to our dictates and adopts a constitution to suit our fancy.

And we talk about "arrogance of power."

And we talk about Congress holding tighter reins on the power of the executive to get us involved in foreign entanglements.

Yet, the world knows that our two-faced, forked tongue interference in the internal affairs of Rhodesia has been undertaken pursuant to dictates of the United Nations Security Council. We have been directed by this agency to impose "mandatory sanctions" against Rhodesia and otherwise use our might to overthrow that government.

All the while, we are involved in a bloody war in Vietnam. Laos and Cambodia are ready to blow sky-high. The Middle East is a powder keg, and we are furnishing aircraft and other instruments of warfare to nations over the globe. Russia holds a cocked gun pointed at the heart of Czechoslovakia and Yugoslavia, and Berlin is a permanent tinder box. Yet, in the face of these situations, the United Nations and the United States have determined that little independent Rhodesia is a threat to world peace. This nonsense is supposed to justify United Nations interference in the internal affairs of Rhodesia, and our Nation in turn is justifying our interference on this silly proposition despite all of our high-sounding protestations to the world of our dedication to the ideal of noninterference in internal affairs of other nations.

Mr. President, the continued proliferation of contradictions in our foreign policies are going to catch up with us. Soon an awareness of the history of our foreign policy failures is going to shake the people of our Nation out of complacency which has arisen from a misplaced trust in the phrasemakers and word worshipers who currently call the shots in the State Department.

Mr. President, I predict that somebody is going to rue the day that he championed this disgraceful repudiation of our commitment of noninterference in the internal affairs of other nations. Clearly, Congress has a responsibility in this matter.

THE TECHNIQUE OF THE RADICAL LEFT MEDIA

Mr. GOLDWATER. Mr. President, the technique of the radical left media of this country for years has been to attempt to destroy everything and everybody they disagree with. Their favorite target has always been the President of the United States.

Another target has been conservatism, and lately they have had a peculiar phobia for anything connected with the defense of our country. What motivates these people is hard to understand because I cannot quite claim they are unpatriotic or anti-American, but I have to come awfully close to that conclusion when I read the constant attacks being made on the defense of our country and our responsibilities to the free world.

Mr. John L. Frisbee, who is senior editor of the Air Force/Space Digest, has written a cogent, timely, and on-the-target article on this subject. I ask unanimous consent that it be printed in the RECORD.

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

THE MYTHICAL MENACE OF MILITARISM

(By John L. Frisbee)

Has America become a militaristic society?

No question bears more importantly on the future of this country. History underscores the gravity of the issue. It's difficult to think of a democracy that became militaristic and remained a democracy. And it's equally difficult to name a militaristic nation that reversed its course except as the result of a war that is sought—and lost.

Despite the importance of the question, it has hardly been debated at all. Discussed, yes. One need spend only a few minutes at the magazine and paperback racks of any large drugstore to compuile a formidable list of critics and commentators who claim that militarism is in the American saddle—or at least has a foot in the stirrup. Among the gloom-spreaders are well-known academicians, scientists, economists, congressmen, novelists, editors, and an occasional retired military officer. But what should be a *dialogue* has been very largely a monologue, with terms defined for the convenience of the speaker. This, in itself, does not make for enlightenment.

The relevance of the current discussion becomes even more dubious when we consider the target on which it focuses—the military profession. That is the wrong target. Militarism is not a disease of the profession of arms. While we may find in the American military discrete attitudes toward discipline, authority, and the legitimate or illegitimate use of force, these are attitudes without which the militarly could not function as a useful agency of the democratic government it serves.

Militarism, rather, is the disease of a society that attempts to misapply to secular, civilian problems the kinds of attitudes and practices that are entirely proper, and uniquely required, in a military context. If we wish to discover whether a society has become militaristic, we should look at civilian attitudes—not at the military profession.

The study of militarism is hardly a new discipline. Serious students have catalogued a number of its symptoms. Among the most virulent are:

Glorification of war, supported by elaborate pseudoscientific justifications based on biological, psychological, ethical, nationalistic, or economic grounds. The best sellers of this genre were written by foreign despots and read here with horrified disbelief.

Public deification of the military, which was last observed in this country about the time of V–J Day. With twelve million men and women in uniform, representing almost every American family, one could then have said quite accurately that the military was the public.

An elite officer corps, with perquisites and privileges denied to most civilians. Ask any officer in uniform who ever tried to pull rank on a New York taxi driver or on a congressman about that.

Belief in a military mystique, unfathomable to the layman. Maintaining such a mystique in a country with twenty-six million veterans, almost any one of whom believes that he could run almost any war better than almost any general, would be the neatest trick of the century.

A lack of control of the military by elected and appointed officials. Vietnam, where the military still fights an Asian land war against which they counseled for years, with strategy and tactics often not of their choosing but dictated by civilian leaders, provides its own refutation of this charge.

A belief that external national goals can be attained only by military means. With few exceptions—none of them in recent years—the public has viewed the purpose of our armed forces as strictly defensive. This view has been shared, almost universally by American military professionals. Certainly public belief in the effectiveness of military power as a solution to world problems, other than defensive ones, is at an all-time low today.

An interesting note is found in the January 1970 issue of *The Center Magazine*, a publication of The Center for the Study of Democratic Institutions. Neither The Center nor its magazine will ever be described as a voice of the so-called military-industrial complex. Seven associates and consultants of The Center were asked to comment on the question, "Has America become a militaristic society?" Collectively, they represented five academic disciplines: theology, economics, mathematics, law, and the humanities. Among their responses, all the criteria described above were touched on directly or indirectly. Six of the seven answered, "No."

When charges of American militarism have been made, they generally are hung on loose and rather rusty semantic hinges. Whatever malaise besets this country, it is not militarism by any accepted definition of the term.

The military is open to criticism for errors of omission and commission, as it should be. It has not, however, committed the fatal error of trying to militarize American society, and the American people show no disposition to adopt militarism on their own.

We are not imperiled by militarism. But there is a real risk that those who would exorcise an imaginary devil may, in the process, dangerously weaken and seriously alienate from American society, the only agency it has to protect it from an external military threat that not only is real, but is growing with each passing month.

This kind of devil-chasing is about as useful as beating your wife because the car won't start.

EASY CREDIT AND INFLATION

Mr. HOLLINGS. Mr. President, the American public is being deluged by easy credit on the one hand and inflation on the other. The two are not compatible, and the public is the loser. The editor of the State, the daily newspaper of Columbia, S.C., has written an outstanding article and a penetrating editorial on the subject. I commend him for this, and recommend these writings to my fellow Senators. I ask unanimous consent that they be printed in the RECORD.

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

[From the State, Mar. 8, 1970]

LET THE BUYER BEWARE OF UNSOLICITED CREDIT CARDS

(By William D. Workman)

I suppose I should feel complimented that my credit rating is good enough to inundate me with unsolicited bank credit cards, but I confess to an uneasiness when I think of how the cards showered in without so much as a request, an acceptance, or a by-your-leave on my part. And I shudder to think what could have happened if any of the cards had fallen into the hands of some soul with a bit of larceny in his heart.

It all started back a little more than a year ago. In February of 1969, I received a printed letter from the Master Charge Director, Interchange Group. Said letter, mailed from Moorestown, N.J., informed me that I had been selected to receive a Master Charge card which would bring me many conveniences by letting me charge items hither and yon about the United States.

A tear-off form at the bottom of the letter asked whether I had received other letters and, if so, how they were numbered. Since I had not requested a credit card in the first place, I figured that if I did nothing, maybe nothing further would happen. That was my first mistake, an error of omission, as it turned out.

A second letter came on the heels of the first, different only in that it had my first name rather than initial and bore a different number. Meanwhile, I'd received a couple of letters from local banks with which I had done some business in the past, both of them bearing tidings that I had been selected as a recipient of a Master Charge card.

In March, the cards began to drift in, two at a time. Some were highly flattering in setting my line of credit, but I took a rather dim view of the notice which came along with them—telling me, in so many words, that "Retention of and-or use of the Master Charge Card" constituted an agreement with the bank to be responsible for credit extended on the card, etc., etc.

Since I didn't quite see how I could enter into an agreement with a bank, or anybody else, by doing absolutely nothing, I simply put the first two cards aside to see what would happen.

It didn't take long to find out. Two more cards came in, along with the now familiar notice that their retention made me party to an agreement with another bank. Then came another pair, mailed (like all the rest) from Raleigh, and tying me up with a third local bank. And, so help me, there came still another brace of cards, this time from one of the same banks I'd already heard from.

So there I was by the middle of March, 1969, unhappily possessed of eight (count 'em) credit cards, utterly unsolicited but carrying the potential of a couple of thousand bucks worth of indebtedness even if they had been used only once apiece.

And let me remind the gentle reader that I had yet to lift a finger, either affirmatively or negatively. But, there was more to come. In April, another pair of cards arrived, bearing the imprint of a bank which already had sent two cards. Sure enough, it wasn't long before a letter arrived (in May) from the bank, saying they had mistakenly sent two sets of cards and would I please send one set back.

By this time, a sort of willful inertia had pervaded my curiosity, so I did nothing. But doing nothing did not end the charade. Two more cards arrived in June, this time dragging the good wife into the act for the first time, since one of the pair bore her name instead of mine.

A few weeks slipped by and I heard nothing—except for a spate of notices acquainting me with provisions of the Truth In Lending Act insofar as they related to credit gained through use of the Master Charge cards.

But business picked up again beginning in August. The original cards were about to expire, so here came the replacements. By the end of November, 10 new cards had descended upon me, all with 1970 expiration dates.

Came the new year, and more cards arrived. The first two (the husband and wife set) were good for the entire year 1970. February brought another set, also good for a year. And, something new, a set showed up at the office. All the earlier ones had arrived at the home address. And that's where matters stand at the moment (this appears in print before I've checked the morning mail). Here's the box score, or perhaps I should say the card index:

Credit cards received and expired—16.

Credit cards received and not yet expired—12.

Total Master Charge cards received, unsolicited, within the last 12 months—28.

Total Master Charge cards used—0.

It would be pleasant to think that the story ends here, without my having to pass the word to my trusting friends in the banking business that I really don't want any more credit cards than I've got. But somehow, I seem to have made the master list of Master Charge, and I can expect more cards with the changing of the seasons.

It may take an act of Congress to dislodge me (and thousands of others) from the list, but if I read the signs from Washington correctly, Congress may oblige with just such legislation in the near future. And high time it is.

LETTING THE CREDIT GO

Without credit, public and private economies would collapse in this day of the "buy now, pay later" philosophy.

Yet we wonder it the careless use of credit might not hold the seeds of its own destruction. It's not our intention to meander into the complexities of high finance, but we worry over the increasing tendency of American businesses to extol credit as a way of life and to extend credit as a solicitation rather than as a service.

The individual, whether businessman or housewife, who builds a good credit rating through prudent management may well be entitled to the convenience of a credit card signifying that rating. But there is a growing practice of many firms—oil companies, banking institutions, department stores, and on and on—which involves scattering credit cards among potential patrons without any request whatever from those persons.

Here's where the going gets sticky and the risks get higher. For one thing, the wholesale distribution of such cards has spawned an entirely new criminal activity, stealing of credit cards and using them to run up bills which often come to rest on the shoulders of the original card-holder.

Furthermore, there is a degree of arrogance and, at least in our view, basic business immorality in a unilateral transaction which attempts to make the recipient of an unsolicited credit card party to an agreement not of his asking or of his choosing.

Fortunately, it appears that Congress may be puckering up to blow the whistle on such practices. In recent days, the Senate Banking Committee approved (9 to 6) a bill which would ban the distribution of unsolicited credit cards. The bill also would limit to $50 the liability of card-holder for misuse of his card by another person.

We don't know whether the bill in question is the proper solution to the problem, but at least it reflects a congressional awareness of a situation which is bugging millions of Americans.

LACK OF ACTION ON CRIME LEGISLATION

Mr. SCOTT. Mr. President, time is of the essence in the fight against crime.

If tomorrow Congress were to give the President every new weapon he wanted and every new dollar he has asked, nothing would happen—without time.

Time is needed to implement new legislation—to recruit and train additional personnel—to investigate, apprehend,

and convict criminals. Time is required for the deterrent features in new laws to take effect; time is essential to rehabilitate men.

Nothing of lasting significance in the struggle against crime can be accomplished overnight.

Time wasted through delay does not contribute to the healing process. It is lost forever, while our problems become aggravated. Each day that Congress fails to act, the hour of restoration is pushed farther to the future. Each day that corrective legislation is slowed or stalled, adds to the enormity of the present crisis.

When the President addressed Congress in his state of the Union message last January, he reminded us that he had sent the Congress 13 separate pieces of legislation dealing with organized crime, pornography, street crime, narcotics, and crime in the District of Columbia. He said then:

> None of these bills has reached my desk for signature.

He is still waiting.

Time is still passing.

And crime marches on.

Mr. President, the people of this country are wondering where all the time has gone. They are beginning to ask pointed questions of the Congress about whether these long delays can be justified.

I believe our record in the Senate is commendable and I want to examine it:

On June 23, 1969, we passed the omnibus judgeship bill and sent it to the House.

On September 19, 1969, we passed an historic bill on court reorganization in the District of Columbia and sent it to the House.

On November 21, 1969; December 5, 1969; and December 22, 1969, we passed bills relating to public defenders, criminal law revision, and the juvenile code in the District of Columbia and sent them to the House.

On January 23, 1970, we passed S. 30, an immensely important bill to combat organized crime, and sent it to the House.

On January 28, 1970, we passed the Controlled Dangerous Substances Act, a major recodification and reform of Federal narcotics law, and sent it to the House.

To date, none of these bills has been approved by the other body.

There are, of course, some obvious problems. I am aware, for example, of the highly commendable efforts of the House District Committee, which has reported an omnibus crime bill of enormous importance for the District of Columbia. That bill is more than 400 pages in length. It is complex. When it passes it will be as significant a measure as we will consider this session. Time has been used for careful drafting and research to close the loopholes and avoid the pitfalls which inevitably attend such far-reaching legislation.

But I wonder, Mr. President, why almost 9 months have passed since the day we approved the omnibus judgeship bill without our seeing action in the other body.

On June 23 of last year, we passed that bill, which was urgently requested by the Judicial Conference of the United States. The bill created 70 new Federal district judgeships, 67 permanent and three temporary. On that occasion the late Senator from Illinois, Senator Dirksen, was moved to say:

> I believe that these additional judges are absolutely indispensable, particularly so when one stops to consider the congestion of criminal cases in the courts from one end of the country to the other. So this bill, which is an important bill, should reflect the general sentiment of the Senate as it goes on its way to the House of Representatives. I hope they will take expeditious action and that in due course these additional judges can be named so that they can get to work at once and deal with this rather phenomenal caseload.

The distinguished Senator from Maryland (Mr. TYDINGS) observed that:

> Nine months have elapsed since [the request by the Judicial Conference] was made. Final enactment of this legislation still lies in the future. There will be some time expended in filling these judgeships. Indeed, the Justice Department witnesses at hearings on S. 952 estimated the passage of a year after enactment before all the new positions would be manned.

Such a delay should not be countenanced. Our colleague from Maryland said, "a much shorter period of time should be expected by our citizenry."

Mr. President, our citizenry knows that the President and the Department of Justice are anxious to get about the business of investigating and appointing these new judges so they can reduce the backlog in the federal system. The Senate is anxious to receive these appointments to advise and consent.

But the President must wait and the Senate must wait for definite action in the other body.

There may be good reason why we have been waiting for House action for almost 9 months. But it is not because the omnibus judgeship bill is 400 pages in length, because it is not. And it is not because there are great complexities and important constitutional issues to consider, because there are not.

There may also be good reason why almost 7 weeks have passed since the Senate approved S. 30 and sent it to the House. But I do not know what. It has still not been referred to a subcommittee for hearings.

I do know, however, that crime waits for no man—not even for legislators whose own persons are no safer than others from crime in the District. We cannot realistically suppose that organized crime has suspended its vast network of criminal activity in deference to delay in the other body. On the contrary, we can only assume that it is working more tirelessly than ever to exploit and corrupt across the country.

The Senate should not be held responsible for these long delays. The Senate has passed most of the President's crime program. We are proceeding apace on the problem of obscenity and will soon consider criminal appeals. All in all, our record is a good one.

One of the few instances in which we have some explaining to do is the Bail Reform amendments requested by the President. No hearings have been held on the President's legislation; no hearings have been scheduled. I am informed that no delay in the Senate has ever been requested by the Department of Justice.

These bail reform amendments are unusually important, particularly for residents of the District of Columbia. Experience under the Bail Reform Act has demonstrated that it was unwise for Congress to deny Federal courts authority to consider danger to the community in setting conditions of pretrial release. Continued application of this unreasonable standard can only lead to tragedy.

Many people will recall an unfortunate incident in Philadelphia a few years back. An incorrigible young troublemaker with four previous arrests was taken into custody for slashing a boy across the face with a straight razor. He was released on bail. Two weeks later, when police officers tried to arrest the man for driving a stolen automobile, he pulled a revolver, shot one of the officers and was himself killed.

Everyone would have been better off if the man had been held in official custody. No one, including the lawbreaker, was served by his pretrial release.

In the District of Columbia, every noncapital offender like Emanuel Roulhac must be released to trial as a matter of law. A long record of vicious conduct is unimportant and must be disregarded by the trial court. As a result, many defendants like Roulhac are being released in the District of Columbia and elsewhere where they doggedly pursue their commitment to crime.

When John Dillinger was first captured in 1933, he had robbed at least 13 banks, three supermarkets, a mill, a drugstore, and a tavern. Had Dillinger lived in the District of Columbia and had the Bail Reform Act been in effect, that law would have mandated his pretrial release.

Mr. President, in this era of rampant crime, it staggers the imagination to suppose that the Congress of the United States should endure this suicidal statute much longer. The evidence is abundant that it must be changed.

Lives, otherwise to be forfeited, can and will be saved by enactment of these bills.

Let us get on with it.

DR. NORMAN J. SMALL

Mr. ERVIN. Mr. President, I desire to pay tribute to a man whose death, on February 9, ended the career of a distinguished and dedicated public servant. Dr. Norman J. Small served in the legislative reference service of the Library of Congress for the past 29 years, 9 of those years as legislative attorney in the American Law Division. Prior to joining the Library staff, he had served with distinction as a teacher and in the field of educational research.

Dr. Small was an authority on the Constitution and was editor of the 1964 edition of the Constitution of the United States of America: Analysis and Interpretation, a compendium of the construction of the Constitution's provisions

by the U.S. Supreme Court which has been published intermittently since 1913.

In addition to his work at the Library of Congress, Dr. Small taught courses in government at Howard University and Catholic University, and was a frequent contributor to professional journals. He was a member of the American and Federal Bar Associations, the American Political Science Association, the American Academy of Political and Social Science, the American Society for Public Administration, and the District of Columbia Bar, and the Bar of the U.S. Supreme Court.

On numerous occasions over the years, I called on Dr. Small to assist my staff or one of my subcommittees in preparing analyses and reports on various constitutional and legal matters, and in every instance I was impressed by the excellence of his scholarship. He was a man of great ability. He was unstinting in his devotion to his work, and the services he rendered me and to other Members of Congress were invaluable. Dr. Small's outstanding contributions to scholastic and governmental endeavors long will be a tribute to this eminent American.

Mr. President, I take this means to convey an expression of my high admiration and regard for Dr. Small and my sympathy to the members of his family.

THE LESSONS TO BE LEARNED FROM SAGE

Mr. WILLIAMS of New Jersey. Mr. President, recently I had the good fortune to hear a progress report on the many good works of the Summit-Area Association for Gerontological Endeavor, or—as it is more commonly known—SAGE. I was so impressed that I asked for a special statement describing the achievements of that organization, which can serve as a splendid model for action on behalf of older Americans in other communities.

That statement has been forwarded to me by Mr. Fred Vansant, president of SAGE. It is as helpful as I expected it to be, and I submit it now with some pride for reprinting in the CONGRESSIONAL RECORD.

My pride arises partially from the fact that SAGE was organized in my home county, Union. I am also very much impressed by the fact that its founders began their work almost 20 years ago, when few other private citizens were concerning themselves with the gerontological revolution which was then beginning.

Since then, one need after another has been recognized and met by SAGE which now offers a wide variety of services, including homemaker, employment, meals-on-wheels, friendly visiting, and referral programs. SAGE is, as Mr. Vansant once described it, "a unique but true conglomerate."

Perhaps this conglomerate has been successful because Summit and nearby communities are generally high-income areas. There, it has been possible to enlist leaders who have both the experience and the means needed to establish and improve programs that have become part of everyday life in the Summit area. Only very modest help from governmental sources has been required or requested. For the most part, SAGE has been on its own.

But, even though SAGE may enjoy unique advantages, the lessons to be learned from its successes can be of great help to other communities which do not have such advantages. The Congress acted 5 years ago to enact the Older Americans Act, which was meant to provide seed money and other forms of assistance to establish programs such as those pioneered by SAGE. Other forms of assistance exist, but they will be of greatest help only if community leaders have as clear—and as dynamic—an understanding of the elderly, their needs, and the great resources available but too often unused.

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

SUMMIT-AREA ASSOCIATION FOR GERONTOLOGICAL ENDEAVOR, ITS HISTORY AND GROWTH

Summit-Area Association for Gerontological Endeavor, Inc. is the official name for SAGE. It is located at 50 DeForest Avenue, Summit, New Jersey 07901, and was incorporated in March 1954.

It was in 1951 that the need for planning and programming of services and activities for the aging was recognized in the Summit area. At that time a study group of the College Club undertook an intensive survey of the literature, reference material and programs on gerontology available at the time. Among the forecasts were the needs for special attention to health and medical care; for appropriate housing; opportunities for gainful employment; leisure time occupations, including adult education; and greater participation in Church and community activities.

The Summit Coordinating Council on Aging was organized in 1953 as an outgrowth of the study. It included the original study group plus key members of social agencies, professions, and local organizations. This group became the SAGE described above. The Council stated, "The letters accurately spelled out the Association's predicted purpose and at the same time, symbolized a quality of maturity characteristics of later years. The goal was to set up and forward-looking program to be carried out by the whole community. SAGE becomes a non-profit corporation concerned with all aspects of aging and endeavoring to develop attitudes, facilities and services so that all citizens might live with independence, service and dignity." Within this basic policy SAGE worked, developed and grew.

In October of 1954, the year of incorporation, SAGE Visiting Homemaker Service was started with offices in Overlook Hospital. Summit was among the very earliest to inaugurate this service and it attracted wide attention. The Homemaker Service was written up in a feature article in the New York World Telegram and Sun magazine in May of 1956 and in September "AGING," published by the U.S. Department of Health, Education and Welfare, the service was described. Leaders of the SAGE unit were invited to serve on the State's Consultant Committee on Community Homemaker Service, and were members of the National Committee on Homemaker Service. They participated actively. Also, in 1956 the State and County Heart Associations began making generous contributions to the SAGE Homemaker Service in the interest of heart patients.

The Homemaker Steering Committee was relatively small in the beginning but . . . "the members were so busy that the Committee had to be expanded." Members were innovative with respect to training of Homemakers, basic policy and management procedures. In 1954 eight Homemakers served 585 hours with patients. The service grew year by year with 71 Homemakers in 1963, and about that many since serving some 70,000 hours annually. There are now a full-time Director, Assistant Director and a part-time bookkeeper.

In 1961, for the first time, a training course for directors of Homemaker Service was inaugurated in cooperation with the Extension Division of Rutgers University, the Division of Chronic Illness Control of the State Department of Health and the New Jersey Visiting Homemaker Association, Inc. SAGE's first Director of Homemaker Service resigned to become the first Executive Director of the New Jersey Visiting Homemakers Association. The State Department of Health wanted a survey made on the use of Homemaker Service in the maternity cycle. This was done by SAGE volunteers.

During its early years Grants-in-Aid were given to the SAGE Homemaker Service by the State Department of Health to help toward added salaries. It was not the intention of the Department of Health to pay for homemaker care for individuals but to aid Homemaker Service in its operations to offer a better service to the community. The allotments which come from the United Campaigns plus the administrative surcharge, help balance the budget. Assisting over the years are agencies like the Sunshine Society, Convalescent Fund, Chapter O of the P.E.O. Sisterhood, Family Service, the Welfare Departments, those interested in heart, cancer and medically indigent patients.

In 1955 a membership campaign was started; an Executive Director was employed; a personnel policy, recommended by a volunteer consultant, was adopted by the SAGE Board of Directors; the Canteen at Fair Oaks Hospital was started; an Advisory Board was created and SAGE was accepted as a member of the Summit United Campaign. In that year there were 30 members. Now that number has grown to around 500.

SAGE edited the first edition of "Our City and Its Older Citizens—A Guide to Facilities and Resources" in 1956 and also in cooperation with Overlook Hospital SAGE published a guide to nursing homes and boarding homes. Both of these pamphlets are revised as often as necessary to keep them current. The printing costs have been met over the years through the generosity of Kiwanis Rotary, CIBA Pharmaceutical Company and the Soroptomist Club. "Most in demand was the Guide to Nursing Homes in Morris, Union and Somerset Counties. The Division of Aging in Trenton requested 25 copies of the Guide for distribution to Councils on Aging throughout the State, and the U.S. Department of Health, Education and Welfare asked for 75 copies for their regional representatives. The hope of both agencies was that the Guide would serve as an incentive for other communities to make similar surveys."

In 1958 SAGE assisted in the establishment of the Evergreen Nursing Home. It is privately owned and continues to provide a valuable service.

In 1959 it became evident that the organizational structure of SAGE needed attention. With intermediate updating there are now five divisions: General Activities (workshop, canteen, employment referral service, exchange, crafts, information and consultation service, library, and management problem solvers); Membership—Publicity—Finance; Home Services (homemakers, friendly visitors and meals-on-wheels); Research and Development; and Operations. Most of these activities (13) are managed by Steering Committees having from 8 to 18 members each. They work cooperatively, each with all the others, under the SAGE umbrella as to basic policy and management acumen.

In 1961 some of the older friends of SAGE gave their power and hand tools and a workshop was opened to provide a place where older men and women could use these tools in their own interests to make items for sale or to repair furniture for pay and to have companionship. Initially the shop was in the garage behind the Evergreen Nursing Home but now it occupies the basement of SAGE's home at 50 DeForest Avenue. (The workshop is the rare place where a five-man conference will determine whether to use a nail, a screw or glue, following which the man making the repair can do as he pleases.)

1961 was a year when the White House Conference on Aging alerted the whole nation to the needs and challenges of the lengthened life span of its citizens. SAGE participated. It was a year when SAGE gained national recognition through a Lane Bryant citation. In November a copy of SAGE's statement to the Senate Hearing on Housing for the Elderly was sent to all members of SAGE. The Summit Herald was very cooperative about taking pictures to publicize events and "Added Years", the publication of the New Jersey Division on Aging, called statewide attention several times during the year to some of our projects.

In discussing budgetary matters with the Budget Review Committee of the United Campaign, the wisdom of starting a pension plan for employees was discussed, and we were advised to start one as soon as finances would permit. In November of 1961 it was possible to inaugurate such a plan for the staff.

Under the terms of a formal agreement between the Greater Summit Section of the National Council of Jewish Women and SAGE, an employment referral service was opened on April 1, 1963. The volunteer sponsors worked diligently at this project and in the remaining nine months of 1963 interviewed 103 elderly applicants, uncovered 177 job opportunities and made 67 placements. These results clearly demonstrated that older people can work and need help in finding suitable jobs. OWL (Older Workers Lifeline) is not a licensed employment agency. It collects no fees nor does it specify rates of pay. The office is open each week day morning and has a paid Director and a paid Assistant Director (both retired from business) and several well trained volunteer interviewers. In 1969 there were 537 job opportunities, 93 new applicants and 249 placements.

In 1963 the New Providence United Campaign accepted SAGE. Later Berkeley Heights and Springfield admitted SAGE to their campaigns.

For a long time SAGE thought about the desirability of a Friendly Visiting program. January, 1965 saw the launching of such a program under the sponsorship of ten Churches and nine Social Service Agencies, among them was SAGE. Later SAGE organized a Steering Committee and supplied a Staff Coordinator to manage the program.

With the inspirational aid of the College Club and by formal agreement between the Junior Service League and SAGE, the Meals-on-Wheels service was started in June of 1966. The League appropriated $10,000 to equip the SAGE kitchen and subsidize the service for three years while it stabilized into an ongoing service. Other agencies and clubs contributed time, energy and money to meet deficits and/or to provide for the needy. Now "on its own," SAGE Meals-on-Wheels brings well-balanced, quality meals to the housebound, with the assistance of volunteers and the part-time services of an Administrator and a Caterer-Cook.

Also in 1966 an energetic and enthusiastic committee of volunteers opened the SAGE exchange. Useable furniture and bric-a-bac is collected from those who wish to donate them and is sold at very low prices for quick turnover. This activity is bursting at the seam.

SAGE encourages older people to make things for sale—ceramics, jewelry, knitwear, wooden inlay pictures, painting, etc. The consignor receives 80% of the selling price.

During the early years SAGE occupied a room in each of three buildings as unpaying guests. With growth and courteous evictions SAGE brought its office activities together in rented rooms which were soon outgrown. Again the lease was terminated. In 1964, the tenth anniversary, the United Campaign allowed SAGE to start an "EnviSAGE" fund to be used for capital purposes when needed. Now it was needed and in March of 1966 the Board of Trustees voted to buy the property at 50 DeForest Avenue. The Trustees called upon friends of SAGE for help and received nearly $30,000 and a bank mortgage at favorable interest rates. In June of 1966 SAGE had the deed for the property and by the end of 1970 it appears that the mortgage will be retired.

As to income beyond payments for services to people who can afford to pay their way, SAGE earns money through hard work by volunteers at the canteen, the exchange, the workshop and the craft shop. Area United Campaigns review SAGE's contributions to the community and its budget and allot a share of their collections. Many clubs, civic agencies, government agencies, where legal, members of SAGE, and others through direct donations or memorials keep SAGE solvent.

In dollars, the SAGE volume of business was about $1,000 in 1954 and was over $200,000 in 1969.

NO CONSTITUTIONAL OBJECTIONS TO RATIFICATION OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, for the past several days I have been presenting sections of the ABA's standing committee on world order through law's report supporting ratification of the Genocide Convention.

The report makes clear that the convention provides for the trial of anyone accused of genocide by courts of the state where the act is alleged to have been committed. And there is nothing in the convention requiring mandatory participation in an international court. Should the United States ever decide to take part in such an international tribunal, it could only be through the positive action of both the Senate and the President.

In its final arguments the committee report says:

Fear has been expressed that because Article VI refers to a possible trial of an accused before "such international penal tribunal as may have jurisdiction" that an American citizen could be deprived of his constitutional right to a trial by jury, or be forced into a trial in some foreign court under procedures not American.

It is difficult to understand this objection to ratification in the face of the full Article VI which reads:

"Persons charged wih Genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which have accepted its jurisdiction."

Nothing in the Convention makes mandatory American participation in an international tribunal. In the more than twenty years since the adoption of the Convention no such tribunal has come into being. Although a proposal for one was presented to the United Nations, it was last discussed by the Legal Committee in the U.N. in 1957, but the whole project was indefinitely postponed.

If at some future date such a court is in fact proposed, and if an appropriate treaty is adopted by the United Nations, and if the President of the United States decides to submit it to the Senate for its advice and consent, then and only then will this country, through its elected Senators, by open debate and after full consideration of its merits determine whether it wishes to agree to the court's jurisdiction. It seems most unlikely that any President with the support of the Senate would ratify a Convention which in any way diminished the constitutional rights of Americans.

It is asserted that by virtue of Article 2 (7) of the United Nations Charter and because murder is a matter of domestic concern, that the United States is barred from entering into a treaty on the subject. Article 2(7) provides that "nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter."

This article, of course, is a limitation upon the United Nations, as it was established by the charter and upon such activities as depend on the charter for their authority. This does not prevent the member states from making any agreements they wish to make by new treaties to carry out one of the basic purposes of the United Nations. This is the exercise of sovereign power by any state which accepts the treaty. If any meaning is to be given to the ideals expressed in the purpose clause (and elsewhere) in the Charter, obviously it would not be an interpretation which prevents members from carrying forward these objectives.

Article IX provides for the submission, at the request of any party, of disputes relating to the interpretation, application of fulfillment of the Convention, to the International Court of Justice. This is substantially the same provision as is contained in the treaties unanimously approved by the Senate in 1967 (Slavery) and in 1968 (Refugees). The former was approved by this Association.

This Committee concludes that there exist no constitutional objectives to ratification of the Genocide Convention. It recognizes no justifiable policy reasons for not ratifying. It deems ratification to be in the national interest. . . .

The report concludes there are "no constitutional objections to ratification of the Genocide Convention." The committee recognizes "no justifiable policy reasons for not ratifying" the convention and deems "ratification to be in the national interest."

I strongly support these sentiments.

THE ALASKAN DYNAMO

Mr. YOUNG of Ohio. Mr. President, in the March 12 edition of Newsday, I read an article by Nick Themish referring to Secretary of the Interior Walter J. Hickel as "the Alaskan dynamo." It appears to me, Mr. President, that in little more than a year in President Nixon's cabinet, Secretary Hickel, the former Governor of Alaska, has racked up an outstanding record of service to the American people.

When Mr. Hickel's name was first proposed for the position of Secretary of the Interior, I had serious reservations con-

cerning his fitness to serve as guardian of our environment and protector of our natural wildlife and voted against the confirmation of his nomination. In fact I based my vote against confirmation on some newspaper items I had read. That was a mistake on my part.

Since taking the oath of office Secretary Hickel has taken the lead in rewriting offshore oil drilling regulations so that companies assume "absolute liability" for all pollution; and he has championed the cause of conservationists against money-hungry land developers who have no pangs of conscience when it comes to tarnishing or destroying our natural wilderness in pursuit of the dollar.

Mr. President, I report today that some months back I wrote a letter to Secretary Hickel, commending him on the outstanding work he has been doing. I know I speak for many Americans when I say that Secretary of the Interior Walter Hickel has our admiration for his industry and his achievements as Secretary of the Interior, and I am glad that he was appointed to his extremely important Cabinet post.

I ask unanimous consent that the article entitled "The Alaskan Dynamo" be printed in the RECORD.

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

THE ALASKAN DYNAMO

(By Nick Thimmesch)

WASHINGTON.—The liveliest guy in the Nixon cabinet is Walter J. Hickel, the Alaskan dynamo, whose freshman performance shames early critics who saw him as an environmental Dr. Spock, radiating permissiveness for greedy developers.

To the general delight of conservationists, Wally Hickel slugged the polluters and spoilers pretty good in his first year. And history has chosen him to wade into the issue which has become terribly popular with Americans—the cleanup of our environment and the preservation of what natural beauty we have left.

"We didn't see the environment issue coming this fast," Hickel said in his office last week, punching the air with fists which once earned him $125 for drubbing a prizefighter in Anchorage. "But it's the biggest thing going. The Net Natural Environment is more important than the Gross National Product. We've got to think about God and not materialism.

"A man can live in a slum out in the open spaces and be happier than a man of means who lives in the city and can't get that spiritual renewal," he says, pointing to his head and his heart. "We've just made life miserable for ourselves in these urban areas."

But Wally would rather talk the brass tacks he has dealt with all his life, so he ticks off some of the actions that Interior has been involved in since he took office:

Re-writing off-shore oil drilling regulations so that companies bear "absolute liability" for all pollution, including accidental, and ruling that public hearings be held on applications for proposed off-shore leases.

Stopped the building of a commercial jetport in the Florida Everglades, and intervened in a half-dozen other projects where it appeared conservationists had lost out to developers.

Investigated charges that four major steel companies, a mining firm and the City of Toledo were polluting the already polluted Lake Erie, and delighted in "naming" their names at a Chicago Executive Club's luncheon. The affected parties quickly complied with regulations.

Privately and publicly pushed for higher appropriations for water pollution control than the administration originally asked for.

Advocated that an inventory be taken of land and water resources, and that a value be assigned for each resource, with conservation getting the top priority. The inventory could be taken by an "Environmental Control Organization," a kind of Peace Corps of young people interested in conservation.

Pushed a "Parks to People" program for urban areas which would make use of rooftops, vacant lots, school grounds and streets besides existent playgrounds and parks—for recreation.

Hickel has been so forceful and earnest on behalf of conservation that several Senators who voted against his confirmation when he was considered an ogre, have recanted. Ohio Democrat Stephen M. Young wrote Hickel: ". . . I admire the outstanding work you are doing . . . I made a mistake in voting against your confirmation. I am sorry. I am glad that our President appointed you to this extremely important cabinet post."

Lest Wally be quickly canonized with such conservation greats as Teddy Roosevelt, Gifford Pinchot and Izaak Walton, it should be said he has only started.

The conservation "jury" is still out on such matters as: the oil import quota which Hickel fought for; the precautionary measures being required of Alaska pipeline developers; the cutback on the Federal Great Lakes Fishery Laboratory at Ann Arbor, Mich., as charged by Wisconsin Senator Gaylord Nelson; the delay in moving on federal studies of pollution of the Potomac and Conn. Rivers; and opposition to a bill which would consolidate ocean and water programs into a NATIONAL OCEANIC AND ATMOSPHERIC AGENCY which many marine scientists think would be an effective force.

So far, Hickel gets some satisfaction from his changed "image" and his critics' admissions that he isn't out to ravage the earth. "Without a doubt," he declares, "if they would have looked at my record, they would have known better."

The record is pretty good, and Hickel wants conservation to occupy even more of the government's attention. He'd like to see his venerable Department of Interior renamed and rechartered as the "Department of Natural Resources and Environment."

"After one year," snaps Hickel, "I'm only mad at myself for not having done enough yet."

AGREEMENTS ON TEXTILE IMPORTS

Mr. HOLLINGS. Mr. President, this week's rejection by the Japanese for meaningful agreements on textile imports is the last straw. We have waited through months and months of palavering by the Nixon administration. In the meantime, the U.S. textile industry has lost 50,000 more jobs to imports. This is a cold, hard fact, and one which demands action by this Government.

In January 1969, there were an even 1 million persons employed in the textile mill products industry. By December of 1969, that figure had dropped to 982,000—or a loss of 18,000 jobs in the year 1969. By February 1970—a period of only 2 months—that industry had lost another 15,000 jobs, down to 967,000 employees. This represents a total loss since January of 1969 of 25,000 American jobs.

In the apparel industry, in January 1969, there were 1,424,000 jobs. By December, that had dropped to 1,417,000 jobs, or a net loss of 7,000 jobs. By February of this year, this vital industry has dropped down to 1,407,000 jobs, or a 2-month further loss of another 10,000 jobs. Since January 1969, this industry, too, has lost 25,000 jobs.

Why has this happened? Well, in 1968, 1,648,000,000 square yards of cotton textiles were imported into the United States, much of it from Japan. In 1969—despite a dock strike which affected the first half of the year—imports had risen to 1,654,000,000 square yards. To show how things have worsened, the United States imported 69,000,000 square yards of cotton textiles in January of 1969 but 150,000,000 in January of 1970.

In man-made fabrics, we imported 1,453,000,000 square yards in 1968 and 1,783,000,000 square yards in 1969. It has jumped tremendously this year. In January 1969, the import total was 85,000,000 square yards. In January of this year the figure was 188,000,000, or the largest monthly total increase in the last 6 years—and a record all-time high.

For all textiles, Mr. President, we see a huge increase in the first month of this year compared to January 1969. The figure has gone from 163,000,000 square yards to 350,000,000 square yards in January of this year.

This is appalling and disgusting. On the one hand, we have a critical erosion of American jobs. On the other, imports are increasing at a devastating pace. This can no longer be tolerated, and it is high time the Congress demands action from our President.

Just this week Japan apparently has rejected our request for a comprehensive approach to the textile import program. They had the gall to say American industries have not proved injury from Japanese imports. What more must be proven? How many more American jobs must go down the drain? What will it take to get the White House to stop talking and start acting.

NEEDED: GENUINE SOCIAL SECURITY REFORMS

Mr. WILLIAMS of New Jersey. Mr. President, the House Ways and Means Committee has put social security reform high on its heavy work agenda for 1970. This decision by Chairman MILLS is welcome, and it is timely. It should help overcome any complacency caused by the 15-percent increase in social security benefits voted by the Congress late last year.

That increase, while very much needed, should be recognized for what it is: an inadequate stopgap action. It did not come to grips with other important reforms needed in social security, including a cost-of-living adjustment mechanism such as that proposed in S. 3100, an increase in minimum benefits, fairer treatment for widows and working wives, and adjustments in the "retirement test," or earnings limitation.

In addition, benefits should be raised across the board to more adequate levels. I am the sponsor of a bill, S. 3100, which would have raised these payments by 20 percent this January and another 20 percent in January 1972. Until we in this Nation take such action, social security will be a bare subsistence program for most of the people it serves.

My observations are based partially upon the excellent reports and hearings conducted by the Senate Special Committee on Aging within the past year on the "Economics of Aging: Toward a Full Share in Abundance."

Direct confirmation of the statistical evidence has also come to me at Saturday morning information sessions I have conducted in several New Jersey counties. At all such meetings, I have made a point of listening directly to the elderly themselves, as well as others.

At one such meeting for Union County, for example, I received firsthand evidence of desperate economic problems among older individuals, most of whom had not become poor until they became old.

Rising medical costs certainly are a source of great concern, even with essential medical care coverage. For those who own homes, rising property taxes take a larger and larger bite. And for those who can no longer afford to pay such taxes, another problem arises: the lack of rental quarters at costs within their means.

The Elizabeth Journal account of the meeting provided an excellent summary of problems which should be considered by the Congress as it prepares this year to deal with social security legislation. I ask that this article, as well as an excellent editorial which appeared in the Atlantic City Sunday Press, be reprinted in the RECORD.

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

[From the Elizabeth (N.J.) Daily Journal, Feb. 2, 1970]

CAN'T AFFORD FOOD AND MEDICINE, SENIOR CITIZENS TELL SENATOR WILLIAMS

(By Evelyn Kipners)

"All of us should have property tax exemptions. My husband has emphysema . . . we have high hospital bills," she choked back some tears, unable to continue.

"We can't afford both food and medication," someone in the crowd remarked.

U.S. Sen. Harrison A. Williams Jr., a Democrat from Westfield, listened thoughtfully, sympathetically, to the plight of many who addressed him during a Saturday morning session on the "Economics of Aging."

The community room at J. William Farley Towers, a senior citizens high-rise in Elizabeth, was jammed with more than 250 golden agers, who nodded as Sen. Williams described their plight—namely poverty or prospects of it.

One woman, speaking for a friend who was "too upset to talk," told the senator that the other woman had appealed for federal housing in 1964 and has been moving from place to place ever since.

"She has to be out of her apartment by the 28th of February . . . Her husband is in the hospital . . . both are in their 70's."

Another senior citizen said, "When we bought our house in Plainfield in 1964, the taxes were $200. Now they're up to more than $900."

Another woman said, "My mother is getting $68 a month from social security. She had to sell her home a few years ago but the money is going fast because she is ill. Her rent went up three times this year. There is no place to go."

Sen. Williams, who is chairman of the Senate Special Committee on Aging, has conducted five days of hearings in Washington and met informally with senior citizens in five other New Jersey counties.

He is culling evidence to support his social security bill that calls for a 20 per cent increase effective this month and another 20 per cent increase in two years.

Sen. Williams did not have to dig very deep for evidence to support the measure. During a recess at the Saturday session, scores of the elderly crushed around the speaker's table to encourage him, congratulate him, thank him or just meet him.

Some had tears in their eyes as they told him of their hardships, others were filled with emotion because they were glad that somebody cared.

The distress of the retired citizens is a result of having to meet inflationary prices while living on fixed incomes, Senate investigations proved.

Sen. Williams, in his opening statement, blasted the month-old congressional action on an across-the-board 15 per cent increase in Social Security benefits.

"Now there may be some who say that this 15 per cent raise should quiet down the old folks. After all, it keeps them in the race, just about, with the cost of living. Well, I don't believe that, and I know that you don't either. No, 15 per cent is not enough," he asserted.

"Yes, we still have time—during the last year of the 91st Congress—to win more congressional victories for the elders of this nation," he said.

Sen. Williams said his Social Security proposal "provides for a badly needed increase in minimum benefits, which now stand at $55 a month. Fifteen per cent of $55 doesn't add many dollars to a below poverty income."

He said one of the most important provisions of his bill would unify Medicare, which now is divided into parts A and B. Monthly premiums and other charges are made on part B, he said.

"The recent announcement about a rise in premium cost is bad news for the elderly and bad news for the Medicare program. Our hearing records are already crammed with testimony about difficulties many elderly persons have in paying the present premium, $4 a month," he said.

"Now that the Department of Health, Education and Welfare has declared that the premium will soon be $5.30. I feel safe in predicting this action will cause a flood of Medicare dropouts."

Following the senator's statements, a panel of leaders of the senior citizens community in the county presented ideas to the group as a jumping-off point for discussion.

Mrs. Mildred Barry Hughes of Union, a former state senator from Union County, was one of them. Others were Charles Hamilton, board of directors president of the Senior Citizens Center of Elizabeth; H. Joseph Walsh, president of the Cranford Senior Citizens Club and Mrs. Norman Frank, chairman of the Union County Anti-poverty council.

Also, Mrs. Dorothy Pierce of the Union Township Senior Citizens Drop-in Center; Fred Vansant of the Summit Area Association for Gerontiological Endeavor (SAGE); the Rev. Ace Tubbs of the Westfield Presbyterian Church; Thomas Highsmith, former executive director of Community Action for Economic Opportunity (CAFEO) in Elizabeth, and Mrs. Julia H. Meagher, executive director of the Greater Plainfield Senior Citizens Center.

The group was welcomed by Mrs. Jeannie Afflerbach, president of the former tenants association.

Mrs. Hughes pointed out the problem of residents who move from a city when they can no longer afford adequate housing there and lose their eligibility for senior citizens housing if it should be built in their hometown.

Hamilton said members at the senior citizens center reported that property owners cannot afford to repair their homes or pay their taxes.

Walsh of the Cranford group is going to Trenton to lobby for a broadened bus fare reduction bill, an increase on the $80 property tax exemption for the aged and to Washington to work for passage of Sen. William's bill.

Mrs. Frank spoke of the "exiled citizen," those older people forced to move, and suggested a county-wide coalition of senior citizen groups, a maximum rent no higher than 25 per cent of the Social Security benefit, and cross-municipality planning in Federally financed housing for the elderly.

Highsmith, formerly of CAFEO, closed the comments from the panel on an appropriate note.

"We would not, as an individual, do to our parents, what we as a nation, do to our elderly," he said.

[From the Atlantic City (N.J.) Press, Feb. 8, 1970]

PLIGHT OF THE AGING

The ancient Spartans banished their old people. They moved them out of their city and abandoned them to die of starvation or the elements.

We have come a long way since those barbaric times. Or have we?

Now we pay our oldsters less than a poverty level pension and let them worry about how to live on it in a world of rising costs and spiraling inflation.

Today the minimum Social Security benefit is $55 a month. Thousands of elderly are striving to exist on this amount, and fighting a losing battle. Even those who receive more are having a struggle.

Sen. Harrison A. Williams Jr., Democrat from Westfield, has been championing the cause of the senior citizen. He advocates an increase in Social Security benefits by 20 per cent effective immediately and another 20 per cent in two years. This would help.

A month ago Congress boosted Social Security benefits 15 per cent. "Not enough," says Williams.

Adding 15 per cent to $55 gives the pensioner only $63.25 a month, and anyone, young or old, would have a terrible job trying to stretch that for food and shelter—and medical expenses—for a month.

Many of our senior citizens, who deserve some freedom from worry in their twilight years, are worrying more now than they ever had to during their younger days.

At a recent hearing in Elizabeth, N.J., Sen. Williams listened to the plight of the aged and aging. More than 250 of them attended the session and pleaded, many tearfully, for help.

One woman applied for federal housing in 1964 and has been moving from place to place ever since. She has to move again by the end of the month. Her husband is hospitalized and both are in their 70s.

Another complained: "When we bought our home in 1964, the taxes were $200. Now they're up to more than $900."

Still another, who receives $68 monthly, said she sold her home a few years ago because she needed money. Her funds are rapidly dwindling and her rent has been raised three times within a year. She has no place to go.

Senate investigations have proved that the distress of these retired citizens is caused by

having to meet inflated prices while living on fixed incomes.

While Congress has approved the 15 per cent increase in benefits, costs of Medicare also have increased and each subscriber will be assessed an additional $1.30 a month to pay for it. Some can't really afford the $4 they must pay now. Sen. Williams predicts the increase will cause a flood of Medicare dropouts. This is tragic.

Most of our suffering senior citizens are in difficulty through no fault of their own. Many are widows. Many are ill. As the senator pointed out: "None of us would treat our parents the way the government treats its elderly citizens."

"We still have time during the last year of the 91st Congress to win more victories for the elders of this nation," he declared.

We wholeheartedly agree with the senator and support his efforts on behalf of our seniors. We urge everyone to write to Sen. Williams as well as Sen. Clifford Case and to our congressmen indicating support of the fight to help those who need help.

While some of us may begrudge the few dollars a year we contribute to Social Security when we're young—be assured our tune will change when our turn comes to receive the benefits.

THE BATTLE AGAINST MARIHUANA

Mr. CURTIS. Mr. President, I wish to pay tribute to some outstanding young Nebraskans who are carrying on a battle against marihuana. I salute all who are engaged in this endeavor. I particularly want to commend Jerry Zitterkopf, of Lyman, Nebr., and Becky Stevens, of Polk, Nebr., for their leadership.

Mr. President, I ask unanimous consent to have printed in the RECORD a news article entitled "Group Is Organized To Stamp Out Pot," published in Lincoln, Nebr., Journal of March 7, 1970.

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

GROUP IS ORGANIZED TO STAMP OUT POT

(By Gwen Drake)

An aggressive program to stamp out wild marijuana that grows in abundance throughout Nebraska was kicked off in Lincoln Friday with the formation of Nebraskans for a Better World.

The group, composed of about 40 individuals representing agriculture, church, youth and government divisions from throughout the state, met to draw up a battle plan to defeat the weed. They dubbed their effort "swat pot."

The main weapon the organization hopes to use is the planting of strong native grasses throughout the state in hopes those grasses will eventually crowd out pot, thereby eliminating the problem.

Delegates at the organizational meeting named three cochairmen to head the statewide campaign to replace marijuana "grass" with native grass. They are Ellsworth Carlson, Polk; Jerry Zitterkopf, Lyman, and Becky Stevens, Polk.

Carlson, with the state Agriculture Dept., said Agriculture Director Elmer Schlaphoff announced recently that marijuana should not be treated as a noxious weed but as a social problem to insure fairness to landowners.

Carlson said the key to solving the problem will probably not lie entirely in official hands. Landowners are being encouraged to take measures on their own to destroy marijuana.

In the area of problem solutions, Dr. Bruce Cowgill of the Nebraska Game Commission suggested that a newly organized Nebraskaland Acres for Wildlife Program might serve a dual purpose of providing wildlife cover and encouraging landowners to stop the growth of marijuana.

"If you can get those participating in this program to introduce low grass seed cover in place of the hemp, instead of burning or mowing, we can solve two problems at once," Dr. Cowgill said.

D. E. Hutchinson, with the Soil Conservation Service, said the complexion of marijuana has changed over the past 50 years. "I can remember when we cut hemp and used it for fish poles," he said. "And early this century there was at least one Lincoln company that grew the stuff and distributed the seed to farmers to grow as a crop for binder twine purposes."

Hutchinson applauded the suggestion that the solution to the problem of marijuana lies in the introduction of strong native grasses to take over the wild hemp. He noted that along some sections of Interstate where native grasses are now taking hold, marijuana will soon become a thing of the past.

POLLUTION—TWO RESOLUTIONS ADOPTED BY COMMUNICATIONS WORKERS OF AMERICA

Mr. NELSON. Mr. President, one of the Nation's major labor unions, the Communications Workers of America, has acted to help end what the union called the era of indifference which saw the pollution of our air and water and the defiling of our cities and countryside.

Its president, Joseph A. Beirne, has informed me that the union has decided to help organize and to participate in the environmental teach-ins which will be held at schools and college campuses across the country on April 22. It has also spelled out the need for going beyond sloganeering, and specified a series of goals for improving the environment.

There are almost 900 locals in the Communications Workers, many of them in close proximity to college campuses, and their involvement in the environmental crusade will be welcome and helpful.

Mr. President, I ask unanimous consent to have printed in the RECORD the two resolutions adopted by the Communications Workers executive board which established its program for involvement and its goals.

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

ENVIRONMENT TEACH-INS RESOLUTION

The era of indifference which saw the pollution of our air and water and the defiling of our cities and countryside can be brought to an end if the people of the nation join together in pushing good environmental programs to the forefront of our national priorities. We, the Communications Workers of America, acting as citizens and as Unionists, accept our responsibility to participate in this effort for the betterment of our lives and the lives of our children.

A method of participation for CWA has become available through the announcement that a nationwide program of teach-ins on environment will be held on many college campuses on April 22. Sponsored by Senator Gaylord Nelson, a Democrat, and Rep. Paul McCloskey, a Republican, the teach-ins are non-partisan, and are designed to develop community awareness of the great risks and great costs of continued lack of improvement in the environment. Those participating in the teach-ins will select issues which are of importance in their particular area, and devise procedures to implement correction of area environmental problems. Therefore, be it

Resolved, That the Executive Board of the Communications Workers of America endorse the teach-ins to be held on college campuses, and urge all Locals to participate in the teach-ins. And be it further

Resolved, That Locals participate in helping organize the teach-ins, conduct the teach-ins, follow through on necessary post-teach-in programs to secure environmental improvements, and publicize their participation. And be it further

Resolved, That Locals not located near a campus which is the site of a teach-in aid in this effort for a better environment by informing elected officials in their communities and states, members of the Congress, and the news media, of their support for measures to improve the environment, by noting situations in their areas which need correction. And be it further

Resolved, That the President's office endeavor to obtain and distribute a list of the campuses where teach-ins are being held so that contact may be facilitated by the Locals. And be it further

Resolved, That Local officers call the membership's attention to the extensive coverage of environment in the March issue of the CWA News, and that Local officers use this information as the basis for developing arguments on behalf of environmental improvements.

ENVIRONMENTAL QUALITY—MORE THAN SLOGANS NEEDED

The United States is encountering severe problems in the quality of its environment. The problems are largely due to the tremendous success of our mass production-high consumption economy.

Concepts currently prominent in the thinking of government and other public bodies and the information media include "ecology," "total environment," "quality of life," "urban decay" and "pollution." The magnitude of these concepts is at long last being recognized.

The scope of the problem has not been adequately defined. It must include air and water pollution, the ever-growing masses of solid wastes, the abuse of natural resources, and the inability of the individual citizen to do more than protest.

Advances in technology and increases in the Gross National Product have not been accompanied by sufficient efforts to ensure that they are truly forward steps.

For instance, the coming of a paper mill or chemical plant is an event often welcomed by a community, because of the many financial benefits. But the price subsequently exacted on the community can be high—in ravaging of the landscape and waters, in noxious discharges into the air, in congestion.

DDT and other toxic chemicals have greatly reduced the number of insects which have plagued mankind through history. However, these substances are not selective: Bees, birds, fish and other animal life also have been threatened, and there is medical evidence that human health may be harmed by the continued use of these chemicals.

A drilling accident in the Santa Barbara Channel and the wreck of the tanker *Torrey Canyon* in the last two years fully illustrated the dangers inherent in the petroleum industry, and the substantial economic losses by individuals and businesses not directly involved.

For a final instance, the installation of a nuclear power plant can be a source of adequate electricity for a large area. But the price paid by the area can be hazardous radiation, thermal pollution of large expanses of publicly owned waters, and difficulty in disposing of radioactive nuclear wastes.

Heretofore, the individual or local group

alarmed at water and air pollution by local industries has been in danger of being an outcast because of "anti-business" attitudes. Opposition to strip-mining has been viewed as somehow "anti-American," because the protester would be denying a company the use of its own minerals. Questioning the "unquestionable assumptions" of the use of nuclear energy has been equated to impeding progress. Open advocacy of modern and adequate mass-transit systems can be offensive to the gigantic automotive industry and its natural allies—the oil industry, tire makers and paving contractors.

In his first State of the Union Message, President Nixon focused attention on the goal of "a new quality of life in America." While the message lacked specific steps to reach that goal, the President promised to send the Congress "the most costly and comprehensive program in this field in the Nation's history.

If the Nation's goal is to become more than another set of slogans coined for political purposes, full commitment must be made—and honored.

While it is impossible to find anywhere in this land a single individual who says he prefers polluted air and water, junkyards on the streets, traffic congestion, ravage of the natural resources, and any of the other indices of a breakdown of the environment, there are natural and artificial sources of inertia which would prevent action. Therefore, be it

Resolved, That the Executive Board of the Communications Workers of America wholeheartedly endorse efforts by the Administration and the Congress to take all needed steps to achieve "a new quality of life in America"; and be it further

Resolved, That this Executive Board express this Union's sense of urgency in the following aspects of the national goal:

1. Definition of the problems of the environment, especially those which require legislative action.

2. Enactment of the most stringent of Federal laws with clear standards, providing adequate funds for the strictest enforcement, and setting criminal penalties against individuals who refuse to obey the law.

3. Permitting the public at large, by "class actions" in Federal courts of competent jurisdiction, to secure its rights to an unpolluted and otherwise undefiled environment.

4. Unification of the jurisdiction of Federal agencies and Committees of the Congress in environmental matters.

5. Establishment of a policy that city streets are to be used primarily for the movement of traffic, not vehicle storage.

6. Taxation of slum properties on a formula that favors maintenance and penalizes those who traffic on misery.

7. Expenditure of Federal and other public funds for more useful and practical purposes than up to the present.

8. "Open Spaces" programs meaning more than shopping centers and parking lots.

THE MOYNIHAN MEMORANDUM

Mr. SCOTT. Mr. President, on behalf of the Senator from Colorado (Mr. ALLOTT), I ask unanimous consent to have printed in the RECORD a statement prepared by him and the text of the Moynihan memorandum of January 3, 1969.

There being no objection the statement by Senator ALLOTT and the article were ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR ALLOTT

In the last few days there have been new developments in the unfolding story of the many Moynihan memoranda.

Last week there was much controversy concerning Daniel P. Moynihan's memorandum to the President concerning race relations.

This memorandum sparked considerable sound and fury, much of it signifying nothing except the fact that many people denounced the memorandum without pondering it.

Some hasty and thoughtless critics seized upon some famous words and tried to find in those words evidence that Dr. Moynihan is indifferent to the fate of American blacks.

Senators recall that I spoke in defense of Dr. Moynihan last week. Today I want to allow Dr. Moynihan to speak for himself. I want to place before the Senate the text of a memorandum Dr. Moynihan prepared for President-elect Nixon in January, 1969.

This memorandum relates America's race problems to the wider problems confronting American society at the outset of the Nixon Administration.

Dr. Moynihan's memorandum is thoughtful and illuminating. It takes as its theme the words of the French philosopher, George Bernanos, who wrote: "There are no more corrupting lies than problems poorly stated." Dr. Moynihan has served the nation well by stating problems clearly.

[From the New York Times, Mar. 11, 1970]

TEXT OF A PREINAUGURATION MEMORANDUM FROM MOYNIHAN ON PROBLEMS NIXON WOULD FACE

WASHINGTON, March 10.—Following is the text of a memorandum, dated Jan. 3, 1969, from Daniel Patrick Moynihan, then the President-elect's chief adviser on urban affairs, to Mr. Nixon:

Before the storm breaks, as it were, on the 20th, I would like to send in a few extended comments on some of the longer range issues that face you, but will tend, I should imagine, to get lost in the daily succession of crises.

I would like to speak first of the theme "Forward Together."

This appeal was much in evidence in your very fine acceptance speech at Miami, and during the campaign the logic of events, and your own sure sense of them, brought it forward ever more insistently.

In the end it was the theme of the campaign and, in the aftermath of victory, it stands as the most explicit mandate you have from the American people. I would hope it might be the theme of your Administration as well.

It has fallen to you to assume the governance of a deeply divided country. And to do so with a divided Government. Other Presidents—Franklin Roosevelt, for example—have taken office in moments of crisis, but the crises were so widely perceived as in a sense to unite the country and to create a great outpouring of support for the President as the man who would have to deal with the common danger.

Neither Lincoln nor Wilson, the two predecessors whose situations most resembled yours, in terms of the popular vote and the state of then current political questions, had any such fortune. No one would now doubt that they proved to be two of our greatest leaders, nor yet that their Administrations achieved great things. But, alas, at what cost to themselves.

COMMON ELEMENT SOUGHT

A divided nation makes terrible demands on the President. It would seem important to try to anticipate some of them, at least, and to ponder whether there is not some common element in each that might give a measure of coherence and unity to the President's own responses and, by a process of diffusion, to provide a guide for the Administration as a whole.

I believe there is such a common element. In one form or another all of the major domestic problems facing you derive from the erosion of the authority of the institutions of American society. This is a mysterious process of which the most that can be said is that once it starts it tends not to stop.

It can be stopped: The English, for example, managed to halt and even reverse the process in the period, roughly, 1820–40. But more commonly, those in power neglect the problem at first and misunderstand it later; concessions come too late and are too little; the failure of concessions leads to equally unavailing attempts at repression; and so events spiral downward toward instability.

The process is little understood. (Neither is the opposite and almost completely ignored phenomenon: Some societies—Mexico in the 1920's—seem almost suddenly to become stabilized after periods of prolonged and seemingly hopeless chaos.)

All we know is that the sense of institutions being legitimate—especially the institutions of government—is the glue that holds societies together. When it weakens, things come unstuck.

CONTRAST IN PEOPLE

The North Vietnamese see this clearly enough. Hence the effort through the subtleties of seating arrangements to establish the N.L.F. as an independent regime, and the Saigon Government as a puppet one.

In contrast, Americans, until presently at least, have not been nearly so concerned with such matters. American society has been so stable for so long that the prospect of instability has had no very great meaning for us. (As I count, there are but nine nations that both existed as independent nations in 1914 and have not had their form of government changed by invasion or revolution since.)

Moreover, we retain a tradition of revolutionary rhetoric that gives an advantage to those who challenge authority rather than those who uphold it. Too little heed is given the experience of the 20th century in which it has been the authority of democratic institutions that has been challenged by totalitarians of the left and the right.

Even the term "authority" has acquired for many a sinister cast, largely one suspects from its association with the term "authoritarian." Yet it remains the case that relationships based on authority are consensual ones: That is to say they are based on common agreement to behave in certain ways.

It is said that freedom lives in the interstices of authority. When the structure collapses, freedom disappears, and society is governed by relationships based on power.

Increasing numbers of Americans seem of late to have sensed this, and to have become actively concerned about the drift of events. Your election was in a sense the first major consequence of that mounting concern. Your Administration represents the first significant opportunity to change the direction in which events move.

Your task, then, is clear: To restore the authority of American institutions. Not, certainly, under that name, but with a clear sense that what is at issue is the continued acceptance by the great mass of the people of the legitimacy and efficacy of the present arrangements of American society, and of our processes for changing those arrangements.

For that purpose the theme "forward together" responds not only to the deepest need of the moment, but also, increasingly, to a clearly perceived need, as the facts of disunity more and more impress themselves on the nation's consciousness.

What has been pulling us apart? One wishes one knew. Yet there are a number of near- and long-term developments that can be discerned and surely contribute significantly to what is going on.

Of the near-term events, the two most conspicuous are the Negro revolution and

the war in Vietnam. Although seemingly unrelated, they have much in common as to origins, and even more as to the process by which they have brought on mounting levels of disunity.

The French philosopher George Bernanos once wrote: "There are no more corrupting lies than problems poorly stated." I, at least, feel that this goes to the heart of much of the present turmoil of race relations and foreign policy. In a word, those in power have allowed domestic dislocations that accompany successful social changes to be interpreted as irrefutable evidence that the society refuses to change; they have permitted foreign policy failures arising from mistaken judgments to be taken as incontrovertible proof that the society has gone mad as well.

The fact is that with respect to Negro Americans we have seen incredible progress since, roughly, the Brown v. Board of Education decision of 1956 and President Eisenhower's subsequent decision to send Federal troops to Little Rock, thus commencing the second Reconstruction.

Nowhere in history is there to be encountered an effort to bring a suppressed people into the mainstream of society comparable to the public and private initiatives on behalf of Negro Americans in recent years.

BLACKS SAW IT FIRST

As I would like to discuss in a later memorandum, the results have been dramatic. Yet it was only after that effort had begun, and had been under way for some time, that it became possible to see the true horror of the situation white America had forced on black America and the deep disabilities that came about in consequence.

The first to see this, of course, were the blacks themselves. The result on the part of many was a revulsion against white society that has only just begun to run its course. Large numbers of middle-class, educated blacks, especially young ones, have come to see American society as hateful and illegitimate, lacking any true claim on their allegiance. Well they might.

The problem is not that one group in the population is beginning to react to centuries of barbarism by another group. The problem is that this cultural reaction among black militants is accompanied by the existence of a large, disorganized urban lower class which, like such groups everywhere, is unstable and essentially violent.

This fact of lower class violence has nothing to do with race. It is purely a matter of social class. But since Watts, the media of public opinion—the press, television, the Presidency itself—have combined to insist that race is the issue.

As a result, middle class blacks caught up in a cultural revolution have been able, in effect, to back up their demands. This has led to a predictable white counter-reaction. And so on. In the process, we have almost deliberately obscured the extraordinary progress, and commitment to progress, which the nation as a whole has made, which white America has not abandoned, and which increasingly black America is learning to make use of.

To the contrary, it has been the failures of policy that have seemed ever more prominent. The essence of the Negro problem in America at this time is that despite great national commitments, and great progress, a large mass of the black population remains poor, disorganized, and discriminated against.

These facts are increasingly interpreted as proof that the national commitment is flawed, if not indeed fraudulent, that the society is irredeemably "racist," etc.

This interpretation is made by middle-class blacks and whites who, outwardly at least, society would seem to have treated very well, but the continued existence of black poverty makes their argument hard to assail. Moreover, increasingly that argument is directed not to particulars, but to fundamental questions as to the legitimacy of American society.

WAR ALSO A "DISASTER"

Vietnam has been a domestic disaster of the same proportion, and for much the same reason. As best I can discern, the war was begun with the very highest of motives at the behest of men such as McNamara, Bundy and Rusk in a fairly consistent pursuit of the postwar American policy of opposing Communist expansion and simultaneously encouraging political democracy and economic development in the nations on the Communist perimeter and elsewhere.

At the risk of seeming cynical, I would argue that the war in Vietnam has become a disastrous mistake because we have lost it. I quite accept Henry Kissinger's splendid formulation that a conventional army loses if it does not win, the opposite being the case for a guerrilla force. We have not been able to win.

Had the large-scale fighting by American forces been over by mid-1967 (which is my impression of what Bundy anticipated in mid-1965), had the children of the middle class accordingly continued to enjoy draft exemption, had there been no inflation, no surtax, no Tet offensive, then I very much fear there would be abroad at this point at most a modicum of moral outrage.

But this is not what happened. The war has not gone well, and increasingly in an almost primitive reaction—to which modern societies are as much exposed as any Stone Age clan—it has been judged that this is because the gods are against it.

In modern parlance this means that the evil military industrial complex has embarked on a racist colonialist adventure. (I have heard the head of S.N.C.C. state that we were in Vietnam "for the rice supplies.")

But the essential point is that we have been losing a war, and this more than any single thing erodes the authority of a Government, however stable, just, well intentioned or whatever.

"MOB" TOPPLES PRESIDENT

I would imagine that the desire not to be the first President to "lose" a war has been much in President Johnson's mind over the past years, and explains some of his conduct. But the fact is that he could not win, and the all-important accompanying fact is that the semiviolent domestic protest that arose in consequence forced him to resign.

In a sense he was the first American President to be toppled by a mob. No matter that it was a mob of college professors, millionaires, flower children, and Radcliffe girls.

It was a mob that by early 1968 had effectively physically separated the Presidency from the people. (You may recall that seeking to attend the funeral of Cardinal Spellman, Johnson slipped in the back door of St. Patrick's Cathedral like a medieval felon seeking sanctuary.)

As with the case of the most militant blacks, success for the antiwar protesters has seemed only to confirm their detestation of society as it now exists. Increasingly they declare the society to be illegitimate, while men such as William Sloan Coffin, Jr., the chaplain at Yale, openly espouse violence as the necessary route of moral regeneration.

The successful extremism of the black militants and the antiwar protesters—by and large they have had their way—has now clearly begun to arouse fears and thoughts of extreme actions by other groups. George Wallace, a fourth-rate regional demagogue, won 13 per cent of the national vote and at one point in the campaign probably had the sympathy of a quarter of the electorate, largely in the working class.

Among Jews—I draw your attention to this—there is a rising concern, in some quarters approaching alarm, over black anti-Semitism. They foresee Negro political power driving them from civil service jobs, as in the New York City school system. They see anti-Semitism becoming an "accepted" political posture. With special dread, they see a not distant future when the political leaders of the country might have to weigh the competing claims of 10 million black voters who had become passionately pro-Arab.

In the meantime, we must await the reaction of the armed forces, and the veterans of Vietnam to whatever settlement you get there. No officer corps ever lost a war, and this one surely would have no difficulty finding symbols of those at home who betrayed it. All in all there are good reasons to expect a busy eight years in the White House.

REJECTION OF VALUES

There is a longer term development contributing to the present chaos which bears mentioning. Since about 1840 the cultural elite in America have pretty generally rejected the values and activities of the larger society.

It has been said of America that the culture will not approve that which the policy strives to provide. For a brief period, associated with the depression, World War II, and the Cold War there was something of a truce in this protracted struggle. That, I fear, is now over. The leading cultural figures are going—have gone—into opposition once again. This time they take with them a vastly more numerous following of educated, middle class persons, especially young ones, who share their feelings and who do not "need the straight" world.

It is their pleasure to cause trouble, to be against. And they are hell bent for a good time. President Johnson took all this personally, but I have the impression that you will make no such mistake!

It is, of course, easier to describe these situations than to suggest what is to be done about them. However, a certain number of general postures do seem to follow from the theme "bring us together." I would list five:

First, the single most important task is to maintain the rate of economic expansion. If a serious economic recession were to come along to compound the controversies of race, Vietnam, and cultural alienation, the nation could indeed approach instability.

It would be by judgment that the great prosperity of the 1960's is the primary reason we have been able to weather this much internal dissension. The lot of Negroes has steadily improved, and so has that of most everyone else. Black demands for a greater share have thus been less threatening.

The war has been costly, but largely has been paid for through annual fiscal increments and recent deficits. Consumption has been effected not at all. If this situation were to reverse itself, your ability to meet black needs, the tolerance of the rest of the society for your efforts, the general willingness to see military efforts proceed, would all be grievously diminished.

Second, it would seem most important to de-escalate the rhetoric of crisis about the internal state of the society in general, and in particular about those problems—e.g., crime, de facto segregation, low educational achievement—which Government has relatively little power to influence in the present state of knowledge and available resources.

This does not mean reducing efforts. Not at all. But it does mean trying to create some equivalence between what Government can do about certain problems and how much attention it draws to them. For this purpose the theme you struck in presenting your Cabinet on television seems perfect: Yours is an Administration of men with wide-ranging interests and competence whose first concern is the effective delivery of Government services.

There is a risk here of being accused of caring less than your predecessors, but even that will do no great harm if you can simultaneously demonstrate that you do more. It is out of such perceptions that the authority of Government is enhanced.

STRESS OF MINORITIES

It would seem likely that a powerful approach to this issue will be to stress the needs and aspirations of groups such as Mexican-Americans, Puerto Ricans, American Indians and others, which have also been excluded and exploited by the larger society. This, of course, is something you would want to do in any event.

Third, the Negro lower class must be dissolved. This is the work of a generation, but it is time it began to be understood as a clear national goal. By lower class I mean the low income marginally employed, poorly educated, disorganized slum dwellers who have piled up in our central cities over the past quarter century. I would estimate they make up almost one half the total Negro population.

They are not going to become capitalists, nor even middle class functionaries. But it is fully reasonable to conceive of them being transformed into a stable working class population: Truck drivers, mail carriers, assembly line workers—people with dignity, purpose, and in the United States a very good standard of living indeed. Common justice, and common sense, demands that this be done.

It is the existence of this lower class, with its high rates of crime, dependency, and general disorderliness, that causes nearby whites (that is to say working class whites, the liberals are all in the suburbs) to fear Negroes and to seek by various ways to avoid and constrain them.

It is this group that black extremists use to threaten white society with the prospect of mass arson and pillage. It is also this group that terrorizes and plunders the stable elements of the Negro community—trapped by white prejudice in the slums, and forced to live cheek by jowl with a murderous slum population. Take the urban lower class out of the picture and the Negro cultural revolution becomes an exciting and constructive development.

Fourth, it would seem devoutly to be wished that you not become personally identified with the war in Vietnam. You have available to you far more competent advice than mine in this area, and I am sure you will wish to proceed in terms of the foreign policy interests of the nation in broader terms, but I do urge that every effort be made to avoid the ugly physical harassment and savage personal attacks that brought President Johnson's Administration to an end.

The dignity of the Presidency as the symbolic head of state as well as of functioning leader of the Government must be restored. Alas, it is in the power of the middle class mob to prevent this. I would far rather see it concentrate, as Faute de Mieux it now seems to be doing on attacking liberal college Presidents as "racist pigs."

I fear the blunt truth is that ending the draft would be the single most important step you could take in this direction. The children of the upper middle class will not be conscripted.

In any event, the present system does cast a pall of anxiety and uncertainty over the lives of that quarter of the young male population which does in fact require four to eight to 10 years of college work to prepare for careers which almost all agree are socially desirable, even necessary.

Fifth, it would seem important to stress those things Americans share in common, rather than those things that distinguish them one from the other; thus the war on poverty defined a large portion of the population as somehow living apart from the rest.

I would seek programs that stress problems and circumstances that all share, and especially problems which working people share with the poor. Too frequently of late the liberal upper middle class has proposed to solve problems of those at the bottom at the expense, or seeming expense, of those in between.

Obviously the theme "forward together" is essential here, and there are other symbols at hand of which I would think the approaching 200th anniversary of the founding of the Republic is perhaps the most powerful.

In the final months of your second term you will preside over the anniversary ceremonies of July 4, 1976. It would seem an incomparable opportunity to begin now to define the goals you would hope to see achieved by that time, trying to make them truly national goals to which all may subscribe, and from which as many as possible will benefit.

Hopefully our 200th anniversary will see the nation somewhat more united than were those 13 colonies.

INVOLUNTARY, FORCED BUSING OF CHILDREN

Mr. ALLEN. Mr. President, the spread between words and deeds of this administration is becoming more apparent with each passing day. Contrary to protestations in favor of neighborhood schools, grossly discriminatory, involuntary, forced busing of children from their neighborhoods continues to be vigorously pursued as fixed policy of the Department of Health, Education, and Welfare. Unless this policy is reversed, we will destroy our public school system. The end result will be poorer education of white and black alike.

An editorial by the Jesuit priest, Father Daniel Lyons, entitled "The Big Yellow School Bus," appeared in the publication Twin Circle of March 8, 1970. We believe that Senators and the public alike will profit greatly by a thoughtful consideration of the observations and conclusions of Father Lyons.

With this object in mind, I ask unanimous consent that the editorial be printed in the RECORD.

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

THE BIG YELLOW SCHOOL BUS

The Supreme Court ruled in 1954 that the two separate school systems in the South, one for whites and one for Negroes, were bound to be unequal and were therefore unconstitutional. It was a fair and wise decision, and the dual school systems have gradually been unified. But the Court has since confused segregation by law with residential areas where whites or blacks predominate, and where the schools reflect the racial composition of those areas. Many Negroes prefer to live in predominantly Negro areas, just as many whites prefer to live in predominantly white areas. There is no law preventing whites from moving into colored neighborhoods, but most whites would rather not, and the blacks would rather they did not. Blacks usually prefer to live with others of their race, if the neighborhood is as nice as they can afford, and if prices are fair and police protection good.

Unless we are going to destroy our neighborhood school system, local schools will continue to reflect the make-up of their neighborhood. What has been happening down South, however, is that the Court has forced many areas to bus students into other parts of the city, as though that were necessary to prove that the dual school system has been dismantled. The Court ruled on de jure segregation, then tried to break up de facto segregation as though that were a part of it. Yet the Supreme Court has never ruled on de facto segregation. In many ways it would be impossible to prevent it.

NO MASS LEVELING

There can never be a mass leveling of society. If you live in an area where most of the breadwinners are unskilled workers, no matter what their race, the vast majority of their children will not go on to college, even if the college is free. To go to college means giving up the chance to earn about $20,000 during those four years. It means being dependent on one's parents instead of being independent. The interests of parents in working-class neighborhoods are much less academic than in neighborhoods where most of the parents attended college. As a whole, working-class parents do not provide as much intellectual background or stimulation to their children. Schools in such an area will reflect this lack of interest. Teachers soon realize this, and the schools are not as good, from a college preparatory point of view.

Is that unfair? That's the way it is. The point to keep in mind is that most of the poor families in the U.S.A. are white. The children in these working-class areas are somewhat underprivileged. Should we bus them across town and vice-versa? What about the social dissatisfaction of mixing children who cannot afford cars, expensive clothes, and fancy parties with those who can? What about the hours spent riding buses that could have been employed more profitably? Or are we only going to bus "underprivileged" children if they being to another race?

GROUPS STICK TOGETHER

Our country is full of areas that are predominantly Catholic or Protestant or Jewish or Irish or Italian or German or Polish or Puerto Rican or Cuban or Chinese or Japanese. Spanish language groups stick together. So do other language groups. When they attend school in their neighborhood they find the teachers who know their language and help them learn English. In Los Angeles alone there are 600 bi-lingual teachers in Spanish-speaking areas. An English-speaking child, however, would be held back in such a school. The majority of students in many schools are Jewish, and so are the teachers. Are we supposed to bus them all over town, whether they want to be bused or not?

Last month Judge Alfred Gitelson ruled very arbitrarily that no school in Los Angeles can have a racial minority of less than 10 per cent or more than 50 per cent, after September of next year. Governor Reagan termed it "utterly ridiculous." Said the governor: "It represents a vast and dehumanizing manipulation of school population . . . it will shatter the concept of the neighborhood school . . . the courts were never meant to legislate, or to run our schools." Mayor Yorty commented: "This is a very dangerous thing. They are literally going to tear some of our cities apart." Arthur Gardner, president of the Los Angeles school board, said it would "virtually destroy the school district."

The only way the order could be carried out is by busing at least one-third of the city's 650,000 students all over the school district, which encompasses 711 square miles. The cost to the city for the first year alone would be $42 million. For that price, 4,200 additional teachers could be hired.

UNSOUND DECISIONS

For 20 years the U.S. Supreme Court has been getting away with unsound decisions, but recent appointments to the Court prom-

ise an end to some of these. Judge Gitelson's very arbitrary ruling is almost sure to be set aside in a higher court. It is in direct contradiction to the 1964 Civil Rights Act, which declared that "nothing herein shall empower any official or court of the United States to issue any order seeking to achieve racial balance."

Will parents from better neighborhoods sit idly by and let their children be bused into the worst of ghetto schools, where vice and crime and drugs run rampant, where the majority of the children are uninterested in school, where discipline has disappeared, and where students from the better areas would be unwanted, resented and disliked? Well-established parents will never let it happen. They will move out of the city first.

FREEDOM OF CHOICE

Involuntary, forced busing of children should stop because it will be evaded everywhere except in rural sections of the South, where they can't evade it. It is grossly discriminatory to enforce it only there. People should be able to live in any neighborhood they wish and can afford. If parents choose to live on welfare or spend their money on other things, the choice is up to them. Many parents will find some way to move into an area with better schools, even if it means taking an extra job. Other parents will request that their child be accepted in another school district. The request should be honored wherever possible.

Some cities, like New York, have so encouraged idleness among adults that they are already spending more on welfare than they are on the education of all the children. This is a crime against our nation's future. Let us not compound it by spending countless millions on unnecessary busing when the money should be spent on education. Massive busing to other schools is not the answer, either in the South or in the North. Agitators always like the sound of mass coercion, but it is not the way to make progress in a free society.

FOREIGN AID—THE PETERSON REPORT

Mr. McGEE. Mr. President, I think all of us should pay attention to serious studies of Government programs. But we should not necessarily be eager to accept their findings and recommendations without question. So it is that an editorial published in the Washington Post on Thursday, March 12, on the latest study of U.S. foreign aid programs—the Peterson report—serves a very good purpose. As a critique, the editorial is rather pointed. It concludes that there is not a great deal that is genuinely new about the recommendations, even if some are rather radical departures from today's situation.

I ask unanimous consent that the editorial, entitled "Foreign Aid: Saying versus Doing," be printed in the RECORD.

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

FOREIGN AID: SAYING VERSUS DOING

There is a fine old tradition in the business of reviewing foreign aid which is made all the more ironic by the fact that so many of the same people seem to keep showing up on the review panels. The fashionable thing is to criticize just about everything that is being done, in favor of new programs, new institutions, new directions—the operative word is *new*. This hallowed custom has not been slighted in the latest contributions to the literature in this field, a 48-page document drawn up by a 16-man task force headed by Rudolph A. Peterson, president of the Bank of America, and a shorter critique of the existing program by our Ambassador in Chile, Edwin M. Korry. On the other hand, it becomes necessary to add that in foreign aid, as in foreign policy, "new approaches" are never nearly so new as their advocates would have you believe. Both, the Peterson group and Mr. Korry are very rough indeed on the results and the techniques of our present aid efforts. Both pledge their support to a continuing effort to uplift the underdeveloped two-thirds of the globe. Yet, if you leave aside for the moment the organizational reshuffling and a shift in emphasis which amounts to not much more than a difference in degree, there is not a great deal that is genuinely new about the recommendations in either report.

This is not to knock the idea of regularly reviewing foreign aid; as both reports argue, the problem is evolving, and given the chronic sluggishness of large bureaucracies in reacting to change, it requires some sort of sharp prod from time to time to translate changed thinking into actual changes in programs and priorities. So there is something to be said—in the interest of moving more rapidly away from bilateral aid and toward a larger cooperative, multilateral effort—for forcing the pace by dismantling the present machinery and building new agencies and institutions directly geared to a more impersonal, apolitical collective approach. The Peterson task force sensibly stresses concentration on development lending, through a new American development bank, and heavier contributions to the World Bank's International Development Agency.

But there is something less to be said for a reorganization as radical as the one proposed by Mr. Peterson, in which the present Agency for International Development would be demolished, almost all bilaterial American aid would be ended, military aid would be split off entirely from economic aid, most overseas technical advisers would be recalled, and aid policy would be vested in some sort of White House czar, with a nine-man staff. To the extent that this is a move toward purity in economic assistance and away from political bribery, who could argue. Peeling off military aid, so as not to entangle economic development with military commitments, is also a useful step. But pledging to do away with the international pork barrel and doing it are two different things; pork has been almost as much a feature of international politics as it has of politics at home and it is hard to believe that this won't remain the case, at least to some extent, with the White House rather than the State Department pulling the strings. The result could be something of an organizational monstrosity, with development lending, technical assistance, military aid and surplus food programs all under separate roofs.

This doesn't take into account the likely reaction on the Hill; what the Executive Branch deposes on this matter of how foreign aid legislation is to be handled is very rarely the last word. Even more worrisome is the way Congress may react to the swing toward multilateralism, with the use of American money decided in concert with other international donors, either through established institutions or the consortum approach. This is the point about the alleged newness of all this; we have been moving steadily down this road in recent years, but also very slowly for the very reason that Congress, while talking a good game about burden-sharing and all the rest, is inherently reluctant to surrender any great measure of control over the use of our money for foreign aid.

So we shall see whether the Peterson report turns out to be as "fresh and exciting" as President Nixon finds it now. There is nothing very exciting about making public a blueprint for a new approach to foreign aid which recommends dismantling the present aid program, and then doing nothing more about it until next year; an orderly transition would have been difficult enough without openly inviting Congress to fall upon this year's aid appropriations with even more than its usual vengeance. Still less is there anything exciting about a proposal which encourages native congressional tendencies to scrap all foreign aid while offering as a substitute something which has not only proved unpalatable to Congress in the past but which will depend for its effectiveness upon a lot more collaboration and coordination with international donors as well as beneficiaries than we have been able to elicit up to now.

"We believe that the U.S. role in international development will be as important in the future as it has ever been in the past," the Peterson task force said. Unhappily, we won't really know until at least a year from now whether Mr. Nixon agrees.

WAR ON CRIME IS BEING LOST

Mr. BAYH. Mr. President, on Monday of this week my distinguished colleague from Indiana (Mr. HARTKE) testified before Subcommittee No. 5 of the House Judiciary Committee on behalf of legislation he has introduced to focus Federal crime fighting funds in urban areas. As a cosponsor of S. 3171, I share Senator HARTKE's concern that our crime-plagued cities receive their fair share of these Federal funds. At present, not nearly enough is being done to curb urban crime. As the distinguished senior Senator indicates in his testimony, title I of the Omnibus Crime Control and Safe Streets Act has thus far failed to fight crime in those areas where its incidence is the highest.

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

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

TESTIMONY OF SENATOR VANCE HARTKE BEFORE SUBCOMMITTEE NO. 5 OF THE HOUSE JUDICIARY COMMITTEE, MARCH 9, 1970

Mr. Chairman, the much talked about war on crime is being lost. It is being lost in our cities where last year more than 12,000 people died because of crime. It is being lost in our urban areas where in 1969, 200,000 people were hospitalized with injuries inflicted in a struggle which, in many ways, is more desperate than the one in Southeast Asia.

I find it undeniable that the existence of crime, the talk about crime, the reports of crime and perhaps most importantly, the fear of crime, have served to erode much that is basic to the quality of life in America.

Although most of us here this morning have not actually been robbed or injured or felt a gun at our neck, we are nonetheless the victims of crime. For we have been victimized by the fear of crime. That same fear that catches you when you hear footsteps behind you on the street at night, or when you see someone waiting up ahead in an alley, or when you wonder if you double-locked your door before going to bed at night.

But surely a nation such as our which treasures above all else its heritage of personal freedom cannot long allow its citizens to live in fear, behind locked doors.

The challenge of crime must be met and met soon. The question is how? This subcommittee is currently reviewing what should be one of the chief tools in the battle against lawlessness: Title I of the Omnibus Crime Control and Safe Streets Act. If used intelligently, the planning and action grants distributed to the states by the Law Enforcement Assistance Administration could serve

as invaluable instruments in the crime fight. Unfortunately, I find no persuasive evidence that this is now the case. It is my conclusion, rather, that these funds have generally been wasted in low-crime, non-urban areas where crime is not nearly the real and present danger it is in our urban areas. The cities, on the other hand, have been left to their own very limited devices to cope with a problem which daily grows in intensity.

In California, for example, the county of Tuolumne located high in the Sierra Madre mountains received $30,000 to establish a half way house for drug addicts under the authority of the local district attorney's office. The population of Tuolumne County is less than 20,000, yet it does not appear that the contemplated facility will serve any other county. Thus, a legitimate question can be raised whether the drug problem in this county merits an award of $30,000 in view of the more obvious needs of other areas. In this regard, it should be noted that as of December 31st, 1969, the City of Anaheim, California had received only $3,000, the City of Long Beach only $6,000, the City of Oakland only $18,750 and the City of San Francisco, $20,200. In short, four of California's most populous cities received less federal funding from their state agency than did the County of Tuolumne, population less than 20,000. As much as I applaud the objectives of half-way houses, I cannot believe that the expenditure of $30,000 in the Sierra Madre mountains could not be better used in the high crime areas of Long Beach or Oakland or San Francisco, California.

As you are well aware from your current investigation, the National League of Cities and the U.S. Conference of Mayors have voiced similar doubts concerning Title I's first full action year. In a report released on February 17th of this year, the NLC indicated that Title I block grant funds as presently allocated by the majority of states would not have the necessary impact vitally needed to secure improvements in the criminal justice system. The states in distributing funds entrusted to them under the block grant formula of the Safe Streets Act have failed to focus these vital resources on the most critical urban crime problems. "Instead," charges the study, "funds are being dissipated broadly across the states in many grants too small to have any significant impact to improve the criminal justice system and are being used in disproportionate amounts to support marginal improvements in low crime areas."

I know too that the mayors of New York and Philadelphia have given similar testimony to this subcommittee. Mayor Lindsay made the point that a purpose of Title I was to insure that local law enforcement authority would be spared any federal infringement. Yet, we find the situation now where those local jurisdictions with the most obvious responsibility for law enforcement, have been effectively pre-empted by the states. This clearly violates that most basic tenet of "creative federalism" which holds that those jurisdictions which have the primary responsibility for action should also have the primary decision-making authority. Under the present system state officials with oftentimes limited expertise are, as Mayor Lindsay very aptly put it, encouraged "to second-guess the professional judgment of city officials."

By November of last year, the problems associated with the implementation of this program in Indiana (of which I will have more to say later) and other states, convinced me that there were serious defects in the block grant formula as currently written.

In an attempt to cure what I considered the most obvious inadequacies of Title I, I introduced legislation in the Senate last year (S. 3171) on November 21st. Identical legislation has since been introduced in the House of Representatives by Mr. Bingham.

The Hartke-Bingham Bill would change section 306 of Title I so that no more than 50 percent of the funds appropriated by Congress, rather than the 85 percent currently provided, would go to the states as block grants. Attached to this amendment is the proviso that a State's block grant allocation will be increased by 20 percent from funds allocated at the discretion of LEAA, where it finds that the comprehensive State plan, required under the act, adequately deals with the special needs and particular problems of its major urban areas, and other areas of high crime incidence within the State.

This legislation further provides that a State's block grant will be increased by an additional 20 percent from LEAA discretionary funds where the State contributes at least 50 percent of the non-Federal share of the costs for programs of local government.

Thus, if LEAA finds that a state has "adequately" dealt with the pressing problems of its urban areas and if that state is also willing to accept at least half of the matching cost burden now placed on "units of local government," this state's block grant award will be actually larger than under the current formula. That is, a state which complies with the two provisos in this legislation will receive a 90% block grant allocation rather than the 85% currently provided.

With respect to the first proviso requiring the states to deal "adequately" with the crime problems of its urban areas, I would emphasize that it is not its purpose to weaken the effective control that the states now exert over Title I funds. Rather it is an attempt to further sensitize the states to the needs of their major urban areas. As things stand now, all too many state planning agencies have failed to make provision for the aggravated problems of those urban areas where high population density and low median income combine to breed massive lawlessness.

Similarly, the second proviso is not meant to strengthen the position of the urban areas at the expense of the states, but rather is an attempt to better recognize fiscal realities. At a time when our cities, and other units of local government, are finding it increasingly difficult to generate revenue sufficient to perform even the most basic services, the matching cost requirements of Title I place an unfair burden on our already over-extended cities. Even now many cities are finding it literally impossible to furnish matching funds under a program which is still relatively modest in scope. What, then, will be their position when Title I grows into a billion dollar program? I strongly believe that if the block grant approach to Federal assistance is to work, there must exist a partnership between not only the federal government and the states but also between the states and the units of local government. It is my belief that this partnership can best be established through a more equitable sharing of costs.

As this committee is aware, certain objections have already been raised to S. 3171. Chief among these is that "it is too soon to tell if action grant money is being misallocated by the states." Critics of the Hartke-Bingham approach contend that a program as new and complex as this must be given time to work out its defects, and that any attempt to amend at this time would be premature. I am afraid that I cannot accept this contention. All indications are that the trend of fund misallocation established during this program's first action year will not be atypical. Essential to this conclusion is my belief that the traditional rivalry between state and local governments is very much in evidence in this program. Until it is sublimated to the objective of fighting crime, I believe implementation of the program will suffer.

Interestingly enough this view is apparently shared by officials in the Justice Department. In an address before the Federal Bar Association March 10, 1969, Attorney General Mitchell urged the States to "marshall their resources to concentrate on their urban centers." Later in his address the Attorney General commented that:

"All too often, needed cooperation and help has stumbled on political rivalries and bureaucratic parochialism which divide the urban centers and the state governments. While I understand the basis for much city-state government rivalry, political parochialism must be put aside in the name of our citizens who live in our cities."

On October 20 of last year, Daniel L. Skoler, director of Law Enforcement Programs at LEAA said that the Title I program "promises to absorb billions in tax money in the coming decade," but it has yet to "produce anything in either improved law enforcement or crime control beyond paper plans and fund transfers." Among its chief deficiencies said Skoler was the failure of the States "to demonstrate a clear commitment to the problems of the large cities which account for the bulk of crime incidence."

A Justice Department memorandum sent to the states on April 5, 1969, in effect made official the doubts Attorney General Mitchell and Mr. Skoler expressed earlier. It stated that "State planning agency programs for local planning awards have assumed a greater regional emphasis than was expected. There has been considerably less direct pass-through to major local units or major metropolitan areas than had been anticipated." In short, the memorandum acknowledged that our major urban areas were not receiving an appropriate share of LEAA funds and urged the states to take into account their urban crime problems. But as can be seen from a careful examination of the allocations by the states for fiscal year 1969, most states have failed to heed this advice and LEAA is unable to enforce its will.

In Indiana the failure of the state planning agency to adequately provide for the needs of its cities is most apparent. Last year my state received $613,000 from LEAA, but as of this date less than half of those funds had even been distributed. And those funds which have been distributed have generally not gone to urban, high-crime areas. Gary, for example, an industrial city of close to 200,000, has yet to receive *any* funds from the state planning agency, although it did receive close to $20,000 under section 307(b) earmarked for riot control. These funds were received in August of 1968 and, as the committee is aware, pre-dated the establishment of the state planning agencies. The City of Evansville with a population in excess of 140,000, has received a mere $201 to fight crime since the establishment of the planning agency. The situation in other major urban areas of the state is much the same.

Since in large measure the extent of our commitment to meet the challenge of crime is measured by the funds we reserve for that task, the Hartke-Bingham legislation would also increase the authorization for this program to $800 million in fiscal year 1971, $1 billion in fiscal 1972, and $1.2 bilion in fiscal year 1973. This is an authorization of $3 billion for the period from June 30, 1970 to June 30, 1973. If this program is to be given a much-needed sense of continuity, I believe such a three year authorization is essential, coupled with funds sufficient to get the job done. I would add, however, that my support for quantum increases in the authorizations for LEAA is preconditioned on necessary changes being effected in the fund distribution formula. Certainly, I would be unable to support massive increases in funding to the states without some better guarantee that these funds will be wisely used. In my estimation the Hartke-Bingham legislation would furnish this guarantee.

By way of conclusion, Mr. Chairman, I would suggest that the fear of crime which I spoke of earlier will not be diminished until real progress is made to check crime in the cities. It must be emphasized that although non-urban crime is on the rise, and cannot be ignored, it still represents only one-twelfth of the overall incidence of crime in this country. If the war against crime is to be won it must be won in our cities. If real substantial progress is made there, I am confident that all areas of the country, both urban and non-urban, will profit.

ISRAEL TRIES TO EASE ARAB REFUGEE PROBLEM

Mr. WILLIAMS of New Jersey. Mr. President, too often, news reports bring to our attention only the bad news in the world. Certainly this has been the case with reports out of the Middle East. However, in the Wall Street Journal of March 6, Ray Vicker brings to our attention a series of progressive projects being undertaken by Israel to ease the refugee problem in occupied territories.

In order that we may all appreciate the positive steps being taken in that wartorn area, I ask unanimous consent that Mr. Vicker's article be printed in the RECORD.

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

MIDEAST INDIGENTS: ISRAEL TRIES TO EASE THE REFUGEE PROBLEM IN OCCUPIED ARAB LANDS—WORK AND EDUCATION PROJECTS BEGUN IN GAZA AND SINAI—"SELF-HELP" IS STRESSED—BITTER ISSUE IMPEDES PACE

(By Ray Vicker)

GAZA, GAZA STRIP.—Some 1,200 students from this Israeli-occupied Arab area, many of them from Arab refugee families, are enrolling in universities in Cairo and Alexandria. The Israeli government is paying for their schooling in Egypt.

Israel recently persuaded 35 Palestinian agronomists working elsewhere in the Arab world to come to the West Bank of Jordan, which also is occupied by Israel. There the agronomists will try to stimulate farm production. Israel is subsidizing their salaries.

Even as the Arab-Israeli war continues to heat up dangerously, Israel is coming to grips with one of the most explosive problems in the Middle East—the Arab refugees. The situation had existed since Israel proclaimed its independence in 1948, and bitterness has accumulated in the succeeding 22 years. In the six-day war of June 1967 Israel took over 26,000 square miles of territory, and with it one million Arabs, nearly 400,000 of them refugees.

Both Israel and the Arab nations have declined to take full responsibility for the refugees, with Israel putting off settlement of long-standing compensation claims and the Arab governments refusing to assimilate the indigents. Now Israel is starting to move, by setting up rehabilitation and assistance programs that include expanded education and vocational training opportunities and by simply providing work for the refugees.

"WE WON'T SHIRK"

"As long as we administer the Arab areas we must see to the health, education and welfare of the Arabs," says Golda Meir, Israel's prime minister. "This is a responsibility that we will not shirk."

It won't be an easy task, and Israeli officials acknowledge that they have only made a beginning. But observers here agree that the outcome of Israel's efforts could have an important bearing on whether or not peace comes to the Middle East in the foreseeable future.

The hitherto aloof attitude of both Israel and the Arab nations has tended to bind the refugees together as a class. Their bitterness further heightens Middle East tensions, stimulates Palestinian Arab nationalism and provides a manpower reservoir for Arab guerrilla groups like Al Fatah.

Israel clearly envisages ultimate solution of the refugee problem as possible only in a negotiated peace in the area. For instance, what about the Arabs with claims against Israel for homes and land lost in the 1948 war? "We are prepared to pay compensation for just claims, within the framework of a broad peace plan," says Prime Minister Meir. "But we are not going to hand that compensation to an Arab government for distribution as it sees fit."

Israeli officials say that 25,000 Arabs from the occupied territories, many of them refugees, now have jobs in Israel, and another 5,000 may get jobs shortly. Each workday morning, a bus picks up dozens of Arab men and women on the road near Gaza town for transportation to their jobs at a citrus canning plant in Ashkelon, Israel. Another bus takes other workers to a textile plant in Beersheba.

Unemployment still totals about 10,000 in the Gaza Strip. But the figure a year ago was 20,000. And the downward trend should continue. On the northern edge of the Strip, bulldozers have been leveling sand dune sites for factories in a new industrial center. Bids to build plants have been received from Israeli companies. It is hoped that foreign money will come in,too.

A BREAKTHROUGH

"We're experiencing a real breakthrough," says Harold Silcox, CARE representative here. He oversees a program that is providing nearly $8 million worth of U.S. food aid this year. At the ministry of social welfare in Jerusalem, Josef Ben-Or, deputy director general, says that 26 schools, two dispensaries and four hospitals recently have been completed in the Gaza Strip and in El Arish, the neighboring Sinai city on the Mediterranean. Roads, wells and canals also are being built.

Israeli officials say they are spending $10 million in Gaza ana Sinai developments this year. However, the Israeli effort gets a substantial boost from U.S. oragnizations. Peter Cassimatis, field representative for Community Development Foundation, a nonprofit American agency, says that CDF has 28 projects in the region.

At Beit-Lehia there is a new road nearly a mile long that stretches from the village to an orange grove that supports the local economy. At El Arish, a cooperative fish market is being built with local labor.

"We encourage the local people to launch these projects on a self-help basis," says Mr. Cassimatis. "They select the project that seems most necessary, a new school, a road or whatever they want. Technical assistance comes from the Israeli department of public works. We pay villagers for their labor, and the village or the people involved get the completed project."

Other agencies involved in projects here or in the West Bank include the Lutheran World Service, the Catholics' Caritas, a Mennonite group, the Swedish Organization for Independent Relief and German Community Development. The United Nations Relief and Welfare Agency has food aid programs here.

The Israelis insist that projects be designed to help the refugees help themselves. Mere distribution of handouts is opposed. "These people do want to improve their conditions," says Mr. Cassimatis. "They only want a chance."

There is some progress on the education front, too. The Gaza vocational school, for instance, is a set of barracks-like buildings clustered about towering fig trees. Built years ago by the United Arab Republic, it now houses 40 students from the locality. "Next month we will double the number," says Mohammed Kamal Sousi, director.

Haim Segev, the big, bluff Israeli who heads the Gaza Labor Exchange, says that six new vocational schools now are functioning in the Strip, supplementing the long-established school run by the UN. "Before the war there were about 100 students attending the government vocational school here," says Mr. Segev. "Now we have 1,200, and next month we will have 2,000." Auto mechanics, welding, carpentry and brick-laying are among the trades studied by the men; the women take up such work as dress-making and home economics.

Israeli officials say they are striving to integrate the refugees with the rest of the Arab population and not treat them as a class apart. This isn't easily done, however. The refugees predominate among the poorer Arabs. In the Gaza Strip, the eight refugee camps clustered in shabby huts contain nearly 180,000 persons, more than half the Strip's total population of 355,000. Anti-Israel bitterness is deep here, and there are many guerrillas among the refugees.

The Arab guerrilla organizations have been trying without notable success to discourage Arab-Israeli contacts in the occupied areas. They have tossed hand grenades at buses taking Arabs to their jobs and warned the refugees to shun contact with the Israelis.

The guerrilla hostility poses problems for Arab leaders here who are working with the Israelis. "I am only trying to help my people," says Mohammed Suliman El-Azizeh, Arab mayor of Dir-El-Balah, a village in the Gaza Strip. He is cooperating with Israeli authorities in construction of a plant to alleviate poverty in the village. "If Israel offers work to my people, should I turn my back?" this official asks. "My people must eat."

In the Gaza Strip, it soon becomes apparent that the Israelis have left most of the local administration in Arab hands. Of 3,000 bureaucrats and administrative officials in the region, only 150 are Israelis or outsiders.

"The psychological value of this Arab-Jewish cooperation is very important," says Mr. Ben-Or, the social welfare official in Jerusalem. "We are proving that Arabs and Jews can indeed work together."

At times the cooperation extends to high levels. At a recent cocktail party in Jersusalem, M. A. Kurtz, director general of Israel's ministry of social welfare, was observed discussing the refugees with a key social welfare official from the Gaza Strip—an Arab still holding the job he had for years under the Egyptian government in the strip.

Last month 11 Arab social welfare officials from the Gaza Strip met in Bethlehem with 29 compatriots from the West Bank, in a seminar conducted by Israeli social welfare officials from Hebrew University in Jerusalem. The seminar focused on methods of coordinating activities in behalf of poverty-stricken Arabs in the occupied regions.

The Israelis have decided that if the tension and antagonism is to be dissipated in the refugee camps, lines of communication must be kept open with the Arab world. So Israel is encouraging such contacts, though militant Israelis warn that this provides Arab guerrillas with an opportunity to subvert Israeli-controlled Arabs.

Family visits are encouraged. "Last month we had 16,000 visitors from Arab countries, people allowed to stay up to a month with relatives," says Mr. Ben-Or. More than 1,000 Arabs from Hebron, Gaza and other cities under Israeli rule made pilgrimages to Mecca this year, passing across the Allenby Bridge into Jordan and then proceeding to Saudi Arabia.

Israel's efforts, of course, aren't being greeted with cheers by the Arabs in the occupied regions. For most of them there is only

one answer to the situation: Israel's withdrawal. Alu Mad, proprietor of the Lido restaurant near the Dead Sea, offers this comment: "Any Arab who tells you he likes the occupation is a liar."

SGT. MATTHEW LEONARD, MEDAL OF HONOR WINNER

Mr. SPARKMAN. Mr. President, the people of Birmingham and indeed the State of Alabama and the Nation paid tribute a few days ago to Sgt. Matthew Leonard, of Birmingham.

Sergeant Leonard was killed in action in Vietnam 3 years ago. He was awarded the Medal of Honor. Over 800 people gathered in Birmingham on February 28 to hold memorial services for Sergeant Leonard. Among these was Army Chief of Staff, Gen. William C. Westmoreland. General Westmoreland noted in the services that Sergeant Leonard was among an elite group of 3,275 men, who since the Civil War, have received the Medal of Honor. He noted that this was quite a distinction in view of the fact that 32 million Americans have served in uniform since that time.

I am proud to join with those who honor Sergeant Leonard.

The Birmingham News of March 1, 1970, carried a moving account of the memorial services. I ask unanimous consent that this account be printed in the RECORD at this point.

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

STORY OF HERO UNFOLDS AGAIN IN CITY TRIBUTE

(By Charles Nix)

The jungle of Vietnam came alive inside the brick walls of Graymont Armory as the saga of a hero unfolded and a widow cried.

Sgt. Matthew Leonard was gone. He was dead.

And within those gray walls the powerful, whole bass notes of tubas, the brassy curtness of trumpets and the flutter of a flute had new meaning in the National Anthem.

A four-star general, Army Chief of Staff William C. Westmoreland, stood before nearly 800 persons and expressed awe at the bravery of the Birmingham man whose heroic death earned him the Medal of Honor.

For Sgt. Maj. Henry Cobb the anguish that comes with the loss of a friend has been softened with the passing of time, but his gratitude for his life was strong.

A teacher, Mrs. Bessie Estell, remembered a student with ambitions, "with dreams, with aspirations" and a personality that transcended his average academic rating.

They were among the speakers paying tribute to the soldier who, dying, propped his bullet-riddled body against a tree and continued to fight.

Each of the speakers told the audience they must take up the torch.

"Sacrifice unobserved seems pointless. But sacrifice unremembered surely must rank with profound sin," said CWO Chester Jezierski, who presented a portrait of Leonard to Mayor George Seibels on behalf of the Society of the 1st Division.

"When I came home to Alabama, I related to Mrs. Leonard that it was my sincere hope that should this nation see fit to award the Medal of Honor, that the city of Birmingham would conduct a memorial in his honor. Today, you have made that wish a reality," said Cobb.

The speakers several times said America owes Leonard much, but Sgt. Cobb owed his very life.

"I can't believe we got out to tell you the truth," Cobb said.

Leonard, "my close and personal friend," and his platoon of 43 men were taking the brunt of an enemy attack. Cobb started out to help with a six-man machine gun crew. He was the only one that made it.

When the fight that began at 10 a.m. and stopped at sundown, there were six men able to fire a weapon.

They could almost see the enemy's eyeballs when a burst of fire cut Cobb and a machine gunner down. Cobb was hit in the chest and throat by grenade fragments, a burst of machinegun fire hit him in the back and he still carries a small-arms round in his back from the encounter.

He said Leonard was the type that kept people in high spirits and could cause people to "follow him to the gates of hell."

That trait was already evident in his school days. "The pleasant relationship and rapport with his teachers and the unusual popularity with the students made for him an uncommon position of leadership," Mrs. Estell said.

"His teachers described his character traits as being loyal, ambitious, manly, trustworthy, conscientious, polite, alert and cooperative. These indeed must have been the foundation for the making of a brave soldier," she said.

On his last trip home, he discussed the future with Mrs. Estell. "The welfare of his family seemed to have been uppermost in his mind.

"Thus, he distinguished himself as a student, as a citizen, as a father and indeed as a soldier.

"And so, as we honor him today, there is a deep sense of pride, tempered with reality, that as teachers, somewhere along the way, each of us played a small role in the drama that was his life.

"Ours is the unfinished task he so nobly advanced," she said.

Westmoreland said, "In the course of human events, some few risk their lives to help others. Still fewer give their lives to help others. But all stand in awe and reverence before the man who sacrifices his life in the performance that is clearly 'above and beyond the call of duty'."

He said Leonard was among an elite group of 3,275 men, who since the Civil War, among 32 million men who have served in uniform, who have received the Medal of Honor.

"They have little in common, except uncommon gallantry," he said.

"As we remember Matt Leonard on this occasion, three years after the day he gave all any man could ever give, let us resolve that our remembrance of him and what he did for his fellow men shall be eternal," Westmoreland said.

A PERSONAL "GREEN THUMB" PROJECT

Mr. WILLIAMS of New Jersey. Mr. President, the national Green Thumb program funded through the Office of Economic Opportunity has won widespread admiration from Members of Congress and many others who are aware of its two great purposes.

First, it helps hearty older Americans by providing modest compensation for such tasks as beautifying parks and restoring historical sites.

Second, it helps communities and States by providing talented and hard-working manpower for these projects.

The Green Thumbers and the Farmers Union deserve the thanks of the Nation for making this program work so well.

Recently, I encountered another example of Green Thumb activity. It is not associated in any way with the national program, but it does involve the enthusiasm and the hard work of the elderly—actually, just one 66-year-old man who has devised a unique way of encouraging others to beautify their surroundings.

An article published recently in the Elizabeth, N.J., Daily Journal described this project and its founder, Mr. Maurice M. Freedman. I ask unanimous consent that it be printed in the RECORD as a fine example that could be emulated elsewhere.

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

GROWER OFFERS TO GIVE AWAY CELLAR ORCHARD

So, you think you have a "green thumb." Chances are you can't compare with Maurice M. Freedman.

The 66-year-old Roselle retiree has 1,500 to 2,000 young fruit trees in the cellar of his home at 337 W. Third Ave. which he has literally cultivated from seedlings.

In fact, the seeds were removed from the very fruit that he ate during a two-year period from 1966–68 while he was laid up with a series of spinal operations.

Freedman received a disability retirement in 1966 from his position as a security guard at the Menlo Park Shopping Center in Edison.

During the three months he spent in a hospital, Freedman began saving seeds from the apples, oranges, grapefruit, pears and pits from peaches and plums.

"You name the fruit and I've saved its seeds," Freedman said.

But Freedman didn't stop there.

He also saved the empty cans from the fruit juices he drank during this period for use as "pots" and the skins from the fruit to mix with his backyard dirt for mulch. Incidentally, he "cooked" the dirt to remove any worms and other impurities.

As the plants grew, he visited supermarkets where he obtained grape boxes for use as boxes for his trees. Luckily, he came across some priedieus which were discarded by the Salvation Army and he converted to hold the larger boxes for his trees.

Once again, he is being faced with the need to transplant the larger trees which are now about one year old and becoming overcrowded.

So, Freedman has come up with a plan to give away the trees to various church groups and charities "if they will provide their own pots."

Freedman said the organizations could in turn sell the trees and thus raise funds for their work.

Freedman, who also is active as vice president of the Senior Citizens of Roselle-Roselle Park, said he will give the plants away to anyone who provides his own pots.

His celler, he reports, "is such a beautiful place with all those plants that I spend about four hours down there each morning—watering and caring for them."

Although Freedman spends most of his time around the house, his wife "still goes to business," he said. She is employed at a Shop-Rite supermarket in Elizabeth.

CONCLUSION OF MORNING BUSINESS

The VICE PRESIDENT. Is there further morning business? If not, morning business is concluded.

VOTING RIGHTS ACT AMENDMENTS OF 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be laid before the Senate.

The VICE PRESIDENT. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 4249) to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices.

The VICE PRESIDENT. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

The Senate resumed the consideration of the bill.

The VICE PRESIDENT. The question is on agreeing to the amendment of the Senator from Alabama.

CALL OF THE ROLL

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

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

[No. 102 Leg.]

Allen	Ervin	Spong
Baker	Gore	Stennis
Byrd, W. Va.	Griffin	Talmadge
Cannon	Hart	Thurmond
Cotton	Jackson	Williams, Del.
Dole	Mansfield	

Mr. KENNEDY. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUYE), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Utah (Mr. MOSS) are absent on official business.

I also announce that the Senator from Connecticut (Mr. DODD), the Senator from North Carolina (Mr. JORDAN), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Rhode Island (Mr. PASTORE), the Senator from Georgia (Mr. RUSSELL), the Senator from Texas (Mr. YARBOROUGH), and the Senator from Iowa (Mr. HUGHES) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Nebraska (Mr. HRUSKA), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Florida (Mr. GURNEY) is absent because of illness in his family.

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

The PRESIDING OFFICER (Mr. BYRD of West Virginia). A quorum is not present.

Mr. MANSFIELD. Mr. President, I move that the Sergeant at Arms be instructed to request the presence of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion (putting the question).

The motion is agreed to, and the Sergeant at Arms is so instructed to request the attendance of absent Senators.

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

Aiken	Goldwater	Muskie
Allott	Goodell	Nelson
Anderson	Hansen	Packwood
Bayh	Harris	Pearson
Bennett	Hartke	Pell
Bible	Hatfield	Percy
Boggs	Holland	Prouty
Brooke	Hollings	Proxmire
Burdick	Javits	Randolph
Byrd, Va.	Jordan, Idaho	Ribicoff
Case	Kennedy	Saxbe
Cook	Long	Schweiker
Cooper	Magnuson	Scott
Curtis	Mathias	Smith, Maine
Dominick	McGee	Sparkman
Eagleton	McGovern	Symington
Eastland	McIntyre	Tydings
Ellender	Metcalf	Williams, N.J.
Fannin	Miller	Young, N. Dak.
Fong	Mondale	Young, Ohio
Fulbright	Murphy	

The PRESIDING OFFICER (Mr. KENNEDY). A quorum is present.

Mr. ALLEN. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The amendment of the Senator from Alabama.

Mr. ALLEN. Mr. President, I ask that the clerk state the amendment again.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

Amend the Scott-Hart Amendment (No. 544) by striking all of section 3 under title I—Voting Rights, and inserting a new section 3 as follows:

"Section 3. (a) Section 4 of the Voting Rights Act of 1965 (79 Stat. 438; 42 U.S.C. 1973 et seq) is amended by adding at the end thereof the following new section '(f) section 4 of this Act shall expire and become inoperative on August 7, 1975.'

"(b) Section 5 of the Voting Rights Act of 1965 (79 Stat. 438, 42 U.S.C. 1973 et seq.) is amended by adding at the end thereof the following new sentence: 'Section 5 of this Act shall expire and become inoperative on August 7, 1975'."

Mr. ALLEN. Mr. President, I requested the majority leader to call for a live quorum because I felt that the consideration of this amendment was important enough to seek to increase the attendance of Senators at the session of the Senate. I am delighted to see that a number of Senators—more than is the usual case—are in the Chamber at this time.

Mr. President, the junior Senator from Alabama has been unwilling to limit debate on the amendments he has offered to the pending bill. The junior Senator from Alabama feels that on matters that are so basic, so inherent, so fundamental, and so important to the people of Alabama and the Nation, there should be no limitation on debate. The Senator from Alabama does not feel that any particular significance is to be attached to his amendments, but he does feel that the people of Alabama and the Nation expect that there will be a full and complete discussion of these issues.

Yes, limit debate on such matters as a military procurement bill for the appropriation of billions of dollars. Yes, limit debate on a foreign aid bill for the appropriation of billions of dollars. There, only money is involved. But in the bill under discussion, the good name of the people of Alabama and the South is at stake.

This is a bill that holds the people of Alabama and the people of the South up to ridicule, up to vilification, and up to shame, because, under the terms of the Voting Rights Act of 1965 and under the terms of the Scott-Hart amendment thereto, by act of Congress, the people of Alabama and the South are declared to be guilty of discrimination against their own citizens. They are subjected to the most humiliating requirements. They are subjected to having Federal registrars invade their States and to having Federal election observers and poll watchers swarm over the State like locusts. They are subjected to the humiliation of having to come to Washington to seek approval of the acts of their legislatures, of their town councils, of their county governing bodies. They are required to suspend the use of literacy tests in voter registration; whereas, outside the South, literacy tests are permitted.

Yes, discussion is valuable. It contributes much to the consideration of any measure before the Senate. Much good, in the judgment of the junior Senator from Alabama, has come from lengthy but germane discussion of the pending measure. Four amendments have been adopted to the pending measure. One amendment, offered by the distinguished senior Senator from Kentucky, amended the trigger provision of the Voting Rights Act, on which I shall make comment later. Another amendment was the amendment offered by the junior Senator from Alabama which put into the prohibition against a State, preventing it from having a requirement that would not allow 18-year-olds to vote, the phrase "except as required by the Constitution," which was inserted into the language of that prohibition. Under that, unless this statute is held to be constitutional, it could not apply. Of course, in the humble opinion of the junior Senator from Alabama, this statute, or this legislation would be held to be unconstitutional because it would take a constitutional amendment to change the required voting age throughout the Nation, because the power to set the voting age reposes under the Constitution in the respective States.

Then, too, two amendments were adopted that would get the bill that came over from the House—that is the basic bill now being considered by the Senate—into conformity with the Scott-Hart substitute, except for the matter of the treatment of the problem of voting rights.

Some other amendments may be adopted. I hope so. I hope amendments will be adopted that would change the Scott-Hart substitute beyond recognition, because it is a vicious bill, a bill that should not be adopted by the Senate.

Thus, discussion is helpful. Had there been no discussion of this measure, the amendment offered by the Senator from Kentucky, which is a vast improvement on the bill, would not have been agreed upon, and the three amendments offered

by the junior Senator from Alabama would not have been agreed upon.

Yes, there has been some lengthy discussion of the measure, but I submit to Members of the Senate that all discussion has been germane, that all discussion has hit at the issues involved, that all discussion has been with respect to the provisions of the bill and the views of the people of Alabama with respect to the measures, speaking through the junior Senator from Alabama.

Let me call attention, Mr. President, to the fact that when all amendments have been considered to the Scott-Hart substitute, and that substitute has been adopted, it will not be subject to amendment. The Senate will be required to take it or leave it just exactly as it is then worded.

So we have come to the point where we must act. We must amend the vicious Scott-Hart substitute or we must accept it as it is.

Several days ago, in the course of debate, the Senator from Indiana (Mr. BAYH) spoke, and I have seen in the press references to the Scott-Hart substitute as being a compromise bill. Well, I asked the distinguished Senator from Indiana: A compromise as between what? What did these gentlemen who come forward with this so-called compromise bill compromise?

To compromise anything, you have to have differing views.

Mr. ERVIN. Mr. President, will the Senator from Alabama yield at that point?

The PRESIDING OFFICER (Mr. HOLLINGS). Does the Senator from Alabama yield to the Senator from North Carolina?

Mr. ALLEN. I am delighted to yield to the Senator from North Carolina.

Mr. ERVIN. I would say it is a compromise because it has certainly compromised the Constitution out of all recognition.

Mr. ALLEN. I agree with the distinguished Senator from North Carolina on that point.

This was a different type of compromise that the junior Senator from Alabama had in mind. It would be an agreement between differing views that results in a common bill, that is a result of give and take as between two differing sides. So that the junior Senator from Alabama was unable and is unable to discern any difference in the political philosophies of the Senators supporting the so-called compromise plan, because he notes from the report of—actually a majority of the members of the Judiciary Committee—and I want to comment on that, that while the individual members had to send in a report, ordinarily the committee makes such report. But just look at some of the distinguished Senators who signed the report. I fail to see and difference in their philosophy and just wonder what the compromise was that was agreed upon.

I see here the name of the distinguished Senator from Indiana (Mr. BAYH), the distinguished Senator from North Dakota (Mr. BURDICK), the eminent and able junior Senator from Kentucky (Mr. COOK), the eminent and able and distinguished senior Senator from Michigan (Mr. HART), the able and distinguished Senator from Massachusetts (Mr. KENNEDY), the able junior Senator from Maryland (Mr. MATHIAS), the able Republican leader (Mr. SCOTT), and the able Senator from Maryland (Mr. TYDINGS).

These gentlemen, along with two others—among the 10 who signed it—there were two others whose names I did not mention with respect to whose philosophies I am not so aware as I am of the eight Senators whose names I did call—these gentlemen are all of one mind with respect to this issue.

To call this a compromise bill is certainly an unusual choice of words.

Now, Mr. President, I suggest that I was going to comment on why, rather than having a committee report, with respect to this bill here in the Senate, that the individual Members came in with a lengthy report, a copy of which I hold in my hand, indicating their support of the bill and the fact that favorable consideration should be given to the bill; but the fact of the matter is that the bill did not have the opportunity for a real study before the Judiciary Committee. As a matter of fact, it looked for a long time as though the proponents of the bill—many times I have used the word "perpetrators" of the bill instead of proponents, because I feel that is a proper word—that the proponents of the bill for a while stopped the bill when it came over from the House from even going to a Senate committee. And they objected to the bill going to a committee. It was only when the able chairman of that committee, the distinguished Senator from Mississippi (Mr. EASTLAND) agreed to report the bill out by March 1 that the proponents of the bill were even willing for this important bill to go to the Judiciary Committee for consideration.

So, they held the bill up until that stipulation was agreed to. It was all in the newspapers. There was nothing confidential about it. I am sure that all Senators involved were proud of their part in the procedure that required the chairman to enter into an agreement that he would report the bill out by the first of March.

The committee never had an opportunity to go into a complete investigation and study of the bill. And the chairman, true to his promise, reported the bill, I believe, on the last day of February without recommendation, because the committee had not had an opportunity to consider the bill fully. Therefore, we have no Senate committee report. There is no Senate committee report because the committee was not allowed to consider the bill in the depth that it is supposed to be considered.

So, we do not have a recommendation of the Senate committee on this bill, the need for the bill, or the reason for the bill. We do not have the benefit of any analysis. We do have—and I think this is passing strange—a committee report that has been on the desk on each Senator. And it has been there for the last few days. It is a report of the House committee at the time the bill was reported by the House committee to the full House. But we do not have the benefit of a Senate Judiciary Committee report.

A bill of this magnitude, a bill which discriminates against my home State and the people of the South, was never given the opportunity to be considered in the Senate Judiciary Committee.

I spoke of my State and the other States of the South. The Senator from North Carolina, the eminent constitutional authority of the Senate, and of the entire country for that matter, was pointing out several days ago that a State is not just the State government, the political entity of the State. It is not just the territory within the State's boundaries. It is the people of that State.

So all of these things that are done to the Southern States, are done to the people of the Southern States. And our people resent the implications of the bill. They resent the discrimination provided by the bill. They resent the humiliation, the vilification that the bill and the present act heaps upon them. Speaking for them and for myself, I resent the implications of the bill.

Suggestions have been made that this debate is holding up the consideration of some of the President's appointees to high office, and that the debate should quickly be brought to a close so as not to endanger the confirmation of some of these appointees.

The junior Senator from Alabama rejects the theory that debate should end on an important matter of this sort just because of some supposed effect that it might have on another proceeding to be entered into the future. All issues, in the judgment of the junior Senator from Alabama, should be carefully considered as they come up. Each issue should be considered on its own merits or demerits, and further discussion, if necessary, to point out the defects of the pending legislation, should not be desisted from because of any possible effect that it might have on other action by the Senate.

If the debate should end, would it change the votes of these gentlemen who are proposing the Scott-Hart substitute? Would the cessation of discussion cause any Senators to change their position with respect to any other matter? Are not all Senators willing to consider each question which comes before the Senate on its merits or demerits?

In the judgment of the junior Senator from Alabama, we are going to go from a scant discussion of this bill into a full discussion of the next matter to come before the U.S. Senate. And that discussion is going to be much longer and much fuller in the judgment of the junior Senator from Alabama than the discussion that has taken place with respect to this bill.

The junior Senator from Alabama feels that this measure should be fully discussed, that it should not be agreed to just to get on to still another discussion. If we are going to have a discussion, why not just continue to discuss this?

So, it seems to the junior Senator from Alabama that nothing is to be gained from an end to legitimate discussion. The remarks of the junior Senator from Alabama are going to continue to be with respect to this bill and its evils. And when he gets to the point where he cannot discuss the bill on its merits or demerits, he will be willing to turn the floor over to someone else for, hopefully, a continuation of the remarks.

Mr. President, let us consider for a moment the parliamentary status of the pending legislation. The pending bill is H.R. 4249, the Voting Rights Act. It comes to the Senate after having passed the House. It is the so-called administration plan. It is called "administration" because the present national administration headed by President Nixon suggested the terms of H.R. 4249. It provides for a national law with respect to the protection of the voting rights of all the citizens of this country. In that respect it is a great improvement over, or it is much to be preferred over, the Scott-Hart substitute. It has provisions also, as does the Scott-Hart substitute, about the residence requirement in the respective States for people who vote or seek to vote in presidential elections. It also has the 18-year-old voting provision, as does the Scott-Hart substitute.

The only difference in the bill is the manner and method of treatment of the protection of the voting rights of the people of the Nation, the administration bill having a national application and the Scott-Hart substitute applicable, as it is, to punitive provisions applicable automatically in the seven Southern States only. So when the amending process as to the Scott-Hart substitute has ended and the Scott-Hart substitute is adopted by the Senate—if it is, and I hope it is not—that will close off all amendments either to it or to the basic bill, H.R. 4249, because at that time the Scott-Hart substitute will have supplanted the House bill, the President's plan.

This thought occurs to me. We should be hearing from the President with respect to this important matter. He should reiterate his support of the so-called administration bill. He spoke of his desire to bring us together. Well, he is not bringing us together when he allows such a measure as the Scott-Hart substitute to be adopted. That certainly does not bring us together and it discriminates against the South, without the President saying something about it.

The distinguished Senator from Pennsylvania, the Republican leader—and I assume by virtue of that position, the President's floor leader in the Senate—on two separate occasions has brought into this Chamber letters, which he described as being from the administration, with respect to legislation involving issues regarding Federal public school desegregation policy, and with respect to the Whitten amendments to the HEW appropriation bill, which provided, as the bill came to us from the House, as it came to us from the subcommittee in the Senate, and as it came to us from the full committee in the Senate, that no portion of the funds appropriated by that act should be used to force busing, to force the closing of any school, or to force any child to go to any school against the wishes of his parent. The Senator from Pennsylvania brought in a letter from the administration—I never saw the letter; he spoke of it as being from the administration—endorsing an amendment which he added or sought to add, and which the Senate did add to the HEW bill.

He added the phrase "except as required by the Constitution." That is the very same language that the Senate added with respect to 18-year-olds voting. So by putting in that phrase, HEW was allowed to continue with its double standard of desegregation of the public schools as between North and South because HEW is taking the position that there is nothing wrong with de facto segregation and that these provisions of the Whitten amendment protect de facto segregation but do not protect de jure segregation, so called, the type that is said to apply or that formerly applied in the Southern States.

So the distinguished Senator from Pennsylvania brought in that letter from the administration saying, "We favor your amendment."

Then, the Stennis amendment was laid before the Senate. That amendment provided for uniformity throughout the country in the application of Federal public school desegregation policy. To the great credit of the Senate, it was passed overwhelmingly.

During the course of the consideration of the Stennis amendment here in the Senate, the distinguished Senator from Pennsylvania brought in a letter, again from the administration, saying that the administration approved an amendment which the Senator from Pennsylvania (Mr. SCOTT) sought to attach to the Stennis amendment. That amendment, in effect, sought to freeze de facto segregation into the statutory law of this country by saying there should be uniformity in the application of Federal desegregation policies in those areas of the country where segregation had been ruled to be unconstitutional. Well, the only place in which segregation had been ruled to be unconstitutional was in the South, because they claim we have de jure segregation.

It said that busing should not be used—I am referring to the Scott amendment to the Stennis amendment—for the purpose of overcoming racial imbalance.

Senators well knew that the term "racial imbalance" has been construed to mean de facto segregation. So the effect of that section of the Scott amendment was to say that there should be no busing to overcome de facto segregation, thereby freezing de facto segregation into the Northern States.

I wonder what the black leadership of this country thought about the distinguished and able and eminent Republican leader seeking, by this amendment, to freeze de facto segregation into the statutory law of our Nation.

Is desegregation of the public schools something to be applied only in the South? The Stennis amendment says, "Not so. Apply the same policy in the South as in the North, and vice versa." The Stennis amendment called for uniformity of Federal policy. The distinguished Senator from Pennsylvania, the Republican leader, did not favor this type of uniformity, and apparently he does not favor uniformity now in the matter of voting rights of people throughout the country.

Yes, the Scott amendment is the amendment to the administration plan, and I wonder if the distinguished Senator from Pennsylvania is going to bring in a letter, today, or tomorrow, or next week, or next month, or whenever this bill is voted on, explaining the administration's position with respect to his pending substitute. Yes, it is mighty fine to bring in a letter from the President when he supports your position. Well, let us have that same letter come into the Senate and be inserted in the RECORD to advise us of the administration's position.

Come to think of it, Mr. President, the President has been somewhat silent on this issue while it has been pending in the Congress. The Attorney General appeared before the House committee and recommended the plan that we are now working on, H.R. 4249, but we have not had much comment out of the administration since that time.

I assume the administration's policy has not changed. I would be interested in seeing, though, a letter from the administration—and I wish the distinguished Senator from Pennsylvania had seen fit to attend this session of the Senate so that I might call on him to bring in a letter from the administration—advising us of his position with respect to the Scott-Hart substitute. I believe the Senate could profit by that guidance. If he gave us the benefit of the President's views, or the administration's views—which, supposedly, is synonymous with the President's—on two important issues of a similar nature, why cannot he furnish us his views with respect to this legislation?

I think Senators would be interested in hearing from the President on this score.

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

Mr. ALLEN. Yes; I am delighted to yield to the distinguished Senator from North Carolina.

Mr. ERVIN. Does the Senator from Alabama think he can infer the President's position from the course which the Republican leader in the Senate has taken?

Mr. ALLEN. In answer to the question of the Senator from North Carolina, I would have to say no, because it would be very difficult to judge the President's position by the actions of the distinguished Senator from Pennsylvania. But I would be interested in seeing that letter, if one could be obtained, and I feel the junior Senator from Alabama might be able to discuss this matter long enough for the distinguished Senator from Pennsylvania to communicate with the Presi-

dent and get the benefit of his views with respect to the pending legislation.

I would like to see the membership of the distinguished Senators on the opposite side of the aisle stand by the position that has been said to be the administration's position. I believe we could get a bill that it is in keeping with what is said to be the President's position, and that is H.R. 4249. I would like some reassurances as to the President's position in this regard. I believe there are some 43 Members from across the aisle, and if we could get those 43 in favor of the President's plan, I do not believe we would have any difficulty getting eight from this side of the aisle to go along, and possibly as many as 16, 18, or 20, if we would just get a little help from the party of the President. So we need some help from the President in this regard, and we are here fighting his battle.

It seems a little strange for the junior Senator from Alabama, who I assume is a Democrat of sorts—I am an Alabama Democrat; I do not claim to be much of a national Democrat, but I am an Alabama Democrat—to be here fighting the President's battle, and I wish he would rally some of his troops over on the other side.

I know that the distinguished Senator from Kentucky, who does me the honor of sitting through some of my discussions here, wants to follow his President. If he will just do that, and get his 42 colleagues on the other side of the aisle together, we will carry this battle for the President. We will strike down this vicious Scott-Hart substitute, and we will go along with the President's plan. If the President's plan is agreed to, or if the Scott-Hart substitute is defeated so that the President's plan then may come up for a vote, I assure my distinguished friend from Kentucky, who is occupying the role of the minority leader at this time, that the vote of the junior Senator from Alabama will be in favor of the President's plan. I am ready to vote right now on the President's plan, and vote affirmatively for it.

So the position of the junior Senator from Alabama is this: Any plan with regard to voting rights that the Senate is willing to vote affecting equally the entire country, the junior Senator from Alabama will support; but he is not going to support a plan that applies the punitive and discriminatory provisions of his act against the South and does not apply them against the North.

What has become of the demand for uniformity that we heard so much about during the argument on the Stennis amendment? What has happened to that? Why are we for uniformity there, and not for uniformity in voting rights matters? Possibly it is because the distinguished Senators from sections outside the South are becoming a little bit more aware of some of the problems that we have in our section of the country with respect to schools, and are willing to go along with some degree of uniformity in that area, while in the matter of voting rights they insist on applying one standard down South and another standard up North.

We are one nation, under God, indivisible——

Mr. ERVIN. But, if the Senator will yield, not under the Constitution.

Mr. ALLEN. We are one nation under the Constitution, too.

Mr. ERVIN. Theoretically.

Mr. ALLEN. Yes. theoretically; but the way some of us are being flouted, in complete disregard of the Constitution, we do not seem to be, in the view of some of the gentlemen who are the perpetrators of this act.

We are supposed to be one nation, under God, indivisible, with liberty and justice for all. We make that pledge in our hearts all the time, I assume, and vocally at many meetings, dinners, and patriotic occasions we attend.

But are we one nation, under God, indivisible, with liberty and justice for all, when it comes to applying a standard for voting rights? I submit, Mr. President, that we are not.

I cannot warn too strongly about the danger of the adotpion of the Scott-Hart substitute, because at the time when that Scott-Hart substitute is adopted, if it is—and I certainly hope that it will not be—that vicious proposal will become as unchangeable as the laws of the Medes and Persians, and cannot be changed. No more amendments; we will vote on it just like it is. Now is the time to amend, or forever hold our peace.

Yes, now is the time to amend, and now is the time to talk, because if we do not talk now we are not going to be able to talk for 5 more years. Five more years under this oppressive yoke.

I remember something else that the distinguished senior Senator from North Carolina said. He said that the War Between the States is over, but Reconstruction is not, and, that this is a throwback to Reconstruction I, and we are now in the midst of "Reconstruction II."

The junior Senator from Alabama feels that he should speak out against this proposal, because the people of his State expect him to do that. They would be displeased if he failed to do so.

So, Mr. President, I hope that the distinguished Senator from Kentucky will communicate with the distinguished Republican leader and advise him that the Senate, or at least some Members of the Senate, would be interested in having the President's views with respect to the pending legislation, feeling that it would help them make a decision in this regard.

I see that the distinguished Senator from Kentucky is writing, and I hope he is penning a note to the distinguished Republican leader, advising him of the request of the junior Senator from Alabama for obatining a letter from the President with respect to his views on the pending legislation. I am sure that the Senator will expedite that request, and I shall forever be grateful to the distinguished Senator.

Now, Mr. President, what is the voting rights law? What does it do? When, if at all, does it expire? What is proposed to be done to it by the Scott-Hart substitute?

A little history of this measure is in order, in my judgment, with regard to the initial enactment of this law and the forces behind the Scott-Hart substitute.

In 1965, I am advised—though I was not here at that time——

Mr. ERVIN. Mr. President, will the Senator yield, so that I can clarify my understanding of his present amendment?

Mr. ALLEN. Yes. I am delighted to yield.

Mr. ERVIN. As I construe the pending amendment of the distinguished Senator from Alabama, his amendment is not an amendment designed to extend the period of the operation of the act, but to make it certain beyond any ambiguity that the act will expire at the time that its proponents have stated they intend it to expire?

Mr. ALLEN. That is correct.

Mr. ERVIN. Since the Senator from Alabama, a while ago mentioned with emphasis that we are "one Nation under God," I construe the objective of the Senator from Alabama to be that the residents of the States of North Carolina, Virginia, South Carolina, Georgia, Alabama, Mississippi, and Louisiana will have the privilege to invoke the blessings of the Almighty up to the seventh day of August 1975, with the hope that on that day we will truly be one Nation, not only under God, but also under the Constitution?

Mr. ALLEN. Yes, that is exactly the purpose of the amendment; and the junior Senator from Alabama plans to go into much greater detail with respect to his amendment at a later date. There is plenty of time to get to that. The junior Senator from Alabama was leading up to it gradually, and the hope was that before the day was out we would get to a discussion of the terms of the amendment. The Senator from North Carolina has correctly stated, certainly, the main thrust of the amendment. It has one other aspect to which I will call attention later. But that matter will be discussed in some detail.

Mr. President, as the junior Senator from Alabama was stating, he was not a Member of the Senate or a Member of Congress when the vicious Voting Rights Act of 1965 was passed by Congress. He is advised, however, that the perpetrators of that act decided the States they wanted to trigger the bill against. They decided on the States they wanted to discriminate against. They decided on the States they wanted to humiliate. The decision was reached to apply the automatic trigger; and by that I mean to apply it under a formula that had no relation to discrimination of any sort but to a mathematical formula.

They decided that they wanted to apply it against what might be called the Deep South States. They wanted to apply it against Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana.

They decided that, since they could not name the States in the bill—they felt that to do so, I assume, would be declared unconstitutional even by the Supreme Court—they hit upon a formula. It was easy enough, this being the year

1965, to refer to available figures on voting statistics in 1964 in these States. By studying those statistics, it was found that in these seven Southern States fewer than 50 percent of the voting age population were registered on November 1, 1964, or voted in the general election of 1964. But, lo and behold, they found that in the 1964 election, only about 44 percent of the voting age population in the great State of Texas voted. The President at that time being a native of Texas and the Attorney General being a native of Texas, it was decided that they did not want Texas under this automatic trigger. I do not say that in a disparaging way about the great State of Texas. I am delighted that they were left out of the automatic trigger device. I wish all States had been left out of it, and I am happy and grateful and thankful that Texas was left out. But they had to figure some way to leave out Texas. They observed that Texas did not have a literacy test for voting. So they decided to couple the two—less than 50 percent voting plus the State having a literacy test—and they enacted the provision that where those two factors occurred, where fewer than 50 percent voted and the State had a literacy test, they were covered. A State that had only one factor was not covered. So that left Texas out. That is fine. I have no objection to that. But it does show how it was arrived at—not whether there had been any discrimination down there; not whether there had been a single case of discrimination. That does not enter into it. Did they have 50 percent voting and a literacy test? If so, they are covered by the automatic trigger.

The State of Virginia, it has been brought out on the floor of the Senate—and it is referred to in the House report—according to this report and according to statements by the distinguished Senators from Virginia and the admission by the distinguished Senator from Michigan (Mr. HART), has never had a single case of discrimination reported. Yet, in order to get these other States, they subjected Virginia to the same humiliating trigger device.

Mr. President, this is supposed to be a bill to eliminate devices. That is what they said. They called the literacy test a device. It is supposed to be a bill to eliminate devices by which people were discouraged from voting. If the Voting Rights Act is not itself a device, I do not know what it is. If devices have been used by the Southern States—and I do not concede that they have—the Federal Government here is using a worse device than anything that has ever been used in any State of the Union to discourage voting. This bill is referred to as "a bill to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices." This is supposed to eliminate devices, and it is, in itself, the worst device that I have ever seen used, or suggested in any State of the Union. So, apparently, Congress felt that it was proper to use a device to eliminate devices.

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

Mr. ALLEN. I yield. I want to point out a number of facts to the Senate, but I am delighted to yield at this time.

Mr. STENNIS. I was intrigued by the Senator's amendment, which I read for the first time very late yesterday afternoon, after the vote on the amendment to strike out sections 4 and 5.

As I understand, by this amendment the Senator just proposes to make a date certain when this authority, this vast authority, this uncharacteristic authority in the American system of government, would terminate. That is all the amendment would do. It is just to make certain of the termination date. Is that correct?

Mr. ALLEN. Yes, sir; that is correct, with this added thought that instead of increasing, as the Scott amendment does, this conviction that has been levied against the Southern States from 5 years, as at present, to 10 years, it uses that 5-year period as a period during which these two sections are effective. In other words, the amendment provides that the very same provision now in effect will terminate at the end of 5 years from the enactment of the original law, so that it will meet the objective that the proponents of the Scott-Hart substitute say they are trying to accomplish, that is, to extend the same provisions of the act for 5 years.

Well now, this amendment does not extend, but it does say that it will terminate 5 years from now, indicating, of course, that if it is terminated then, it will last up until then; but the 5-year period is not raised to 10 years as the Senator from Pennsylvania seeks to do.

Mr. STENNIS. Well, now, as the Senator from Mississippi understands it, that was the original concept of the original law that was passed in 1965.

Mr. ALLEN. That is correct.

Mr. STENNIS. To put this unusual requirement in but only for a temporary span of 5 years.

Mr. ALLEN. That is correct.

Mr. STENNIS. It is exactly that pattern which the Senator from Alabama has adopted, as the authors of the original proposal for 5 years did. The Senator adopts that pattern. That is what the Senator asks to do here; is it not?

Mr. ALLEN. Not one single "i" is dotted or single "t" is crossed other than to say that these two sections will expire in August of 1975.

Mr. STENNIS. If I may ask the Senator, what reason has been given against the Senator's amendment? What logic, what cause, what facts have been shown that are different from what they were 5 years ago?

Mr. ALLEN. Well, Senator, in the judgment of the junior Senator from Alabama, one reason I feel is that it is offered by a Senator from the South. Had it been offered by the Senator from Kentucky (Mr. COOPER), who was successful in getting a reasonable amendment adopted. I feel that the chances of passage of this amendment would be greatly enhanced. That is the real answer, in the judgment of the junior Senator from Alabama.

Mr. STENNIS. In addition thereto, though, there have been no new facts cited as to why this proposed reenactment should extend beyond 5 years.

Mr. ALLEN. None whatsoever.

Mr. COOK. Mr. President, will the Senator from Alabama yield at that point?

Mr. ALLEN. I shall be delighted to yield to the Senator from Kentucky as soon as I answer that question. Not only that, but the proponents point out that the bill has been so successful that it is the crowning light and achievement of the civil rights people in this country, that they are more proud of this than of any other act that they have been successful in getting enacted. My amendment offers a continuation of exactly the same language, but it does set a definite termination date for the act.

Mr. STENNIS. I thank the Senator from Alabama for yielding to me. Let me say this, that as I understand it, and I believe I do understand it, the amendment has great merit. I am tempted to relate what happened to me once. After months of working on an amendment, I showed it to our good friend from Georgia (Mr. RUSSELL) and asked him to look it over and see what he thought about it. He did so, and he said to me, "That is a good amendment. Its contents are good and sound. In fact, it is so sound that I am afraid it will not pass."

The Senator from Alabama has an amendment here that is so logical, so reasonable, and so much in keeping with the proponents of this measure that I am afraid it will not pass.

Mr. ALLEN. I thank the distinguished Senator from Mississippi. It is the plan of the junior Senator from Alabama to discuss this amendment until he feels that a substantial majority of Members of the Senate understand the provisions of the amendment. It looks as though I will have to discuss this matter piecemeal because it looks like we will have about 25 or 30 sittings of Senators if no more come into the Chamber than are presently here.

Mr. President, I am delighted now to yield to my good friend, the distinguished Senator from Kentucky.

Mr. COOK. I merely want to make a point of clarification, before the distinguished Senator from Mississippi leaves the Chamber, that there has been no opportunity for anyone who might oppose the amendment to speak on it yet. I would say to the Senator that the opportunity will come, as soon as the Senator from Alabama speaks on all of the points he wishes to speak on.

Relative to the remark of the Senator from Alabama that if the pending amendment had been introduced, say, by my distinguished colleague, Mr. COOPER, it would be passed, but that, somehow or other, he feels that coming from the part of the country he comes from he will not get his amendment passed. I would remind the distinguished Senator from Alabama, in all fairness, that there were two amendments which he introduced yesterday and which were overwhelmingly adopted by the Senate. As a matter of fact, I might state to him that I voted for both of them along with the overwhelming majority of the Senate. I merely want the RECORD to show that.

Mr. ALLEN. I appreciate the remarks of my good friend, the distinguished Senator from Kentucky, and I do appre-

ciate his acknowledgment of the wisdom of the other amendments. I am hopeful that he will see the wisdom of the pending amendment.

The junior Senator from Alabama would remind the distinguished Senator from Kentucky that actually there were three of his amendments adopted by the Senate, the other one being insertion of the magic words, "except as required by the Constitution."

Mr. COOK. That is correct.

Mr. ALLEN. I would like to state to my distinguished colleague from Kentucky that any time he would like to speak, or at any time any other Senator would like to speak, the junior Senator from Alabama would be delighted to yield as much time as the distinguished Senators would care to use. The Senator from Alabama would welcome that opportunity.

Mr. COOK. I merely wanted to make the point that the Senator from Mississippi had said there had been no facts brought out or that there had been no conversation relative to what may be wrong with this amendment, and I merely wanted the RECORD to show that opportunity has not yet been given to do so. I want to make that clear to my colleague from Alabama.

I also want to make it clear to him, in his comment a few minutes ago that I have the duty on the floor. I do not. I do not know who does. I came here for the purpose of hearing the Senator from Alabama, as a courtesy to him, and I want him to know that I will be delighted to listen to him. If there are any comments that those of us who oppose his remarks about the Scott-Hart amendment wish to make, we will have more than enough opportunity to speak on that subject, I am sure.

Mr. ALLEN. I am delighted to yield at any time. I notice that the Senator was saying that his group would oppose the junior Senator from Alabama, indicating that he might possibly look somewhat askance at the amendment for that reason, but I do appreciate the support of the junior Senator from Kentucky on the amendments that I have introduced, and that have passed. I appreciate his courtesy in coming over and listening to me. I do hope that he will see the wisdom of the amendment and that he will communicate with the other Senators on that side of the aisle and that he will give support to an amendment that, in effect, would get a nationwide law in time. It would not get it immediately. We would have to serve our servitude for a considerable time yet.

MESSAGES FROM THE PRESIDENT

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

THE WELL-BEING OF THE AMERICAN WORKINGMAN—MESSAGE FROM THE PRESIDENT

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which was referred to the Committee on Labor and Public Welfare:

To the Congress of the United States:

In his First Annual Message in 1901, President Theodore Roosevelt wrote: "The well-being of the wage-worker is a prime consideration of our entire policy of economic legislation."

The United States of America has changed in innumerable ways in the almost seventy years since those words were written. Yet, despite the changes that have transformed our economic and social life, the profound truth of those words remains: today the well-being of the workingman is a prime consideration of this Administration.

Last year I sent to the Congress legislation dealing with Manpower Training, Unemployment Insurance and Occupational Safety and Health.

The Manpower Training bill deals with how we can help a jobless man get work or help the workingman move on to better-paying and more challenging jobs.

The Unemployment Insurance bill deals with how we can help the workingman when he is temporarily out of work.

The Occupational Safety bill deals with how we can help the workingman to do his job under the best possible conditions of health and safety.

This legislation has now been before the Congress for more than seven months. And while I know that all of these bills are in one stage or another of the Congressional process, I am hopeful that they will be enacted promptly and sent to me for signature. I urge the Congress, for the sake of the American workingman, to reach final action on these measures without further delay.

This legislation concerns the American workingman on and off the job. Yet there is another important part to the average workingman's life; after his working years, the time when he can begin to enjoy his pension and welfare benefits.

The earliest known industrial pension plan in this nation was established in 1875. Today, less than one hundred years later, there are hundreds of thousands of employee benefit plans providing pension and welfare benefits to some 50 million workers.

Welfare and pension plans are a part of the success story of the American workingman. Employee benefits are among the most familiar—and most admired—aspects of economic life in our nation.

These plans involve over one hundred twenty billion dollars. More important, they involve the security, the dignity and the well-being of millions of Americans whose lives have been enhanced upon retirement or on the job by welfare or pension benefits. The control of these funds is shared by employers, unions, banks, insurance companies, and many others. While most of the plans are carefully managed by responsible people, we must make certain that the employee's money is fully protected.

I am therefore proposing the "Employee Benefits Protection Act." This Act would protect employees with pension fund rights against improper investments and conflict of interest on the part of administrators of these funds. This has never before been done by the Federal government.

The reforms proposed in the Employee Benefits Act can be divided into four major areas:

First, the Federal government would require that persons who control employee benefit funds must deal with those funds exclusively in the interest of the employee beneficiaries. A Federal standard of these obligations would more effectively provide a remedy where conflict of interest or carelessness exists in the management and investment of funds.

While these situations are infrequent, existing State and Federal laws are inadequate to deal with them. Theft, embezzlement, bribery, and kickbacks in connection with employee benefit plans have been made Federal crimes in earlier Congressional action, but conduct that breaches established principles of trusteeship has not been adequately dealt with.

Second, the reporting and disclosure provisions would be broadened and strengthened by requirements which call for additional information. Further and more detailed disclosure as to the financial operations and actuarial basis of employee benefit plans is a necessary complement to the imposition of fund management obligations and responsibilities. It is well established that those in a trustee-type relationship should give a detailed accounting of their stewardship. This type of accounting is similar to requirements presently applicable to mutual investment funds, banks, and insurance companies. However, the present reporting and disclosure provisions for employee benefit plans are more limited. The proposed Act would make available to employees vital information about the plans that are run for their welfare and retirement.

Third, changes would be made to implement the newly imposed management responsibility and the newly strengthened reporting provisions. These include broadened investigatory and enforcement powers for the Secretary of Labor and revisions designed to provide an alternative mode of enforcement of remedies through class actions by participants and beneficiaries.

Fourth, the Act would foster a body of uniform Federal law in employee benefits protection. State laws that otherwise regulate banking, insurance and securities are expressly allowed to remain in effect.

In summary, the Act would provide for a uniform source of law for evaluating the conduct of persons acting on behalf of employee benefit plans and for a single system of reporting and disclosure in lieu of burdensome multiple reports. Under the Act, States could require the filing with a State agency of copies of specified reports and State courts as well as Federal courts would be available to provide remedies. Furthermore, the Act would expressly authorize cooperative arrangements with State agencies as well as other Federal agencies. It would also provide that State laws regulating

banking, insurance and securities remain unimpaired. Finally, experience in administering the present law has demonstrated that minor technical amendments are needed to resolve certain details of procedure and to otherwise make the law more workable.

The Employee Benefits Protection Act further expands my program to protect the American worker as he works, when he is out of work, and after his working career is over. Once again, I must express my concern that the first three parts of this program—relating to Manpower Training, Unemployment Insurance, and Occupational Safety—have been so long before the Congress without final action. And again I urge the Congress to enact these measures at the earliest possible date and to give urgent priority to this fourth part of the program—the Employee Benefits Protection Act.

America's most valuable asset is its workers. From their skills and from their determination to build a better life for themselves and their children has come a strong and free economy and a nation whose prosperity is unmatched in the history of the world. They deserve our active interest in their welfare.

RICHARD NIXON.

THE WHITE HOUSE, *March 13, 1970.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Vice President laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

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

VOTING RIGHTS ACT AMENDMENTS OF 1969

The Senate continued with the consideration of the bill (H.R. 4249) to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices.

Mr. ALLEN. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Michigan without losing my right to the floor.

The PRESIDING OFFICER (Mr. HOLLINGS). Is there objection? The Chair hears none, and it is so ordered.

Mr. HART. Mr. President, I thank the Senator from Alabama. I shall be very brief.

The pending amendment would, I think, accurately be described as repealing as of the date suggested, August 7, 1975, sections 4 and 5 and taking down with them the authority contained in sections 6 and 8 for the Attorney General to designate areas that, without prior litigation, examiners could be dispatched to.

The substitute offered by the 10 members of the Committee on the Judiciary, to whose report the Senator from Alabama has made reference, allows any State which has not used tests since the date of the adoption of the 1965 act, by declaratory judgment to escape the trigger of sections 4 and 5.

Under the amendment the Senator from Alabama has offered, these areas would automatically be free of the trigger. Under the substitute amendment these areas would, under section 4(a), have to seek a release from the trigger through the court.

Alabama, for example, we are told has not used tests or devices since 1965. So the question is put, why not automatically release the State? We should not automatically release the State because under section 4(a), States in that situation are retained under the language of that section for a period of 5 years before the court. Jurisdiction attaches for another 5 years.

It is true that even without this retained jurisdiction, the Attorney General could initiate suit all over again under section 3 if there is a reimposition of an improper test. But that suit would have attached to it all of the delays and problems inherent in commencing litigation.

That is the reason we retained jurisdiction in the first place in the fashion outlined in section 4(a). To assure prompt relief was a key element of the 1965 act.

I would hope, Mr. President, that the amendment will be rejected. The substitute retains the 4(a) jurisdiction in these areas where the trigger has operated. This retained jurisdiction would assure against a return to old habits, or if the temptation to return to old habits is overwhelming, the court would be on top of it instantly. It would not require the Attorney General or an interested witness to discover the backsliding, if that is what it would be called, and a new litigation effort undertaken.

We think it is useful that this safeguard remain. It would be lost by agreement to the amendment.

I thank the Senator from Alabama very much.

Mr. ALLEN. Mr. President, would the Senator retain the floor long enough for me to ask a question or two.

Mr. HART. I yield.

Mr. ALLEN. Mr. President, I understood that the distinguished senior Senator from Michigan in the Scott-Hart substitute was asking only for 5 additional years. And this amendment would not knock sections 4 and 5 out until August 7, 1975. That would seem to the junior Senator from Alabama to be the 5-year period that the Senator refers to.

I would like to call attention further to the fact that section 4(b) says that where a State does come out from under the provisions of the automatic trigger by proof of nondiscrimination and nonuse of a device for 5 years, the court shall retain jurisdiction of any action pursuant to this section for 5 years after judgment and shall reopen the action on motion of the Attorney General's allegation that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

So during this 5-year period that the amendment of the junior Senator from Alabama allows these two sections to continue, even if a State would get out from under the provision of the automatic trigger, all the Attorney General would have to do would be to file a motion and they would be under it. It does not require any proof or anything, but just a one-page motion to the court.

Mr. HART. That is the interpretation of the Senator from Alabama.

Mr. ALLEN. That is what it says.

Mr. HART. Our contention is that the adoption of the termination date would require the initiation of action in the event there was a failure in the future to comply with a provision of the act.

Mr. ALLEN. It is hard for the junior Senator from Alabama to equate the Senator's present position with his position when saying in his sponsorship of the Scott-Hart substitute that all he is trying to do is to get an additional 5 years for the act, and then his opposition to the amendment, saying that it will cause the sections to expire in 5 years. It is also difficult for the Senator from Alabama to equate it with the Senator's statement that unless something is done, the act will expire—not 5 years from now, but in August.

Mr. HART. The statement that it will expire is, in truth, inaccurate. We do not argue that the 1965 Voting Rights Act will expire.

Mr. ALLEN. That argument has been made time and again here on the floor.

Mr. HART. It is a shorthand way of saying that the key symbol regarding a test or a device would be lost.

We have always pointed out the fact that section 3 would continue. We have cited it and explained that it is a time-consuming process that was followed in earlier years, the result of which could not be labeled by—I was going to say—objective observers. We hope that history will indicate that we were right in saying that procedure was ineffective. And that is why we turned to the more direct trigger device.

It is our belief that the retention by the court for an additional 5 years would be lost if the amendment were agreed to.

Mr. ALLEN. Would be lost when? Five years from now.

Mr. HART. No. It would be lost as of 1975.

Mr. ALLEN. The Senator is correct.

Mr. HART. And we believe that when the State comes out from under it pursuant to the court's decision, it is desirable that it remain alive in the sense of being an open case and open for the court to promptly respond in the event subsequently there is a return to old practices.

Mr. ALLEN. In other words, the Senator is asking for the present 5 years, plus 5 years; plus 5 years; he is asking for 15 years of subjugation. Is that right?

Mr. HART. Only if the so-called conquered provinces return to old practices. The assurance has been given that that will not happen. It is a question that is academic unless the safeguard were required.

Mr. ALLEN. The Senator stated that no device has been used since 1965. The Senator would want to convict the people of Alabama for what they might do 5 years from now.

Mr. HART. I am assuming, and the Senator from Alabama has assured us,

that because of the existence of the Voting Rights Act, among other things, there have been no applications of tests and devices in Alabama.

Mr. ALLEN. That is what the Senator from Michigan stated.

Mr. HART. I do not challenge the position that Alabama has obeyed the law. I am sure it has. I think the presence of that law has contributed to the elimination of the practices. There have been instances that have been placed in the RECORD indicating desires to make difficult, in improper fashion, the exercise of the franchise. The Senator will recall some of those discussions in earlier days here. But the presence of the law has and will continue, I am sure, to eliminate in almost all cases any discriminatory use of tests and practices; and the retention by the court for an additional 5 years would again be an additional assurance that should there be a return to old customs there would be prompt remedy available. It is for that reason we urge that the amendment not be agreed to.

(At this point, Mr. BYRD of Virginia assumed the chair.)

Mr. ALLEN. The sponsors of the so-called Scott-Hart substitute have been making the statement here on the floor of the Senate that the law is going to expire if not renewed prior to August 7. The Senator from Alabama has been saying that there is no expiration date on any section of the law.

Which statement more clearly reflects the facts?

Mr. HART. I think the precise way to describe what is going on is that the key trigger devices would expire if the administration recommendation were adopted.

Mr. ALLEN. I submit to the distinguished Senator that that is incorrect.

Mr. HART. Well, we are in disagreement.

Mr. ALLEN. The key device does not cease to exist until a State goes into the Federal court and waits for its case to be reached and has proved to the satisfaction of the district court, the three-judge court, on the acquiescence of the Attorney General, that it has not engaged in discrimination for 5 years. Until that petition is filed, and that permission given, and an order entered, only then would the triggering devices cease to be in effect; and if the court found that within that 5-year period they had been guilty of this type discrimination that order of release would not be given and further delay would be required.

So it takes overt action on the part of the State, plus a finding of nondiscrimination for 5 years by the court.

Mr. HART. Assuming that States are anxious to get out from under and assuming States obey the law for the 5-year period, the effect of the triggering device would expire.

Mr. ALLEN. They would expire only when the Attorney General and the courts take action.

Mr. HART. It is assumed by most of us that States will act. We have been assured they are offended by being under it now. We are assured the States are complying with the law. In that sense, the effect of the trigger is gone.

Mr. ALLEN. The Senator would not be satisfied, then, with the cutoff date of sections 4 and 5, 5 years from now.

Mr. HART. Inasmuch as it would remove from the Federal court jurisdiction the States that have come out from under, no. It is desirable, we believe, that there be available the prompt remedy in the event, having come out from under, there is a return to old practices.

Mr. ALLEN. The Senator would not be satisfied with the 5-year probation the act puts the Southern States under.

Mr. HART. There is no probation unless the retained jurisdiction is there.

Mr. ALLEN. That is what I say. It is retained under the amendment.

Mr. HART. That is our disagreement. We believe that by the termination of sections 4 and 5 in August 1975, that the Attorney General would be forced to file actions with a court, to make his proofs in the event it is his judgment that there had been a violation by the use improperly of test and devices.

This would not be the case if the 1975 date was not fixed, as the amendment provides.

Mr. ALLEN. The junior Senator from Alabama would like to point out to the distinguished Senator from Michigan that the action that the Attorney General has to file is not an action de novo. All he has to do is file a little paper and it does not take any proof. That is another vicious provision. All he has to do is file a motion; that triggers the act; the act would be back in effect.

How the Senator from Michigan could feel any rights are being cut off under sections 4 and 5, when the amendment states it does not expire until August 1975, is beyond the junior Senator from Alabama.

But I do thank the distinguished Senator. I appreciate his statement. His statement, made time and time again on the floor of the Senate, that the Voting Rights Act of 1965 is on the verge of expiring, is incorrect, and it was used merely as a shorthand rendition of another set of affairs.

The junior Senator from Alabama has pointed out time and again, without successful refutation, that there is in fact no expiration date in the present act or in sections 4 and 5, but that they are permanent law until changed by act of Congress.

Mr. President, I ask unanimous consent that I may make a request for a quorum without losing my right to the floor.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ALLEN. Mr. President, I am glad to have engaged in colloquy with the distinguished senior Senator from Michigan with respect to the effect of the amendment now under consideration. I was pleased that the distinguished Senator from Michigan conceded the claim that has been made by proponents of the Scott-Hart substitute—that the bill was necessary because the Voting Rights Act of 1965 is about to expire.

The statement that it does expire, as has been said, on August 7, 1970, is in fact incorrect. The junior Senator from Alabama has been making a statement on the floor of the Senate day after day that there is no need whatsoever for the Scott-Hart substitute, because the 19 provisions of the Voting Rights Act are permanent legislation, and that the junior Senator from Alabama would be willing to do what the proponents of the Scott-Hart substitute have been saying that they are in fact seeking to accomplish, which is to renew the same provisions of the Voting Rights Act of 1965 for an additional period of 5 years.

What the pending amendment does is to leave intact every single provision of the Voting Rights Act of 1965. Not one single "t" is crossed nor "i" dotted, nor any change of any sort made, except that at the end of section 4, this sentence is inserted:

> Section 4 of this Act shall expire and become inoperative on August 7, 1975.

Which is 5 years after the supposed expiration date of the Voting Rights Act of 1965; and, at the end of section 5, the following sentence:

> Section 5 of this Act shall expire and become inoperative on August 7, 1975.

That, in effect, would show that these sections do continue to operate until terminated in some fashion; and the purpose of the amendment I have offered is to put a definite expiration date on them.

I do hope that the distinguished Senators on the other side of the aisle will see this amendment as an effort and a method of coming close to the President's suggestion of a nationwide voting rights law. It would not be as favorable to my section of the country as the President's plan. It would not immediately put us all on the same basis. It would continue the exact provisions of the present law until August 7, 1975; but what it would do—and herein is the defect of the Scott-Hart substitute, and what it does that its proponents have not made clear, with the expression that the act will expire unless renewed, and that all they are seeking to do is to renew the identical provisions for 5 years: It does not increase the sentence against the people of the South from 5 years to 10 years, as sought by the Senator from Pennsylvania. It does not require a State to come out from under the automatic trigger to prove any more than it is now called on to prove, which is 5 years of no discrimination.

Mr. President, I point out that section 4 of this act has a provision—and it would be continued under the terms of my amendment for 5 years—that after a State, a Southern State now covered by the act, goes into Federal court and proves that during the 5 years next preceding the filing of the petition, it had not used a device such as a literacy test for the purpose of discriminating then, if the Attorney General acquiesces, and if the matter is ever reached in the Federal court—as is pointed out in the report of the House Committee on the Judiciary, the district court here in Washing-

ton is about 2½ years behind in its cases—if it takes 2½ years to reach a case, with that added to the 5 years the State has to wait to file its petition, even after the case is reached, and the State has proved to the satisfaction of the court that it has not engaged in discrimination for 5 years, then the court retains jurisdiction for another 5 years. That is the situation under the present law.

Even if my amendment is adopted, we would have to go through all of that process, and we would be subject to these provisions for 5 years—the exact provisions of the act: prove nondiscrimination for 5 years, wait until the case is reached and judgment entered, and then the court retains jurisdiction for 5 years.

In effect, they treat us as though we are a bunch of criminals. They put us on probation for 5 years. They retain jurisdiction of the case, and say, "Well, yes, we find that you have not been guilty of any discrimination for 5 years, and that's fine, but we are afraid you are going to go back to your evil ways, so we are going to retain jurisdiction for 5 years," and all the Attorney General has to do to trigger the case again is to file a motion alleging discrimination. It does not require any proof of discrimination.

Let me read an amazing sentence in section 4(a) of the 1965 act, appearing on page 542 of the hearings before the Committee on the Judiciary. This is after the case is reached, and you prove 5 years of nondiscrimination:

> The court shall retain jurisdiciton of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

So the judge reopens it, on the motion of the Attorney General alleging that a device has been used.

Under my amendment, this provision would remain in force and effect for 5 years, until August 7, 1975. During all of that time, the State or other subdivision would have to be free of any type of discrimination. It would have to prove no discrimination for 5 years, and be subject to a probationary period of 5 years at the hands of the Federal court here in Washington—and here, again, is this matter of coming to Washington to try a case in the Federal court, when we have Federal district courts all over the country. Why has the one in Washington any special significance? And why would we want to come to a court that is 2½ years behind with its docket? That is what we have to do, under the terms of the act.

The junior Senator from Alabama, by his amendment, is not seeking to change a single sentence of the Voting Rights Act. But he does want the proponents of the bill to stop coming in here and saying that this act is about to expire, when it is not about to expire. When the Senator from Michigan (Mr. HART) was questioned on that subject, he admitted that it is not about to expire and that it will not expire.

So why all this haste to rush the bill through—not even let the Judiciary Committee give it ample consideration, not even let it go to the Judiciary Committee, until the chairman was subjected to a requirement that he report it by a given date? The Judiciary Committee had other matters that prevented a full hearing of the bill, and it came back without so much as a recommendation of the Judiciary Committee.

So, Mr. President, it occurs to the junior Senator from Alabama that by his amendment he takes at their word the proponents of the Scott-Hart substitute. He takes at their word that all they want to do is to continue the identical provisions of the Voting Rights Act as they now exist on the Federal statute books.

That is what this amendment does. It cuts off sections 4 and 5, 5 years from August 1970.

Yesterday, the junior Senator from Alabama offered an amendment that was rejected, as several of his have been. Several have been adopted, as the junior Senator from Kentucky pointed out. But yesterday the Senate saw fit to reject the amendment of the junior Senator from Alabama which would have repealed sections 4 and 5 now, right now. That is what ought to be done. Voting rights ought to be put on a uniform basis throughout the country. But the Senate, in its wisdom, saw fit to reject the amendment.

So we have gone to the other extreme. We say, "All right. You don't want to repeal sections 4 and 5 now. Let us go ahead and keep them for the 5 years that you say that you want to extend the law." That is all that is added. That is what it says: Add at the end of section 4, "Section 4 of this Act shall expire and become inoperative on August 7, 1975."

The other half of it: "Section 5 of this Act shall expire and become inoperative on August 7, 1975."

During that time, this exact act, as it has existed since its passage, would remain in full force and effect, with not one item changed. That is what the proponents say they want. But they came in, by the admission on the Senate floor of the distinguished Senator from Michigan, and said that their statement that the bill would expire on August 7, 1970, was incorrect, and that that phrase is used as a short method of saying something else that they really meant. That is what we have before the Senate today.

This amendment is offered in all seriousness and candor. It is not a frivolous amendment. It is a serious amendment. It is an amendment that takes at their word the proponents of the measure.

Many Senators, not having read the provisions of the Voting Rights Act of 1965 in some time, and having read in the press time and time again that this act would expire in August of 1970, probably assumed that that was correct. I assumed it was correct until I took the trouble to read the act, and I found to my amazement that no section of the act expires.

The other night I read a small article on the Voting Rights Act in a national news magazine—I shall not state its name, because it is not too important, but it has a general circulation throughout the country—which said in three places that this act is going to expire on August 7, 1970, unless it is renewed. That statement is false.

Mr. President, I regret that the Members of the Senate are not present in larger numbers. I feel that this is an important amendment, and I might say that I would be willing to see the substitute come on for a vote with this amendment adopted, because it puts into effect what they have said they wanted. They want to extend the provisions for 5 years. All this amendment seeks to do is to add after sections 4 and 5 that section 4 shall expire and become inoperative on August 7, 1975, and that section 5 of this act shall become inoperative on August 7, 1975.

According to this Senator's addition, that is 5 years from the fifth anniversary of the passage of the original act. If it is the intention to extend the act to 10 years, this amendment will do that.

The junior Senator from Alabama is not well versed in these matters of wording and is a little confused by the statement that the act is going to expire, when, in fact, it is not going to expire.

All that the junior Senator from Alabama seeks to do is to put the bill in such shape as the proponents have been saying they want it. It seems passing strange to the junior Senator from Alabama that he is having to stand on the floor of the Senate and discuss this matter with the Senate.

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

Mr. ALLEN. I yield.

Mr. DOLE. Can the Senator give us any idea when we might be able to support the amendment?

Mr. ALLEN. I shall be delighted to yield at this time for a little vocal support.

Mr. DOLE. I was speaking about the real support—the yeas and nays.

Mr. ALLEN. If the Senator from Kansas will advise us when 51 Members of the Senate will share his views, we can vote then.

The junior Senator from Alabama would suggest further that if we were voting on the President's plan, we could vote now.

The junior Senator from Alabama suggests that the amendment he is offering will get the Scott-Hart substitute as nearly in line with the President's plan as we are able to do that, using the framework of the Scott-Hart substitute, and not knocking out sections 4 and 5, as we sought to do yesterday.

Mr. DOLE. Do I correctly understand that the Senator from Alabama is saying that he would support the bill passed by the House—the House-passed voting rights bill?

Mr. ALLEN. The junior Senator from Alabama has made that statement already on the Senate floor earlier this afternoon. He is sorry that the distinguished Senator from Kansas was not present to hear him make that statement.

Personally, he would prefer that this matter be left to the States; but he did say that on such a serious matter as voting rights, if we have a national policy and if all sections of the country are subjected to or have the benefit of the same law, then the junior Senator from

Alabama is willing to support that, and he will support the President's plan.

The junior Senator from Alabama also would like to suggest to the distinguished Senator from Kansas that if the party of the President would support the President's plan to the extent of some 75 percent of its members, there is a good chance that the President's plan can be adopted.

It does seem passing strange that the junior Senator from Alabama, who, as he said earlier, is an Alabama Democrat, should be advocating the President's plan while he hears very little about it from his colleagues across the aisle.

Mr. DOLE. That may be the new Southern strategy we have been hearing about. But as I remember the motion to table, the vote was about 18 to 16 on this side of the aisle for tabling the substitute. Generally, I share the views expressed by the Senator from Alabama with respect to these two sections.

In fact, the expiration date suggested in the Senator's amendment seems to have merit, but I am not certain that I will be here to support it, because of the conflicts. I wonder whether it will be this week or next week that we may be voting on the amendment?

Mr. ALLEN. The junior Senator from Alabama would be glad to advise the Senator from Kansas if he knew, but it looks like it will be necessary to talk to Members of the Senate in small numbers. He is pleased to hear the expressions of the Senator from Kansas regarding possible support.

Mr. DOLE. The point I am making is that while the Senator is talking to one small number, there will be another small number that might have to leave, so that I will be glad to pass the word along if it will expedite matters. I am not certain of what the response will be.

Mr. ALLEN. I will be glad to hear from them. I will be glad to have other Senators make similar declarations and the junior Senator from Alabama, with pencil and paper over here, will total up the number.

Mr. DOLE. At this point, the Senator will not need much paper. But I would say, as stated earlier, in the statement made last week, regarding 17 of the 19 sections in the original act, that they are permanent law. As the Senator correctly states, sections 4 and 5 do not expire. They may become partly inoperative but, in effect, as the Senator indicates, they are still a part of the law and they are still a cloud over a part of the country.

I share the view that my State of Kansas and other States in the Nation should have the benefit of the Voting Rights Act or any extension thereof. I support H.R. 4249 as passed by the other body and would hope that I may have a chance, sometime today, to indicate my support.

Mr. ALLEN. I appreciate the remarks of the distinguished Senator from Kansas.

Mr. President, I ask unanimous consent that I may ask for a quorum call, with the assurance that it will not last more than 5 minutes.

The PRESIDING OFFICER (Mr. YOUNG of Ohio). Is there objection? The Chair hears none, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Senate will be in order. The Sergeant at Arms will see that the attachés remain seated or else leave the Senate Chamber.

The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, as I pointed out a few moments ago, on yesterday I offered an amendment to the Scott-Hart substitute seeking to repeal sections 4 and 5 of the Voting Rights Act of 1965 on the theory that these two sections are the so-called trigger sections that trigger the vicious and discriminatory provisions of the act against the seven Southern States.

I pointed out also that it was necessary to repeal these sections if the present voting rights law is to be made applicable to the entire country and use the voting rights law as the basis or vehicle for the change. And that is what the Scott-Hart substitute seeks to do. It seeks to use the present Voting Rights Act as the vehicle for the change and seeks to amend certain sections of it.

The Senate in its wisdom voted down these amendments, causing the junior Senator from Alabama to prepare and to offer the current pending amendment which takes at their word the proponents of the Scott-Hart substitute that all they are seeking to do is to extend the provisions of the Voting Rights Act just as they are, without any change, for a period of 5 years.

In the rest of the country, outside the South, the literacy test under the Scott-Hart substitute is abolished. But the punitive provisions of sections 4 and 5 are applicable only in the South.

So the pending amendment merely adds one sentence to section 4 of the Voting Rights Act and one sentence to section 5 of the Voting Rights Act.

The first sentence as to section 4 says that, "Section 4 of this act shall expire and become inoperative on August 7, 1975."

As to section 5, it says, "Section 5 of this act shall expire and become inoperative on August 7, 1975."

The reason August 7, 1975, is used is that the original act was approved on August 6, 1965. So this would be extending the exact provisions of the act for a period of 10 years from the original effective date. That is what the proponents of the measure said they wanted to do.

The junior Senator from Alabama, on the other hand, has made the statement time and again here on the floor of the Senate that, in fact, no section of the 19 sections of the Voting Rights Act expires in August of 1970 or at any other time by lapse of time. They do not expire. They are there permanently unless changed.

So, the effect of the amendment offered by the junior Senator from Alabama would put an expiration date on the two trigger sections, so-called, of the Voting Rights Act and have them expire 10 years after the original effective date, adding the 5 years that the proponents of the measure say they want.

So, this amendment would do exactly what the proponents of the Scott-Hart substitute said they were seeking to accomplish. However, in dialog earlier this afternoon with the distinguished Senator from Michigan (Mr. HART), he conceded that these sections and that no section of the act would, in fact, expire in August 1970, or at any other time, and that the proponents' use of that term was merely a shorthand rendition of something else that they had in mind.

This amendment will put a cutoff date in the act for the first time there has ever been one, if it is agreed to. But, it will take at their word what the proponents said. There will be another 5 years of the same provisions. So, that would be a cutoff date of August 7, 1975—not on the whole act, which is nationwide, but on these punitive provisions.

I hope that before the afternoon is over I will be able to point out and show to the Members of the Senate wherein these sections are punitive, because they do discriminate against the seven Southern States. They humiliate our people. When I say they discriminate against the seven Southern States, I use the word States not in the sense of being State governments or the territories within the boundaries of the States, but to mean the people of the States.

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

Mr. ALLEN. I yield.

Mr. LONG. Mr. President, the Senator has made the statement that he would show before the afternoon is over that these sections are punitive. I believe most of us pretty well know the issue. I believe the sections are punitive.

I would hope that he would not take all afternoon to discuss this matter, because I suspect he would get more votes if he lets the Senate vote within the next half hour than if he were to have the Senate vote sometime afterward.

Senators do pretty well understand the issue, and I believe that we will get as many votes if we vote in a half hour as we would get if we voted in 3 or 4 hours.

Mr. ALLEN. I appreciate the suggestion of my distinguished friend. I doubt if we will vote within the next 30 minutes. I do appreciate the suggestion of my distinguished friend.

Mr. LONG. Mr. President, will the Senator yield further?

Mr. ALLEN. I yield.

Mr. LONG. If we are not going to vote sometime soon, then some of us feel we will have to look after some other business and, of course, return for the vote.

Mr. ALLEN. I am delighted to be able to excuse the distinguished Senator; and I will be delighted to have him return for a vote at the time the amendment is called up for a vote.

Mr. President, the Voting Rights Act of 1965 was passed in an effort to discriminate against the Southern States and hold them up to humiliation and vilification. The States against which the act operates were chosen in advance. It was decided that the act would operate against the States of Virginia, North

Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana. But they could not put the names of the States in the law because even the Supreme Court would have found that contrary to the Constitution. However, in order to have a seemingly nationwide application of the law, it was determined that these States had fewer than 50 percent of their voting age population participating in the 1964 presidential election. But it was also found that the State of Texas had only 44 percent of its voting age population voting in the 1964 election. Since the President of the United States was a Texan, as was the Attorney General, some other method of hitting the target of these seven Southern States had to be devised.

On further investigation it was found the State of Texas had no literacy test, whereas the other States did have. It was provided where a State had a literacy test and had fewer than 50 percent of the voting age population participating in the 1964 electioin, that the provisions of the act would automatically be triggered against those Southern States. There was no investigation as to whether there was any discrimination in those States. They were indicted and the people of the States were convicted without a hearing, without an opportunity to present witnesses, or to hear witnesses against them. Federal voting registrars, election observers and poll watchers swarmed over the Southern States.

It is provided that as to these States, operating on the 1964 figure—and the Senate, in rejecting amendments earlier in the debate, was unwilling to update those figures to the 1968 election—that fewer than 50 percent participating in the 1964 presidential election triggered the act against them.

This provided that as to those States the State must come to Washington to obtain approval of any law that it seeks to enact having to do with elections, registration, boundaries of cities or counties, or having to do with voting in any way. It is necessary for a city to do that. They must come hat in hand to Washington for approval of their actions. That is humiliating, indeed. It caused Mr. Justice Black in the case of South Carolina against Katzenbach to hold that section 5 making that requirement was unconstitutional because it gave the Attorney General the right to veto the act of a sovereign State.

Mr. Justice Black said that if Congress could provide that the Attorney General could veto an act of the legislature of a State, Congress could delegate that power to the President or anyone else, to whom it saw fit to delegate that power; and that under our State-Federal relationship, it would be unconstitutional as giving the Federal Government the power to veto the acts of a State legislature.

He also stated that this requirement that the States come to Washington to get approval of their legislative acts—and this is required only of Southern States—was reminiscent of the charge made in the Declaration of Independence against King George III wherein that document charged that the English monarch required legislative and judicial bodies of the Colonies to meet at strange, unusual, and distant places far removed from the places where they kept their records in order to force them to accede to his wishes. The Colonies did not do that. But it was interesting that the opinion of Mr. Justice Black saw a similarity between this requirement in the voting rights law with the despotism of the British monarch.

Now, refusal has been made of the effort to apply 1968 election figures as a criterion for triggering these provisions of the Voting Rights Act against the Southern States. Why use 1964 figures when 1968 figures are available? Why, if the purpose of the act is to encourage registration and voting would a State not be given consideration for having registered thousands and thousands of voters, having come from just under 50 percent of its voting age population participating in an election, up to 70 to 75 percent? Why should not some credit be given for that?

Amendment after amendment was voted down by the Senate at this point, requiring us in the South to continue to be humiliated by this humiliating and insulting statute directed against the people of the South.

The people of the South are not allowed to have literacy tests, whereas other States do have them.

People in other sections do not have to come to Washington to get their acts approved. The people of the South do.

It has been said that the Voting Rights Act is going to expire on August 7 of this year unless renewed, but I have pointed out that that is incorrect, and the senior Senator from Michigan has conceded that is true.

The provision of the amendment that the junior Senator from Alabama has offered does cut sections 4 and 5 out of the act as of August 7, 1975. That would leave 17 sections still in the act, and it would be in effect a nationwide voting rights law. That is what the President has recommended, and that is what we are considering in House bill 4249, to which the Scott-Hart amendment has been offered as a substitute.

So we have before us House bill 4249, approved by the House, calling for a nationwide voting rights law, and we have the Scott-Hart substitute, which would not extend the act, because it needs no extension. It is permanent legislation. What it does is increase the period in which Southern States are required to prove that they have not been guilty of any type of discrimination.

In other words, under the present law, a State can come in at the end of 5 years and prove that it has not been guilty of any discrimination during the preceding 5 years prior to the filing of the petition. If it does not come in at all, the statute continues to operate against the State. Only by coming into the Federal court here in the District of Columbia, filing a petition for release, getting the case heard, and then getting a favorable decision and the acquiescence of the Attorney General in the Federal district court, can the State be released from those punitive provisions.

Even after an order is entered releasing the State, it is kept on probation for a period of 5 years, during which all the Attorney General has to do is file a petition, and he can trigger again the provision of the act against the State.

Suppose it is found, when a State went in and sought release from the provisions of the act, that 3 years before that it had been guilty of some kind of denial of the right to vote or right to register to someone, and the court turned the matter down. It would have to wait for 5 years from the last instance of discrimination. And suppose the State never went in to seek release from this provision. This act would continue on and on and on.

So the purpose of the amendment is to put a definite expiration date to these provisions.

The Scott-Hart amendment, instead of just extending the provisions of the act, seeks to make the 5-year period in which the State must prove nondiscrimination, 10 years.

The amendment seeks to change the measure of proof, the amount of proof, the degree of proof, the length of the sentence, the length of the period or term of conviction and servitude and subjection under the act. It is just as though a prisoner in a penitentiary—and, in effect, that is what the people of the South are under this act—under a 5-year sentence, looking forward to being released at the end of the sentence in August, is told by the warden who comes to him, "Well, we are sorry. They have decided to increase your sentence from 5 years to 10 years." We know that cannot be done. It certainly would be an ex post facto law which would increase a man's sentence after he had been sentenced, started his sentence, and almost completed it.

We have almost completed our sentence, and we do not like this idea of being sentenced by the Federal Government. That is what has happened to us. We would like to feel that we are one nation under God, with liberty and justice for all; but we are not so under this act. There is one rule for the North, another rule for the South.

We resent that, and we resent the indictment and the conviction that has been levied against the people of the South by this vicious Voting Rights Act, which the Scott-Hart amendment seeks not to extend, but to change at a most critical point, and that is the length of our sentence. We have not done anything wrong, but we have been held, under an act of Congress, to have been guilty of discrimination. The Scott-Hart substitute seeks to make our term of conviction a sentence of 10 years instead of 5 years.

Yesterday I used the example of a comparable situation, or a situation with comparable facts, and I related what was recorded in the book of Genesis, in the Bible, wherein Jacob, who is also called Israel, who was the father of the Hebrew nation, worked for a man named Laban, and fell in love with one of his daughters, Rachel, who had an older sister, Leah. Jacob was working for Laban and asked for his daughter Rachel as his wife. Laban agreed that if he would work for him for 7 years, he could have his daughter Rachel for his wife.

Well, Jacob put in his 7 years of servitude and labor in order to win this beautiful damsel, and at the end of the 7 years, when he was expecting his reward—as we expect our reward for having complied with the Federal statutes—Laban, at a feast, with Jacob not too much in possession of his faculties, was able to give him Leah for his wife.

He had worked 7 years—the 7 years that Laban stipulated—to gain the girl that he loved, Rachel; but instead he ended up with Leah, and he had to work an additional 7 years to obtain Rachel for his wife.

That situation is not too different from that which we face. Instead of 7 years, we have two 5-year periods—5 years of servtitude, 5 years of subjection to this vicious Voting Rights Act; and, as we get into position to move out from under it, with the proof that we have not been guilty of discrimination in 5 years, they say, "No, we are changing that to 10 years." It is an ex post facto law if there ever was one, and we resent it. We feel that this law, if it is to apply at all, should apply nationwide.

Several weeks ago we had considerable debate on the Senate floor regarding uniformity in application of Federal policy regarding desegregation of our public schools. The eminent and able Senator from Mississippi (Mr. STENNIS) offered an amendment which called for uniformity in the application and enforcement of criteria of the Federal Government regarding the desegregation of the public schools of the Nation. The Senate, in a great display of statesmanship, voted in favor of that Stennis amendment, saying that we should have a uniform rule, that we should have the same rule throughout the country, that we should not have one rule in the South and another rule in the North.

The same policy should be followed with respect to voting rights. What is more important than a man's right to vote? One of the problems we have in our Nation is not only getting people in a position where they are eligible to vote, but getting them to go out and exercise that franchise after they have become eligible. But you take a man's franchise away from him, you say that a voter cannot go to the polls, and you are going to hear from him. We are apathetic about it until the right is denied.

So voting rights are important. The right to vote is one of the greatest rights we have in a democracy, because it gives us a feeling and a sense of participation in the Nation's Government and in the affairs of our State and local governments. We cherish that right.

We also, in my State—and I know that Senators from other States feel the same—value our good name. We resent the fact that we have been declared by act of Congress to be guilty of discrimination, without any proof, without any hearings, and without any witnesses, merely because we did not measure up to a mathematical formula agreed on in advance so as to apply to seven Southern States only.

That is the reason that the junior Seantor from Alabama has been unwilling to agree on a limitation of time regarding this substitute bill, the Scott-Hart substitute, because it does deal with matters that are basic, inherent, fundamental, and important to the people of Alabama and the South.

Yes; put a limitation on it if you are going to consider a military procurement bill involving billions of dollars, or a foreign aid bill involving billions of dollars. Put a limitation on that; because that is only money. But where you are defaming the good name of our people, where you are holding us up to vilification, humiliation, and abuse, that is a matter on which we cannot agree upon a time limitation. That is the reason why the junior Senator from Alabama has felt impelled to speak for his people, to whom this legislation is anathema, and point out how the people of his State feel about this legislation. His feeling and their feeling is that the act has been vicious, and it has held us up to contempt, vilification, criticism, and abuse, has treated us as second-class citizens—and we do not like that, we resent it—the enactment of the act is past. Let us let the legislation be past and gone.

Under this amendment, provisions 4 and 5 are permitted to go on for another 5 years, just exactly as they are on the statute books today.

Mr. STENNIS. Mr. President, before the Senator leaves the thought he has been expressing, will he yield to me briefly?

Mr. ALLEN. I am delighted to yield.

Mr. STENNIS. Mr. President, I think the Senator has given a fine illustration of why he thinks this matter ought to be debated word by word. We are not dealing here with material things.

Mr. ALLEN. That is exactly right.

Mr. STENNIS. We are dealing with things that are more important, that rise above the ordinary; and this sentence that these States are under now, including my own, subjects them to a law. Some law is going to be passed here; I think there is no doubt about that. I am glad to have heard the Senator's argument. I am glad he has made it, or is making it now.

But, as I understand—and I want to be certain—by this amendment the Senator does not propose to destroy the 5-year duration of this new proposal, or this new law that is proposed to pick up where the old one ends; under his amendment, it would definitely continue for 5 years?

Mr. ALLEN. My amendment would continue the present law, every single word of it, yes. It would not change any of its provisions.

Mr. STENNIS. No. It would provide a termination date, though, of August 7, 1975?

Mr. ALLEN. Yes; that is correct.

Mr. STENNIS. Which is a little over 5 years from now, of course.

Mr. ALLEN. Yes.

Mr. STENNIS. And the same provisions, as I understand it, unusual as they are, would apply as in the present law about the degree of proof, if I may use that term, although it does not require any proof?

Mr. ALLEN. That is correct.

Mr. STENNIS. It is just a mandate of the law?

Mr. ALLEN. Yes.

Mr. STENNIS. The same thought with reference to the weight of the evidence, so to speak—there will not be any weight of the evidence? The State will just be guilty under the mandate of the law?

Mr. ALLEN. That is correct.

Mr. STENNIS. But the Senator proposes to let that continue for 5 years, under his amendment?

Mr. ALLEN. That is correct.

Mr. STENNIS. Certainly, that would give Congress a chance to make such reappraisal, take another look, as we say here, and determine in its own wisdom whether there would be an extension of such a law beyond the 5 years mentioned here.

Mr. ALLEN. That is correct.

Mr. STENNIS. Perhaps by then there would be a mood that had mellowed some, with more willingness to give the presumption of innocence to our area of the country. Is that one of the objectives of the Senator?

Mr. ALLEN. That is correct.

Mr. STENNIS. I think the Senator is to be highly commended, and I salute him for his work and his effort, and I join him in it. I thank the Senator, too, for his work here yesterday, when he really strengthened these matters and brought them out clearly, so that there is a clear-cut choice on which the Senate can vote.

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

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

Mr. ALLEN. Mr. President, I should like to explain again the purpose and effect of the amendment. The proponents of the Scott-Hart substitute have been stating that it was necessary to enact it to prevent the Voting Rights Act of 1965 from expiring on August 6, 1970. In colloquy earlier this afternoon with the distinguished Senator from Michigan, he conceded that that statement is not correct, that no portion of the act does expire on that date or at any other given date that all the provisions continue to be operative until changed by Congress.

Taking the original explanation at its face value, that is, that the proponents of the measure, the Scott-Hart substitute, were seeking merely to extend for 5 years the present provisions of the Voting Rights Act of 1965. The junior Senator from Alabama introduced the amendment now under consideration.

All that the amendment would do would put a cut-off date on the operation of sections 4 and 5 which localizes the provisions of the Voting Rights Act in the South and which make the punitive provisions applicable only in the South.

Thus, the amendment would put a cut-off date of 5 years from August 7, 1970, to August 6, 1975, on the section, so that

for the next 5 years we would be governed by the provisions of the present Voting Rights Act.

The key point is that whereas this would provide a cut-off date on trigger sections 4 and 5, it does not, as the Scott-Hart amendment seeks to do, change the 5-year period of servitude which the South is under to 10 years. That is what the Scott-Hart substitute seeks to do, rather than to extend the act for 5 years.

The effect of the pending amendment would be to put that 5 years not on our sentence but on the duration of the act, so that the States convicted under the act of Congress in the automatic triggering device could come in under the present provisions of the law, to seek to get release from the punitive provisions, on a showing of 5 years nondiscrimination, as under present law, instead of the 10 years that the distinguished Senator from Pennsylvania would impose upon us.

The junior Senator from Alabama has pointed out that to change—and the distinguished Senator from Mississippi has underscored this point—from 5 years to 10 years, as the Scott-Hart substitute seeks to do would, in effect, be increasing a sentence on a prisoner from the sentence that he is serving, by adding 5 years to the term of the sentence. The people of the South are imprisoned under this bill just as a prisoner is.

So that the purpose of the amendment is to give the 5 years uninterrupted operation of the Voting Rights Act word for word as it is at present.

So, Mr. President, it would seem to the junior Senator from Alabama that if the Senate wants to carry into effect the stated purpose of the Scott-Hart substitute; namely, to extend the operation of the act as is for 5 years, then the amendment offered by the Senator from Alabama would accomplish that.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. YOUNG of Ohio). The question is on agreeing to the amendment of the Senator from Alabama.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD (after having voted in the negative). On this vote I have a pair with the Senator from Georgia (Mr. RUSSELL). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

The rollcall was concluded.

Mr. KENNEDY. I announce that the Senator from Connecticut (Mr. DODD), the Senator from North Carolina (Mr. JORDAN), the Senator from Louisiana (Mr. LONG), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Rhode Island (Mr. PASTORE), the Senator from Georgia (Mr. RUSSELL), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Utah (Mr. MOSS), and the Senator from Hawaii (Mr. INOUYE) are absent on official business.

I further announce that, if present and voting, the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Texas (Mr. YARBOROUGH) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Nebraska (Mr. HRUSKA), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Florida (Mr. GURNEY) is absent because of illness in his family.

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

The Senator from North Dakota (Mr. YOUNG) is detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT) would vote "yea."

On this vote, the Senator from Texas (Mr. TOWER) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from Texas would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 25, nays 52, as follows:

[No. 103 Leg.]

YEAS—25

Allen	Dominick	Hollings
Allott	Eastland	Murphy
Baker	Ellender	Sparkman
Bennett	Ervin	Spong
Byrd, Va.	Fannin	Stennis
Byrd, W. Va.	Fulbright	Talmadge
Cotton	Goldwater	Thurmond
Curtis	Hansen	
Dole	Holland	

NAYS—52

Aiken	Hartke	Pearson
Anderson	Hatfield	Pell
Bayh	Hughes	Percy
Bible	Jackson	Prouty
Boggs	Javits	Proxmire
Brooke	Jordan, Idaho	Randolph
Burdick	Kennedy	Ribicoff
Cannon	Magnuson	Saxbe
Case	Mathias	Schweiker
Cook	McGee	Scott
Cooper	McGovern	Smith, Maine
Eagleton	McIntyre	Symington
Fong	Metcalf	Tydings
Goodell	Miller	Williams, N.J.
Gore	Mondale	Williams, Del.
Griffin	Muskie	Young, Ohio
Harris	Nelson	
Hart	Packwood	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Mansfield, against.

NOT VOTING—22

Bellmon	Jordan, N.C.	Russell
Church	Long	Smith, Ill.
Cranston	McCarthy	Stevens
Dodd	McClellan	Tower
Gravel	Montoya	Yarborough
Gurney	Moss	Young, N. Dak.
Hruska	Mundt	
Inouye	Pastore	

So Mr. ALLEN's amendment was rejected.

Mr. HART. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SCOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(The following discussion on the imposing postal strike occurred during the debate on the Allen amendment and, by order of the Senate, is printed at this point in the RECORD:)

AN IMPENDING POSTAL STRIKE

Mr. McGEE. Mr. President, a few moments ago I was advised of an impending postal strike by a group in Long Island. Because of the action of the House Committee on yesterday, passing a postal reform bill with a formua for postal salary increases, because of the already announced executive session of the Senate Committee on Post Office and Civil Service on Thursday next to mark up our postal reform bill in conjunction with postal rate adjustments, I think it is important to say that if there is a precipitate act such as threatened now, nothing could do more to harm the cause or place in greater jeopardy the chance for comparability in wage adjustments for postal employees, or, indeed, all of the employees.

We should remind ourselves that a deadline for a strike on Monday, or Tuesday, or any day takes no precedence over the importance of a government under law being maintained. We are going about this expeditiously, with dispatch, and we are arriving at the best judgment this Congress can arrive at under the law.

For that reason, I wanted, as chairman of the Senate Committee on Post Office and Civil Service, to issue the reminder that all that a precipitate act can do at this critical stage, of all time, is not only to "louse it up," but probably to introduce a series of reverse responses that could only make matters much worse.

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

Mr. McGEE. I yield.

Mr. GRIFFIN. I wish to associate myself with the remarks the Senator has made and to make clear that what he has had to say has bipartisan support. Not only would such a strike be illegal and in violation of the law, but I agree with him that it would not help the legislative at all.

Mr. McGEE. I thank the minority whip for his statement.

Mr. President, I have a lengthier statement to make on this subject.

Mr. President, yesterday the Committee on Post Office and Civil Service in the House of Representatives voted to report to the House a postal reorganization bill establishing the Postal Service Authority, which is in fact a Government corporation, and recommending a 5.4 percent retroactive pay increase for postal employees in the clerk and letter carrier categories and below, but nothing for other postal employees, 1.5 million classified employees, or 3 million military servicemen.

Also, yesterday I announced that the Senate Committee on Postal Office and Civil Service has scheduled an executive session to consider postal reorganization on Thursday, March 19. At that time, I intend to lay before the commit-

tee a proposal to reorganize the present Post Office Department and discuss with my fellow Senators on the committee the problems and proposed solutions pertaining to the post office.

Closely related to postal reform is the vitally important subject of the pay we legislate for our postal and other Federal employees. To say that the pressure for pay increases has been intense is to understate the case. Likewise, to say that pay raises are badly needed is so obvious that no one who has any familiarity with the pay lag for Federal employees and the effect of inflation on the families of Federal employees could for a moment doubt that pay raises are justified.

Your committee recognized the necessity for pay adjustments long ago and, of course, the Senate acted expeditiously in unanimously voting a 4-percent increase last December for rank-and-file postal and classified Federal employees. That bill has languished since then. Although it would have increased the take-home pay of every rank-and-file employee in the Federal Government and would have guaranteed at least a 7-percent annual pay increase for all Federal employees by July 1—just 3 months from now—it was described by one employee union magazine as a "monstrosity of legislation."

Now I have been advised that unless the Congress acts within 2 days to guarantee very significant and unprecedented pay increases for some employees, there will be a postal strike. The challenge is that simple.

No Senator has more appreciation for the needs of our postal and other Federal employees than the chairman of the Post Office and Civil Service Committee. I do not wish to be immodest in saying that I take great pride in the role that I am honored to have as chairman in helping to insure that Federal employees share in the bounty of our great Nation. I am proud to have coauthored the McGee-Daniels Civil Service Retirement Act of 1969, which did more to improve the civil service retirement program for our employees than any other piece of legislation in a score of years. I am proud to be the author of legislation, which I hope the Senate will enact at an early date, to require the Federal Government to pay a greater share of the cost of health insurance for Federal employees; and I am proud of the pay legislation which I have sponsored and guided through the Senate. The members of the Post Office and Civil Service Committee are second to none in having concern for, and doing something about, the welfare of Federal employees.

Therefore, I believe that it is incumbent upon me to make it very clear that the threat of reprisals by anyone, anywhere, that if the Senate does not act by a deadline, some precipitate, unwarranted, and illegal action will be taken contributes nothing whatsoever toward resolving the real postal and pay problems we face. The committee will meet next Thursday, and after we have a full and adequate opportunity to consider postal reorganization and the need for any further pay legislation, we will act. I am sure that the majority leader will cooperate with us, as he always has, to achieve speedy enactment of the best bill possible. I am equally confident that our very able colleagues from the House will cooperate.

I hope, therefore, that those who counsel, stir up, initiate, or otherwise participate in "rattling the saber" of a postal strike will consider very carefully the wisdom of their action and the results they might achieve. It seems to me the one way to insure that the public sentiment, as well as the congressional sentiment, might change from understanding and cooperation to suspicion and hostility would be for a misguided handful of employees to take matters into their own hands, to strike in violation of the criminal statutes of the United States, and to walk out on the American people.

VOTING RIGHTS ACT AMENDMENTS OF 1969

The Senate continued with the consideration of the bill (H.R. 4249) to extend the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. COOPER. Mr. President, I send to the desk an amendment and ask that it be stated.

The PRESIDING OFFICER (Mr. McGEE). The amendment will be stated.

The bill clerk proceeded to read the amendment.

Mr. COOPER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with, and that the amendment be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 2, between lines 6 and 7, insert the following new section:

SEC. 5. Section 5 of the Voting Rights Act of 1965 (79 Stat. 439; 42 U.S.C. 1973c) is amended by (1) inserting after "section 4 (a)" the following: "based upon determinations made under the first sentence of section 4(b)", and (2) inserting after "1964," the following: "or whenever a State or political subdivision with respect to which the prohibitions set forth in section 4(a) based upon determinations made under the second sentence of section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968,".

On page 2, line 7, strike out "Sec. 4" and insert in lieu thereof "Sec. 6".

Mr. COOPER. Mr. President, I have discussed this amendment with the Senator from Pennsylvania (Senator SCOTT). It is a technical amendment but it also has substance. Senators will remember that 3 days ago I offered an amendment to section 4(b) of the Scott-Hart amendment. The effect of that amendment, which was agreed to by the Senate, was to prescribe second dates in 1968, as a base for the "trigger" in States which did not register 50 percent of their residents of voting age on November 1, 1968, or in which 50 percent did not vote in the Presidential election of 1968. Such States would automatically fall under the provisions of section 4(b) as have other States with reference to registration and voting in the 1964 Presidential election. That was an amendment to section 4(b).

A similar amendment should have been provided for section 5. As the Senate knows, section 5 provides that a State which maintained a test or device on November 1, 1964, and desired to make a change in its test or qualification, must institute action for a declaratory judgment.

As the Senate has acted to provide the proceeding for additional States to be brought under section 4(b), then it follows logically that an amendment should be provided for in section 5. The only change would be as follows: I shall read section 5:

Whenever a State or political subdivision with respect to the prohibitions set forth in section 4(a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964.

My amendment in effect would add "on November 1, 1968."

Mr. SCOTT. Mr. President, I am aware of the amendment proposed by the Senatory from Kentucky. While it has modest substance in it, it is a perfecting amendment. The purpose is to clarify what was to be accomplished. I have no objection.

Mr. JAVITS. Mr. President, will the Senator yield for a question?

Mr. COOPER. I yield.

Mr. JAVITS. As I understand the amendment, it proceeds upon the fact that the Senate has already acted with respect to a test used in a particular State in relating that test to the size of the voting and, therefore, to the implications which that has in respect of the Voting Rights Act. I understand that the present amendment extends that situation to any change in the law of that particualr State or of the rules or regulations followed by that particular State.

Is there anything in the change which would take it out from under the provisions of law which enable a State or part of a State to be freed of those restrictions upon the determination of a court as provided by the Voting Rights Act? In other words, if the so-called perfecting amendment were adopted, would the particular State or local area still be able, by a declaratory judgment proceeding in court, to be freed of the inhibitions, whatever they may be, of both sections 4 and 5 of the Voting Rights Act?

Mr. COOPER. The Senator's interpretation is correct. It would extend to such State or subdivision power to enter the court, file a suit for declaratory judgment, and, if such State or subdivision

were able to sustain the fact that it had not practiced discrimination, it would be released from the coverage of the act.

Mr. JAVITS. And the provisions of section 4(a), then, with relation to such declaratory judgment proceeding, would not be affected by the amendment now proposed to be changed as they apply to section 5?

Mr. COOPER. That is correct.

Mr. JAVITS. My reason for the question is that I can read the statute and know what it says, but I do not know exactly what the Senator is doing. I want to be sure our intent is correct, so that if he is doing something other than what he thinks he is doing, it can be straightened out in conference.

Mr. COOPER. I may be doing something other than what I think I am doing, but I think I know what I am doing and what the amendment intends. The amendment I offer would authorize States placed under the trigger by reason of my amendment section 4(b) which has been agreed to by the Senate, and it would afford to any State that may fall under the trigger of the 1968 provision, the same cause of action which is provided for other States under the 1964 date.

Mr. JAVITS. For a declaratory judgment?

Mr. COOPER. For a declaratory judgment. That is the purpose of my amendment. I do not intend any other effect, and I do not believe it has any other effect.

Mr. SCOTT. If the Senator will yield, 4(a) of the amendment is not affected.

Mr. JAVITS. And it continues to apply to 5?

Mr. COOPER. Yes.

Mr. JAVITS. Mr. President, I opposed the Senator's earlier amendment, and I still do, but I think the Senate has spoken. This effort is simply to bring about consistency in the drafting, and I have no objection.

Mr. COOPER. I thank the Senator for his statement and for his explanation.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter sent to me by the Department of Justice which gives a certification of the 1968 election as it affects certain States.

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

DEPARTMENT OF JUSTICE,
Washington, D.C., March 11, 1970.

Sen. JOHN SHERMAN COOPER,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COOPER: In accordance with your request today, I am enclosing a table containing statistics on counties maintaining, on November 1, 1968, a test or device within the meaning of Section 4 of the Voting Rights Act of 1965 in which less than 50 percent of persons of voting age voted in the Presidential election of 1968.

Please note that the statistics on voting age population are based on the 1960 Federal Census.

Please let me know if I can be of any further assistance to you.

Sincerely,

DAVID L. NORMAN,
Deputy Assistant Attorney General, Civil Rights Division.

COUNTIES MAINTAINING ON NOV. 1, 1968, A TEST OR DEVICE WITHIN THE MEANING OF SEC. 4 OF THE VOTING RIGHTS ACT OF 1965 IN WHICH LESS THAN 50 PERCENT OF PERSONS OF VOTING AGE VOTED IN THE PRESIDENTIAL ELECTION OF 1968

State and county	Population of voting age, 1960 [1]	Total vote in 1968 election [2]	Percent of voting age persons who voted
Alaska:			
District 11	4,379	2,095	47.8
District 12	4,081	851	20.8
District 16	27,615	12,175	44.1
Arizona: Apache	13,035	4,162	31.9
California: Imperial	41,215	20,399	49.5
Idaho: Elmore	8,909	3,769	42.3
New York:			
Bronx	965,315	441,649	45.8
Kings	1,745,408	770,673	44.2
New York	1,257,867	519,222	41.3
Oregon: Wheeler	1,566	762	48.7

[1] Source: U.S. Bureau of the Census: Current Population Reports, Series P-23, No. 14, April 21, 1965.
[2] Source: Statistics furnished by Secretaries of State of respective States.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

Mr. MURPHY. Mr. President, I would like to ask the manager of the bill a question. It has to with the language "the term 'test or device' means any requirement that a person as a prerequisite for voting," and so forth.

Some of our States contain many citizens who do not speak English. In our State we have many Mexican-Americans and Indians. Nor do they read English.

As I read that section of the substitute, it states:

> (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject . . .

These people are not illiterate, by any means. They are extremely bright, many of them extremely competent, but in their own language, not in English.

I would like the manager of the bill to say whether or not he agrees with me that, under the pending measure, which would ban literacy tests, it would clearly preclude the use of any test or device requiring one to read or write in English.

Mr. SCOTT. Yes, I will be glad to answer that question. I agree with the distinguished Senator from California that the ban of literacy tests would clearly preclude any requirement that any such person would have to read or write in English.

Mr. MURPHY. I noticed one of the facts mentioned in the discussions that it is now prevalent in the country that one can learn a great deal about political matters from radio or television. There are many Spanish-speaking programs in California. I understand some Chinese programs are being innovated in the San Francisco and Los Angeles areas. So that would apply to the Spanish-speaking, the Indian, the Japanese, and the Chinese.

Mr. SCOTT. Es verdad. The Senator is correct.

Mr. MURPHY. I thank the Senator.

Mr. JAVITS. Mr. President, I have not spoken heretofore with respect to the Scott-Hart amendment in a definitive way and I wish to do so now. I shall vote for the Scott-Hart substitute.

Mr. President, for almost a month now, we have been discussing, and with some emotion, the extension and application of certain laws passed during the early 1960's to extend equal treatment to all Americans regardless of color. Last month we debated the continued application of school desegregation guidelines first established to implement the 1964 act. It was an extremely emotional debate in which the North was charged with enacting regional legislation designed to punish one segment of the country. Today, we hear the same argument with regard to the extension of voting rights legislation enacted in 1965.

I think it would be well at this time to look back a few years at the conditions which produced this kind of legislation and to consider whether the Voting Rights Act of 1965 was indeed designed to punish one segment of the country, or whether it was absolutely necessary to insure equality of treatment which had been denied to black Americans for decades. Surely, if we review conditions and statistics prevailing in 1964, we can see why these laws came to be enacted.

Let us consider the conditions of the black voter in the South in 1964—the conditions which brought about the passage of the 1965 act. Throughout the South, literacy tests and other devices were employed discriminatorily in order to keep the Negro from voting; so, too, were many other forms of intimidation, including violence. In Mississippi, 6.4 percent of eligible black voters were registered. In Georgia, 25 percent; in Louisiana 30.5 percent. Remember these figures. This law didn't spring full bloom from the minds of Northern Congressmen as some mad design to punish the South. These were the conditions which existed, and which absolutely had to be remedied. And the law has worked.

In the 5 years since the passage of the act, more than 800,000 black Americans have been registered in the six affected States. Dozens of blacks have been elected to State and local office. Finally, many formerly disenfranchised black Americans are beginning to feel and act like citizens—a right which had been theirs by virtue of the Constitution, for a century, but which had been denied.

And so now that registration and voter participation has increased because of the act, because of Federal registrars and poll watchers, because of suspension of the literacy tests, and because of Federal surveillance of State election laws, it is suggested that we abandon these tools and relegate the whole problem to a period of "benign neglect." We have seen in Lamar, S.C., the new climate which is capable of being produced when the Federal Government gives the smallest indication of slackening in its determination to proceed on school desegregation, and I, for one, am not prepared to see this happen in the field of voter protection.

We need this law for at least another 5 years; the black voter needs this protection and he should be able to count on the Federal Government to provide it.

It is interesting to note that even after the passage of the 1965 act, the affected States used every possible means to evade it by changing State and local laws. Elective offices were changed to appointed ones. Voter districts were changed and at-large elections were ordered. Deadlines for filing of candidates papers were changed. Every possible obstacle was thrown in the path of the black voter. It is only section 5 of the 1965 act which saved them. We cannot afford to abandon it.

The House committee report, for example, states that—

> These measures have taken the form of switching to at-large elections where Negro voting strength is concentrated in particular election districts and facilitating the consolidation of predominantly Negro and predominantly white counties. Other changes in rules or practices affecting voting have included increasing filing fees in elections where Negro candidates were running; abolishing or making appointive office sought by Negro candidates; extending the term of office of incumbent white officials, and withholding information about qualifying for office from Negro candidates.

This pattern of obstruction has continued, resulting in the Attorney General's disapproval, only 10 months ago, of three amendments to the Mississippi statute which would: First, provide for the at-large election of members of the county boards of supervisors at the option of incumbent boards; second, increase the requirements which must be met to qualify as an independent candidate; and third, require the appointment rather than the election of certain officials. In June of last year, the Attorney General had to object to the implementation of two similar statutes in Louisiana. This is not the time to slacken upon the law lest we encourage the kind of men who hand out ax handles as a persistent and flagrant testimony to their determination to resist the law.

In 1964 the dual school system prevailed in the South in spite of a Supreme Court decision of 10 years standing mandating a unitary system. The law was ignored—even flaunted—and an entire generation of Negro youngsters was deprived of a quality integrated education. So we passed the 1964 act saying, in effect, the Federal Government would not stand for this condition any longer. We cut off Federal money from any district which continued to segregate, and we vigorously pursued court action to integrate the schools.

Within 5 years, more than a million black children in the South were admitted to school with whites. By September of this year, compliance would have been complete. But for a few months, we hesitated. The guidelines were modified. Enforcement was slowed. Government officials with dedication to this cause were dismissed. And last month, the Senate adopted two amendments which appear to encourage delay. We see now what has happened in response to this weakening of our resolve. The many thousands of State and local officials who, in good faith, complied with the law, now find themselves undercut. And, most important, we have encouraged, by our indecision, the very worst, the violent element in our Nation—those dedicated to resistance, even if it means violence. The true extent of the damage was shown last week in Lamar, S.C., when a band of lawless and vicious hooligans stoned school busses filled with black children attempting to attend an integrated school and actually overturned those buses after the children had escaped into school. This morning, in Lamar, the National Guard is on alert because the schools have reopened and armed troops may be necessary to protect children from the violence of a lawless mob. Is it not sickening? Is it not shocking that after some years of relatively peaceful compliance with the law, and indeed on the very brink of full compliance, the conditions of 1957 can occur again? Lamar, S.C., has shown us vividly the price of vacillation.

I urge my colleagues not to abandon the cause of voting rights now. The time is crucial. A failure by the Congress and all the progress of the last 6 years in voting rights can be destroyed. Let us continue to enforce the law which has brought about so much progress, so much hope, and rekindled in so many Americans, the belief that we really can provide equal justice under law for all. This can best be done by passing the Scott-Hart amendment.

THE ADMINISTRATION'S AMENDMENTS TO THE VOTING RIGHTS ACT

Mr. ERVIN. Mr. President, thus far I have devoted my remarks to a discussion of the 1965 act. I would like now to talk briefly to the administration's proposal.

The administration's proposal, H.R. 4249, is only a little less objectionable than the proposal to extend the 1965 Voting Rights Act for 5 years without any change. It does have the virtue of eliminating the discriminatory and illogical trigger device, terminating the exclusive jurisdiction of the District Court of the District of Columbia, and taking away the unreviewable authority of the Attorney General to disallow changes in State voting laws. These changes make the administration's proposal appealing, but only in contrast with the 1965 act itself. They do very little to correct the fundamenal constitutional defects in the 1965 act. Indeed, by providing for the elimination of literacy tests nationwide and by prescribing uniform residency requirements for presidential elections, the administration's amendments to the 1965 act incorporate even greater inroads upon the State's constitutional authority over voting qualifications.

The proposed elimination of literacy tests throughout the Nation represents a direct assault upon the constitutional and traditional authority of the States over voting qualifications. Section 2 of article I, section 1 of article II, the 10th amendment, and the 17th amendment, clearly grant to the States this authority. It is true that section 2 of the 15th amendment grants Congress the power to enact "appropriate legislation" to insure that no person is deprived of the right to vote on account of race, color, or previous condition of servitude. However, the essentially negative mandate of the 15th amendment does not include congressional power to grant the right to vote where it does not otherwise exist; it only prohibits the States from denying suffrage on the ground of race or color.

Even from a more expansive view of congressional power under section 2 of the 15th amendment, the Congress would have to make legislative findings to the effect that literacy tests across the Nation per se constitute a denial of the right to vote on account of race. This finding of fact has not been made and cannot be made on any evidence submitted by the Department of Justice.

The Supreme Court has twice dealt directly with the constitutionality of State literacy tests. In both instances, it has decided that, in the absence of unreasonable and discriminatory application as prohibited by the 15th amendment, the literacy test is a valid exercise of the State's power, and the citizen is not deprived of any right under the Constitution. See *Guinn* v. *U.S.*, 238 U.S. 347 (1915); *Lassiter* v. *Northampton County Board*, 360 U.S. 45 (1959). In the Lassiter case, the Court clearly set forth the power of the States to require literacy tests as a condition for the exercise of the franchise:

> We come then to the question whether a state may, consistently with the fourteenth and seventeenth amendments, apply a literacy test to all voters irrespective of race or color. The Court in *Guinn* v. *United States* disposed of the question in a few words. "No time need be spent on the question of the validity of the literacy test considered alone, since, as we have seen, its establishment was but the exercise by the state of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted." [238 U.S. at 366]

Despite the Supreme Court's decision in Lassiter against Northampton County, there are those who assert that Congress has power under the 14th amendment to abrogate State power over voter qualifications. They contend that section 5 of the 14th amendment gives the Congress power to define the equal protection clause.

Unfortunately, this pernicious theory has been embraced by a majority of the justices on the Supreme Court in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966).

In holding that section 4(e) of the Voting Rights Act of 1965 is a constitutional exercise of Congress' power under section 5 of the 14th amendment, the majority in *Katzenbach* against *Morgan* asserted that Congress could find that an English literacy test was a violation of the equal protection clause of the 14th amendment even if a State legislature and the Federal courts determined otherwise. The scope of judicial review over such a congressional determination would be limited to whether the purpose of the legislation was proper and the means chosen appropriate. Congress, in other words, has the power to determine whether State action poses any possible threat to the equal protection of the law and, after making such a determination, can proceed to prohibit such State action. The scope of such congressional power is limitless.

According to Prof. Archibald Cox's analysis of this theory, Congress can invalidate State legislation upon the ground that it denies equal protection where the Supreme Court itself would uphold, or even has upheld, the constitutionality of the same statute. It would be enough if Congress has a "rational basis" for the conclusion that a certain State action violated the equal protection clause and, therefore, should be prohibited.

I reject this theory as a basis for a nationwide ban on literacy tests. I trust that the Congress will not accept any such fundamental disregard of the Federal system of government provided for in the Constitution.

The language of the Constitution and the history of our Republic make clear that the States have authority to prescribe voting qualifications. To find a constitutional basis for invading such authority in any other part of the Constitution is to assume that the Constitution is to be interpreted as containing mutually hostile rather than harmonious provisions. Except for the Morgan case, to the best of my understanding, neither the Supreme Court nor the Congress has ever accepted such an interpretation.

In the past, Congress has used a constitutional amendment as the means for affecting voting qualifications. It is especially noteworthy that in this same session of Congress the Senate has under consideration a proposed constitutional amendment to lower the voting age to 18 years. I do not understand why, according to the constitutional theory underlying the administration's proposal to eliminate literacy tests and residency requirements, Congress could not proceed to do the same thing through the legislative process. Indeed, Prof. Archibald Cox, of the Harvard Law School, in recent testimony before the Subcommittee on Constitutional Rights, argued for this very position. He said:

> In my opinion, the constitutional underpinning for abolishing residency requirements and literacy tests is equally applicable to legislation reducing the voting age to eighteen.

I am left with the suspicion that an unsupportable and dangerous constitutional theory has been hastily constructed to support the immediate demands of certain powerful interest groups. Such an attitude toward our constitutional form of Government cannot bring forth any lasting security for the rights of the individual.

My objections to the proposed restriction on State residential requirements for voting in presidential elections are basically the same as those I have concerning the proposal to eliminate the literacy test or to lower the voting age. While few persons would look with disfavor upon a broadening of the franchise by reducing voter residency requirements, an attempt to change these requirements by Federal legislation is simply not sanctioned by the Constitution. To contend that the 14th amendment gives Congress such authority is to suggest again a constitutional theory which would allow the complete dismantling of State power over all matters. The States themselves have both the constitutional authority and the wisdom to consider the merits of proposals to reduce or to eliminate residency requirements.

While Congress in its collective wisdom may believe that residency requirements are no longer as necessary as they were 100 years ago, it has no constitutional authority to decide that residency requirements per se violate the due process or equal protection clauses of the 14th amendment and, therefore, should be prohibited by statute. Such a determination is for the courts to make. Yet, such a usurpation by Congress of a judicial function underlies the constitutional theory set forth as the basis for Congress' power to enact such legislation.

I respectfully submit that the proposed Federal restriction on State residency requirements for voting in Presidential elections constitutes both a violation of the separation of powers doctrine and a serious undermining of our Federal system of government.

The administration's bill proposes the establishment of a National Advisory Commission on Voting Rights to study the effect upon voting of residency and literacy laws as prerequisites to voting. The bill expressly authorizes the Commission "to collect data regarding voting in Presidential and other elections, by race, national origin, and income groups."

Mr. President, the nature of the studies authorized to be conducted by this provision of the act clearly constitutes a threat to the individual's right to privacy. There are already enough surveys, questionnaires, information forms, and other data collecting activities by the Federal Government to compromise seriously the individual's "right to be let alone." I see no compelling reason to initiate yet another assault on this right as is lurking in the proposed establishment of the Commission on Voting Rights.

While I am sympathetic with both the liberalization of literacy tests and residency requirements as conditions for voting, I oppose any attempt by the Congress to legislate in an area so clearly within the exclusive domain of the States. In my view, Congress simply does not have constitutional authority to enact the amendments to the 1965 Voting Rights Act as proposed by the administration. If there is general agreement on the elimination of literacy tests, lowering voting age to 18, and establishing uniform residency requirements, let us make these reforms through constitutionally sanctioned means.

Again, Mr. President, I will acknowledge the merit of the administration's amendment to the 1965 act in that it provides for uniform application of its provisions. To a Senator from the South, who has seen his State and others of the South subject to unfair and unequal treatment by the Congress, I am not unappreciative of the administration's approach. However, simply stated, I cannot support even a uniformly applied unconstitutional piece of legislation.

Mr. SCOTT. Mr. President, on the substitute offered by the distinguished Senator from Michigan (Mr. HART) and myself, at this point I demand the yeas and nays.

The yeas and nays were ordered.

Mr. SCOTT. I wish to announce, Mr. President, that when we reach that point, following the vote on the substitute, if the substitute shall be adopted, I shall then ask for another vote, on final passage of the bill as amended by the Scott-Hart substitute amendment, and I shall ask for the yeas and nays—I do this so that Senators may be advised.

The PRESIDING OFFICER (Mr. MCGEE). The question is on agreeing to the amendment of the Senator from Michigan (Mr. HART) and the Senator from Pennsylvania (Mr. SCOTT), as modified and as amended.

Mr. GRIFFIN. Mr. President, the distinguished Senator from Florida (Mr. GURNEY), who is necessarily absent because of illness in his family, has asked me, and has authorized me to state his views on the Voting Rights Act now before us.

Senator GURNEY favored the enactment of H.R. 4249, the administration's sponsored Voting Rights Act, in the form approved by the House.

Had he been present, Senator GURNEY would have opposed and would have voted against the Scott-Hart amendment—amendment No. 519.

Had he been present, Senator GURNEY would have opposed and would have voted against the Mansfield amendment—amendment No. 545—for reasons he had previously made clear.

The inclusion of these amendments in the Senate version of the bill has compelled Senator GURNEY reluctantly to withdraw his support for the bill now before us.

If present, Senator GURNEY would oppose the bill in its present form and would vote against it. It is Senator GURNEY's hope that these provisions will be deleted in conference, and that he will be in a position to support fully the conference version.

Mr. TALMADGE. Mr. President, the Voting Rights Act of 1965 is scheduled to expire on August 5 of this year.

This law is sectional legislation at its worst. It was enacted purely and simply as a punitive measure against only a few carefully selected States.

This law is clearly unconstitutional in that it deprives these States of their right to set qualifications for voting.

Because it is regional legislation and because it flies in the face of clear constitutional doctrine, the Voting Rights Act of 1965 should be allowed to die.

Some say that it has done some good, that between 800,000 and 1 million people have been registered to vote since it went into effect in 1965. That is good. No one that I know of would argue with the proposition that every qualified American citizen is entitled to the full and unfettered right to vote. Voting is more than a right. It is also a duty.

But I have yet to see any substantial proof that the number of minority voters registered since 1965 would not have

been registered if the law had not been enacted.

Over the past several years there has been greatly increased interest in voter registration. This has been due to a great many factors, such as intensive voter registration drives and increasing interest in politics and government. I am sure it is also partly a result of the turbulent times in which we live.

By way of example, according to the Civil Rights Commission, there were 1,238,038 Negroes registered in the 11 Southern States in 1956. Between 1957 and 1964, that number rose by almost 1 million, to 2,174,200.

Thus, tremendous progress in voter registration was already being made, and this was before the enactment of the Voting Rights Act of 1965. In fact, the movement was then just beginning to build up steam.

So, I am far from being convinced that full credit can be given the 1965 law for the increased registration in the past 3 or 4 years.

I want to make myself clear. We are not here to put up stumbling blocks in the way of any citizen's right to vote. Nor would we retire from trying to remove any stumbling blocks that may exist now.

The right to vote is secure. There are some 17 civil and criminal statutes that relate directly or indirectly to the right to vote. It is guaranteed by the 15th amendment to the Constitution. Whenever or wherever this right is abridged by manipulation of literacy tests or any other device, it is readily enforceable in every court of the land.

I will defend the right to vote. I urge people not only to register, but to exercise their franchise. Georgia is one of the States where 18-year-old citizens are allowed to vote, and they are encouraged to register at age 17½. The State of Georgia need apologize to no one for its record in extending the right to vote.

But I am also sworn to uphold the Constitution of the United States. I cannot support a bill that violates the Constitution by depriving States of their right to establish voter qualifications.

That is what the Voting Rights Act of 1965 did.

I also object to putting laws on the books that are cleverly contrived to apply to only one section of the country and to only a few States.

This amounts to discrimination between the various States, under a Constitution that applies equally to every State in the Union. That also is what the Voting Rights Act did.

If Congress deems there is need for a law affecting voter rights, school desegregation, or any other issue, then that law ought to apply equally to all 50 States and not to just those in one part of the country.

This principle is so elementary that I cannot see how anyone in either the executive, legislative, or judicial branches of the Government could fail to understand it.

Yet, in recent years, it has become fashionable in some circles to put double standard laws before the Congress, and for many of our courts to hand down double standard decrees. It has amounted to a virtual campaign against the South. The people are just about fed up.

The War Between the States has been over for more than 105 years. It is time that the Federal Government stopped treating the South like a conquered province and let this section back into the Union on an equal, legal footing with all the other States.

When the Voting Rights Act was before the Senate 5 years ago, I expressed regret that the Senate was unable to reaffirm its support of the right to vote without doing violence to the Constitution.

To extend this law for another 5 years would compound that violence.

We are asked to consider three major proposals. What it comes to is this: We are asked to choose the lesser of three evils.

We have proposals for extending the law without modification.

We have the administration bill.

We have the so-called Scott-Hart "compromise."

To simply extend the law as it is would add insult to injury, not only to the Constitution but also to the States held captive by the terms of this noxious act.

We need to review the provisions of the Voting Rights Act.

Even some of its supporters admit that it departed from the principles of good legislation.

Under an arbitrary trigger device, the bill outlawed literacy tests and set up Federal election machinery in States where less than 50 percent of their citizens were registered on November 1, 1964, or where less than 50 percent of the registered voters cast ballots in the presidential election of November 1964.

As planned, the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and 39 counties of North Carolina became subject to the act.

What manner of legislation would pass judgment on a few States, and find them guilty of vote discrimination simply because less than 50 percent of their voting population was registered or voted in November 1964?

What manner of law do we make that presumes States to be guilty until proven innocent?

What manner of law is this that would forbid the State of Georgia from employing a literacy test to determine voter qualification, and at the same time permit other States to keep their literacy tests?

What manner of law is this that gives the Attorney General veto power over State legislatures?

Under the 1965 act, affected States must secure his permission before changing any of their election laws in any way whatsoever.

What manner of legislation is this that requires States to come all the way to the Federal court in Washington, D.C., to prove their innocence? States cannot go before their Federal district courts. These courts were held unfit to hear cases brought under the so-called "escape provision" of the law.

This is the provision that allows States to come to Washington on bended knee to seek forgiveness for sins that were never proven. They can escape from the law, providing they are able to prove to the satisfaction of the court that they are not presently sinning and have committed no transgressions for the past 5 years.

It should be pointed out that the escape provision has now been rendered meaningless. This came from a ruling of the three-judge District Court in Washington in the Gaston County, N.C., case of 1966.

Gaston County proved all it had to prove. The fact that there was no voter discrimination there went uncontradicted.

But the court was not satisfied with the law as it was written. In another supreme example of legislating by court decree, the District Court added a new provision to the law.

It held that all States and counties which maintained a separate school system prior to 1954 must stay under the law's provisions.

The court rendered this decision in the full knowledge that prior to 1954 the "separate but equal" doctrine was the law of the land. The court chose to ignore this fact, and to indulge in dictating ex post facto law.

Mr. President, it is unthinkable that such a law as this be extended for another 5 years. In the first place, it is not needed. All of the States affected by the act met the 50-percent requirement in the 1968 election.

This law was politically motivated in 1965. It is motivated by political expediency today. This law was unconstitutional in many respects. It is unconstitutional in the same respects today.

We now come to the administration's version of the Voting Rights Act. I suppose it must be said that it has certain virtues over the law as it now stands. The administration's bill would at least make this national legislation, instead of regional. Thus, it would apply to all 50 States instead of just seven.

It would readmit States to their Federal district courts from which they were locked out in 1965. States, in seeking to secure pardon from the terms of the law, would no longer have to come hat-in-hand to Washington, D.C.

In short, the administration bill would make the law apply nationally. It would put the Federal district courts back in good standing. It would permit State legislators to make laws without having the Attorney General, an appointed official, looking over their shoulders with a club in his hand.

These features probably make the administration's bill more desirable than the present law. But, it is still not a very attractive piece of legislation. It still blatantly flouts longstanding constitutional doctrine.

By proposing to outlaw literacy tests in all the States, the administration's bill violates the Constitution in three separate instances.

Three specific provisions of the Constitution—article I, section 2; article II, section 1; and the 17th amendment—give the States, and not the Federal Gov-

ernment, the power to set qualifications for voting.

The Voting Rights Act is based on the 15th amendment. Yet, we are asked to use this limited authority to enact legislation that directly violates other provisions of the Constitution.

However noble they may seem, we cannot base a law on one provision of the Constitution when it does violence and conflicts with other sections. The Constitution cannot be interpreted by bits and pieces. It must be considered as a whole.

No other provision is more firmly imbedded in the Constitution than the right of the States—and not the Federal Government—to set qualifications for voters. The power to change or establish voter qualifications can be accomplished by constitutional amendment alone.

Short of amending the Constitution, the Congress has no more authority to declare what voter qualifications will not be than it does to dictate what they will be.

The Congress can no more abolish voter qualifications, whether it be a literacy test or any other requisite, than it can create them, unless it does so by putting an amendment before the States for ratification.

Wherever there exists the wrongness of voter discrimination, let it be remedied at the local level, in accordance with existing Federal and State law, not by congressional edict that relies on one section of the Constitution and casts aside the rest of it.

Wherever literacy tests are unfairly administered so that the right to vote is abridged, let corrective action be taken by the Attorney General in a court of law.

Wherever citizens claim the deprivation of their right to vote, let them secure a redress of grievances in a legal and orderly fashion. They will find a multitude of existing law that puts the full might of the Federal Government at their disposal.

I can find no justification in anything that has taken place in the past, or that is allegedly happening now, for overriding the Constitution and long-established law in the manner that is proposed here today.

I hope the Congress will let the Voting Rights Act of 1965 expire next August.

Mr. HARRIS. Mr. President, the Voting Rights Act of 1965 has won wide acclaim from blacks, civil rights advocates, and people of goodwill everywhere as the most significant and effective legislation passed by the Congress in this century to guarantee and protect the rights of Negroes and other American citizens.

Although the right to vote had been guaranteed by law to blacks since the adoption of the 15th amendment to the Constitution, there was little evidence to support the fact that blacks were able to make effective use of this basic right. Time after time this right depended almost entirely upon private litigation.

In the Civil Rights Act of 1957, Congress gave the U.S. Attorney General statutory authority to institute suits on behalf of Negroes deprived of voting rights. Supplementary legislation strengthening the 1957 act was passed in 1960 and 1964.

The chief means of limiting the franchise of blacks in the 1950's and early 1960's was the literacy test. Generally, State laws vested wide discretion in local registrars in administering these and other qualification tests. Although the Department of Justice had a right to sue, litigation oftentimes was protracted and successfully reached only a small percentage of blacks.

The Voting Rights Act of 1965 departed from this pattern by providing for "direct Federal action" to enable Negroes the right to register and vote without reliance on protracted litigation required by the previous legislation. This point, is very important, as for the first time the burden of proof concerning discrimination or nondiscrimination shifted from the plaintiffs to the State—or its political subdivision. The opposite effect will be true if H.R. 4249 is approved by the Congress.

Since passage of the Voting Rights Act, there has been a significant increase in the number of blacks registered, voting and holding elected offices in southern States. Records of the Civil Service Commission show that Federal examiners have been assigned to 58 counties in Southern States since 1965 and have listed as eligible to vote 158,094 persons including 150,767 nonwhites and 7,327 whites.

Voting rights suits brought by the Department of Justice between 1957 and 1965, when the Civil Rights Act of 1957, 1960, and 1964 were in effect, produced only 36,000 black voter registrations throughout the South. Testimony presented to the Judiciary Subcommittee on Constitutional Rights by the Southern Regional Council indicates that there has been an increase of 897,000 Negroes registered to vote in the seven Southern States principally covered by the 1965 act. These States are: Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and 39 counties in North Carolina. The registration figure represents approximately 59.5 percent of the voting age population in those States. We might also attribute the election of approximately 570 black public officials in the South to this act.

Who, then, can question the effectiveness, or deny the need for the continuation for this particular piece of legislation? The Constitution of the United States as well as all legislative acts of the Congress should be designed in the best interests of all citizens of this country, and to assure equal opportunity and protection under the law for all Americans.

This, of course, will not be true in the area of voting rights if the Senate supports H.R. 4249 as passed by the House and endorsed by the Nixon administration. These amendments, if passed, would considerably weaken the effect of the 1965 act by:

First. Deleting the provision which permits appointment of Federal examiners and election observers and suspension of literacy tests in any area which, in 1964, had such tests and had less than 50 percent of voting age persons registered or voting. Commonly referred to as the "trigger formula".

Second. Deleting the requirement that covered areas must submit new voting laws for Federal approval prior to their taking effect, and substituting a provision authorizing the Attorney General to prohibit any discriminatory laws enacted in any State.

As I stated earlier, Negro registration now exceeds 50 percent of the black voting age population in Southern States. Prior to passage of the act, this was true only in Florida, Tennessee, and Texas. The biggest gain has been in Mississippi, where Negro registration has gone from 6.7 percent to 59.8 percent. There have been important gains in other States. For example, in Alabama the percentage has increased from 19.3 to 51.6; in Georgia from 27.4 to 52.6; in Louisiana from 31.6 to 58.9; and in South Carolina from 37.3 to 51.2.

Broadly based community and national interests groups have presented testimony in committee hearings and made statements recommending extension of the present act. Correspondence from my home State of Oklahoma has been 100 percent in favor of extension.

Supporters of the administration bill have argued against the regional focus of the 1965 act. They argue that the act has accomplished its purpose; that is, an increase in black voter registration to approximately 59 percent. I ask whether the administration and its supporters, through these arguments, intend to establish a ceiling on the level to which we, the Congress provide and enforce equal opportunity for disenfranchised blacks and other minorities? It would seem that now is the time to extend the act and to work for its full effectiveness. To do otherwise is to retreat on the progress we are making in human relations and to replace substance and hope with subterfuge and frustration.

Contrary to the arguments of the administration and its supporters, the 1965 act applies to all 50 States and their political subdivisions. Section 4 of the present act suspends the use of literary tests and other specified prerequisites to registration or voting in any State or political subdivision if less than 50 percent of the voting age residents of the area were registered to vote on November 1, 1964, or actually voted in the 1964 presidential election. The 1965 act specifically provides that any State or political subdivision may remove itself from a coverage by obtaining a judgment from a three-judge Federal district court in the District of Columbia, or the Attorney General.

In addition to the seven Southern States presently directly affected by the act, the "trigger formula" covered the States of Alaska, three counties in Arizona, one county in Hawaii, and one county in Idaho. As of January 16, 1968, these States removed themselves from coverage by using the above process. The principally affected southern areas can, under the law, exercise the same right—

if they prove that race is not a factor in their registration and voting process.

On Wednesday, July 9, 1969, testimony and statements were received from Senators SCOTT and MATHIAS and from Commissioner Freeman of the Civil Rights Commission. All testified to the need for continuation of the 1965 act as enacted. On July 10, 1969, Senator SCHWEIKER submitted a statement urging extension of the act, and Mr. Clarence Mitchell and Mr. Joseph L. Rauh appeared on behalf of the Leadership Conference on Civil Rights, representing over 125 organizations interested in civil rights. Commissioner Freeman, Mr. Mitchell, and Mr. Rauh and others have presented, at length, facts demonstrating the need for retention of the act.

We have heard considerable debate on the legislation before us. Many amendments have been offered to weaken the major provisions of the 1965 act—sections 4, 5, and 6. These efforts have been defeated by substantial margins. Yesterday, the Senate by a margin of 64 to 17 passed the amendment to extend voting rights to 18-year-olds in national, State, and local election.

The Scott-Hart substitute bill provides for extension of the 1965 act. It also extends the suspension of literacy tests and other devices to all States and establishes uniform residency requirements for national elections.

I strongly support the Scott-Hart bill and hope that it will be passed by the Senate without further delay.

The PRESIDING OFFICER. The question is on agreeing to the amendment in the nature of a substitute, as modified and as amended, of the Senator from Pennsylvania (Mr. SCOTT) and the Senator from Michigan (Mr. HART). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COTTON (when his name was called). On this vote I have a live pair with the Senator from Rhode Island (Mr. PASTORE). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote, "nay." Therefore, I withhold my vote.

The bill clerk resumed and concluded the call of the roll.

Mr. MANSFIELD (after having voted in the affirmative). On this vote I have a pair with the senior Senator from Georgia (Mr. RUSSELL). If he were present, he would vote "nay." I have already voted in the affirmative; I therefore withdraw my vote.

Mr. FULBRIGHT (after having voted in the negative). On this vote I have a pair with the senior Senator from Idaho (Mr. CHURCH). If he were here, he would vote "yea." I have already voted "nay." I withdraw my vote.

Mr. SPONG (after having voted in the negative). On this vote I have a pair with the Senator from Hawaii (Mr. INOUYE). If he were here, he would vote "yea." I have already voted "nay." I withdraw my vote.

Mr. SPARKMAN (after having voted in the negative). On this vote I have a live pair with the Senator from New Mexico (Mr. MONTOYA). If he were present, he would vote "yea." I have previously voted "nay." I withdraw my vote.

Mr. JORDAN of Idaho (after having voted in the affirmative). I have a live pair with the Senator from Nebraska (Mr. HRUSKA). If he were here, he would vote "nay." I have already voted "yea." I therefore withdraw my vote.

Mr. EASTLAND (after having voted in the negative). On this vote I have a live pair with the Senator from Connecticut (Mr. DODD). If he were present, he would vote "yea." I have already voted in the negative; I therefore withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Connecticut (Mr. DODD), the Senator from North Carolina (Mr. JORDAN), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Rhode Island (Mr. PASTORE), the Senator from Georgia (Mr. RUSSELL), and the Senator from Texas (Mr. YARBOROUGH), are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Utah (Mr. MOSS), and the Senator from Hawaii (Mr. INOUYE), are absent on official business.

On this vote, the Senator from Utah (Mr. MOSS) is paired with the Senator from North Carolina (Mr. JORDAN). If present and voting, the Senator from Utah would vote "yea" and the Senator from North Carolina would vote "nay."

On this vote, the Senator from Alaska (Mr. GRAVEL) is paired with the Senator from Arkansas (Mr. MCCLELLAN). If present and voting, the Senator from Alaska would vote "yea" and the Senator from Arkansas would vote "nay."

I further announce that, if present and voting, the Senator from California (Mr. CRANSTON), and the Senator from Texas (Mr. YARBOROUGH) would each vote "yea."

Mr. GRIFFITH. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Nebraska (Mr. HRUSKA), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS) and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Florida (Mr. GURNEY) is absent because of illness in his family.

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

If present and voting, the Senator from South Dakota (Mr. MUNDT), and the Senator from Texas (Mr. TOWER would each vote "nay."

On this vote, the Senator from Illinois (Mr. SMITH) is paired with the Senator from Alaska (Mr. STEVENS). If present and voting, the Senator from Illinois would vote "nay" and the Senator from Alaska would vote "yea."

The pair of the Senator from Nebraska (Mr. HRUSKA) has been previously announced.

The result was announced—yeas 51, nays 22, as follows:

[No. 104 Leg.]

YEAS—51

Aiken	Harris	Nelson
Anderson	Hart	Packwood
Bayh	Hartke	Pearson
Bible	Hatfield	Pell
Boggs	Hughes	Percy
Brooke	Jackson	Prouty
Burdick	Javits	Proxmire
Cannon	Kennedy	Randolph
Case	Magnuson	Ribicoff
Cook	Mathias	Saxbe
Cooper	McGee	Schweiker
Dominick	McGovern	Scott
Eagleton	McIntyre	Smith, Maine
Fong	Metcalf	Symington
Goodell	Miller	Tydings
Gore	Mondale	Williams, N.J.
Griffin	Muskie	Young, Ohio

NAYS—22

Allen	Ellender	Murphy
Allott	Ervin	Stennis
Baker	Fannin	Talmadge
Bennett	Goldwater	Thurmond
Byrd, Va.	Hansen	Williams, Del.
Byrd, W. Va.	Holland	Young, N. Dak.
Curtis	Hollings	
Dole	Long	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—7

Cotton, against.
Eastland, against.
Fulbright, against.
Jordan of Idaho, for.
Mansfield, for.
Sparkman, against.
Spong, against.

NOT VOTING—20

Bellmon	Inouye	Pastore
Church	Jordan, N.C.	Russell
Cranston	McCarthy	Smith, Ill.
Dodd	McClellan	Stevens
Gravel	Montoya	Tower
Gurney	Moss	Yarborough
Hruska	Mundt	

So the Scott-Hart amendment in the nature of a substitute (No. 544), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Several Senators requested the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. BENNETT (after having voted in the affirmative). On this vote I have a pair with the distinguished junior Senator from Nebraska (Mr. HRUSKA). If he were present, he would vote "nay." Having already voted in the affirmative, I withdraw my vote.

Mr. MANSFIELD (after having voted in the affirmative). On this vote I have a pair with the distinguished senior Senator from Georgia (Mr. RUSSELL). If he were present, he would vote "nay." Having already voted in the affirmative, I withdraw my vote.

Mr. GOLDWATER (after having voted in the affirmative). On this vote I

have a pair with the senior Senator from Texas (Mr. TOWER). If he were present and voting, he would vote "nay." Having already voted in the affirmative, I withdraw my vote.

Mr. LONG (after having voted in the negative). On this vote I have a pair with the Senator from Rhode Island (Mr. PASTORE). If he were present, he would vote "yea." Having already voted in the negative, I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Connecticut (Mr. DODD), the Senator from North Carolina (Mr. JORDAN), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), the Senator from Rhode Island (Mr. PASTORE), the Senator from Georgia (Mr. RUSSELL), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Utah (Mr. MOSS), and the Senator from Hawaii (Mr. INOUYE) are absent on official business.

I further announce that, if present and voting, the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUYE), the Senator from Minnesota (Mr. MCCARTHY), the Senator from New Mexico (Mr. MONTOYA), and the Senator from Texas (Mr. YARBOROUGH) would each vote "yea."

On this vote, the Senator from Utah (Mr. MOSS) is paired with the Senator from North Carolina (Mr. JORDAN). If present and voting, the Senator from Utah would vote "yea" and the Senator from North Carolina would vote "nay."

On this vote, the Senator from Connecticut (Mr. DODD) is paired with the Senator from Arkansas (Mr. MCCLELLAN). If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Arkansas would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Nebraska (Mr. HRUSKA), the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Florida (Mr. GURNEY) is absent because of illness in his family.

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

If present and voting, the Senator from Oklahoma (Mr. BELLMON), the Senator from South Dakota (Mr. MUNDT), the Senator from Illinois (Mr. SMITH), and the Senator from Alaska (Mr. STEVENS) would each vote "yea."

The respective pairs of the Senator from Nebraska (Mr. HRUSKA) and that of the Senator from Texas (Mr. TOWER) have been previously announced.

The result was announced—yeas 64, nays 12, as follows:

[No. 105 Leg.]

YEAS—64

Aiken	Gore	Nelson
Allott	Griffin	Packwood
Anderson	Hansen	Pearson
Baker	Harris	Pell
Bayh	Hart	Percy
Bible	Hartke	Prouty
Boggs	Hatfield	Proxmire
Brooke	Hughes	Randolph
Burdick	Jackson	Ribicoff
Cannon	Javits	Saxbe
Case	Jordan, Idaho	Schweiker
Cook	Kennedy	Scott
Cooper	Magnuson	Smith, Maine
Cotton	Mathias	Spong
Curtis	McGee	Symington
Dole	McGovern	Tydings
Dominick	McIntyre	Williams, Del.
Eagleton	Metcalf	Williams, N.J.
Fannin	Miller	Young, N. Dak.
Fong	Mondale	Young, Ohio
Fulbright	Murphy	
Goodell	Muskie	

NAYS—12

Allen	Ellender	Sparkman
Byrd, Va.	Ervin	Stennis
Byrd, W. Va.	Holland	Talmadge
Eastland	Hollings	Thurmond

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—4

Bennett, for.
Mansfield, for.
Goldwater, for.
Long, against.

NOT VOTING—20

Bellmon	Inouye	Pastore
Church	Jordan, N.C.	Russell
Cranston	McCarthy	Smith, Ill.
Dodd	McClellan	Stevens
Gravel	Montoya	Tower
Gurney	Moss	Yarborough
Hruska	Mundt	

So the bill (H.R. 4249) was passed.

Mr. SCOTT. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. MANSFIELD. I move that the motion to reconsider be laid on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. COOK). Without objection, the title will be appropriately amended.

Mr. SCOTT. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized and directed to make all necessary clerical and technical changes, including section captions and changes in section numbers and cross-references, in the engrossment of the amendments to the bill, H.R. 4249, extending the Voting Rights Act of 1965 with respect to the discriminatory use of tests and devices.

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

TRIBUTE TO SENATORS ON THE PASSAGE OF THE VOTING RIGHTS BILL

Mr. MANSFIELD. Mr. President, the Senate has just witnessed final action on what I believe is one of the most significant measures to have come before this body. The right of the ballot is without a doubt the most important right—the most fundamental responsibility—in a democracy. The strength of a society in my judgment is measured greatly by the degree of participation enjoyed by the people who comprise it. The strength of its government, its institutions, its policies, and programs is derived directly from the citizens. They express their support through the ballot. The more people who are given access and use it, the more durable will be the Democracy under which they live.

I am happy to note on that score that the Senate of the United States has gone on record squarely in favor of expanding the franchise of the ballot. I am delighted to note that the Senate has among its Members men like PHILIP HART of Michigan, HUGH SCOTT of Pennsylvania, SAM ERVIN of North Carolina, and others who, though they may differ as to the means, work tirelessly in behalf of a democracy founded firmly on the proposition that the right to vote is the most precious right of all.

Their leadership, their devotion and ability, I might say assured the efficient and orderly disposition of this measure. The entire Senate is deeply grateful.

In addition to Senator SCOTT, Senator HART, and Senator ERVIN, there are many others who deserve a great deal of credit for their outstanding efforts on this measure. The senior Senator from Nebraska (Mr. HRUSKA) and the senior Senator from Mississippi (Mr. EASTLAND) deserve great credit for their splendid cooperation. As the chairman and ranking minority member of the Committee on the Judiciary they joined to assure most efficient action.

The issue of expanding the ballot to those between 18 and 21 has long been with us. It is well on its way to being resolved. That it has, has been made possible solely because of the efforts of a number of Members of this body who led the fight with the highest degree of skill and devotion. Certainly the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Washington (Mr. MAGNUSON) are to be singled out in this respect.

It was through the initial efforts of Senator KENNEDY, I might say, that the idea of establishing by statute the vote for the 18-year-old was developed. I must give full credit as well to the distinguished senior Senator from Washington (Mr. MAGNUSON). His association with the concept of expanding the ballot to 18-year-olds goes back to 1933 when he offered such a proposal in the Washington State Legislature.

Of course my hat goes off to the distinguished Senator from West Virginia (Mr. RANDOLPH), on this issue of 18-year-old voting. He has proposed constitutional amendments seeking to lower the voting age for almost 30 years in both the House and the Senate. He has led the way. He has inspired all of us to stick with the idea and to press on in our efforts. He is to be deeply commended. It is a victory he may truly cherish.

The same may be said for the distinguished Senator from Indiana (Mr. BAYH). As the chairman of the Constitutional Amendments Subcommittee he has provided the basic record on which the Senate has acted. During the past few years especially have the hearings held by his subcommittee demonstrated beyond all question the propriety of lowering the voting age.

I also want to pay special tribute to the distinguished Senator from Kentucky (Mr. COOK). He contributed immensely to the discussion of voting rights generally and especially to the issue of 18-year-old voting. His advice and counsel through these past few days have been most appreciated by me.

I want to express to the distinguished junior Senator from Alabama (Mr. ALLEN) my feelings for the outstanding service he performed in behalf of the State which he so ably represents. His views are strong and most sincere. He is an able and effective advocate. Most of all I want to express appreciation for his integrity, his devotion and cooperation. The understanding which he showed during the course of the debate was truly exemplary and the Senate is most gratfeul.

I could go on singling out others who contributed so much to the high-level discussion on the vital issues that have confronted this body during the past several days. Senator COOPER for one offered a proposal that improved the voting rights measure greatly in my opinion. The same may be said of the distinguished Senator from Arizona (Mr. GOLDWATER). His residency proposal was most significant.

I could continue in this endeavor, Mr. President. I do not wish to ignore the efforts of anyone. Indeed, it would be accurate to state that every Senator played a role—every Member of this body made a contribution. I, personally, am most grateful to this entire body.

Mr. ALLEN. Mr. President, I merely want to express my appreciation to the distinguished and outstanding majority leader for his kind and complimentary remarks and to express my appreciation to him for his kindness and unfailing good humor and tolerance of the efforts of the junior Senator from Alabama, and to say I greatly admired his fairness. He was fair at every step of the proceedings to the junior Senator from Alabama in his efforts. The junior Senator from Alabama hopes that he has made clear to the Senate his views with respect to this legislation.

I thank the distinguished majority leader.

REASON FOR VOTE

Mr. HOLLINGS. Mr. President, while the announced intention of the voting rights bill is to eliminate discrimination, I voted against this bill because it discriminates. I believe in voting rights. When other States burned their voting records, as Governor of South Carolina, I furnished then Attorney General Robert Kennedy with the voting records of counties in South Carolina. We have had a few minor complaints; none of them has been substantiated and the individual's right to vote is protected in South Carolina.

This bill is premised on percentages that do not accurately reflect the right of the individual to vote. Up to now, the presence of Federal registrars and the requirement that voting records be submitted to the Attorney General have not, by themselves, disturbed us. But the discrimination against South Carolina has. And it is patently unconstitutional.

It is for this reason, among others, that I supported the amendment permitting 18-year-olds to vote. If an 18-year-old can vote for President in one State, he should be allowed to in all States. I realize the passage of this bill is imminent and that my vote now is not necessary to the 18-year-old issue. No one should construe my vote against the bill as being against the right of 18-year-olds to vote. I supported the right of 18-year-olds to vote in a bill introduced by me in the State legislature back in 1951 and will continue to support this right at every opportunity.

Mr. KENNEDY. Mr. President, I wish to express a word of commendation to the distinguished Senator from Pennsylvania (Mr. SCOTT), the distinguished Senator from Michigan (Mr. HART), and to the majority leader.

We have witnessed today one of the most important pieces of legislation that will pass the Senate in this session. Both the Senator from Pennsylvania and the Senator from Michigan have been on the floor day after day debating these issues and bringing to bear an extraordinary sense of balance and judgment on these most complex and complicated issues and questions affecting the right to vote and the constitutional guarantees related thereto.

My statement is in no way intended to take away from the efforts of those who have expressed their reservations by a series of amendments to this major piece of legislation. Most notably the distinguished constitutional jurist, the senior Senator from North Carolina (Mr. ERVIN), and my good friend, the Senator from Alabama (Mr. ALLEN).

I think that the debate itself has been enormously informative and helpful to all Americans. The vote that has been had here today will indicate to all Americans that we will extend the franchise as nearly as we can to all Americans, black and white Americans, of all races, religions, and creeds, and that we will eliminate the artificial barriers that have been established in the past and assure all Americans that those barriers will not be raised again in the future.

I think that by our agreement to the amendment extending the franchise to the 18-year-olds, we have given 10 million young Americans reason to believe that they can and should play an important and significant role in the whole franchise system of this great Nation. It is a very extraordinary vote of confidence in their judgment and ability to exercise an informed judgment in the important national, State, and local elections. All of us who were involved in this effort are grateful for the leadership of the distinguished majority leader.

I think the Senators whom I have named and others that have not been mentioned are entitled to the commendation of the Senate and the American public.

Mr. SCOTT. Mr. President, I express my very deep thanks to the Senator for his very kind remarks.

The Senator from Michigan and I are both very deeply grateful to the Senator from Massachusetts and to the cosponsors of the Scott-Hart substitute and also to those who have contributed to, I hope, the final result. We are grateful to the Senators from Kentucky (Mr. COOPER and Mr. COOK) for their fine amendments and also to the Senator from New York (Mr. JAVITS), and to all of those on both sides of the aisle who were at all times so deeply concerned over the matter.

I also extend my thanks to those who were opposed, for their courtesy, tolerance, and consideration.

Mr. MAGNUSON. Mr. President, I associate myself with the remarks of the distinguished Senator from Massachusetts.

Mr. JAVITS. Mr. President, I, too, would like to associate myself with the remarks of the Senator from Massachusetts.

I think we have seen a landmark piece of legislation pass the Senate here.

I add only the deep hope that the action on the measure this afternoon will be final—I know there are some reservations in the other body—and that we will be expressing the sentiment of the Nation in giving the 18-year-olds the right to vote and in passing the Voting Rights Act.

LETTER BY O. L. WARR CONCERNING LAMAR, S.C.

Mr. THURMOND. Mr. President, a distinguished citizen of Lamar, S.C., has written a letter to the editor of the State newspaper concerning recent events in Lamar. Mr. Osta L. Warr is a prominent farmer and writer who is well known for his intellect and fine sense of judgment throughout South Carolina.

Mr. Warr served in the South Carolina House of Representatives in 1957–58. He graduated from the University of South Carolina in 1927 where he was a member of Phi Beta Kappa. He coauthored "Darlington County—Economic and Social," which is an excellent history of Darlington County. For 40 years Mr. Warr has contributed columns to the Charleston News and Courier and other South Carolina publications on numerous topics.

Mr. Warr is concerned that numerous facts about what actually happened in Lamar have not been made clear to the public. For example, many citizens believe that the buses overturned in Lamar were filled with students when actually the buses were empty when they were overturned.

He also suggests that adequate State law enforcement personnel were not on hand to maintain law and order in spite of the fact that State officials had prior warning of the tenseness of the situation. He asks whether or not the mob may not have been entrapped so as to discredit the thousands of citizens of Darlington County who had peacefully protested the unjust court order integrating the schools in midterm.

I believe Mr. Warr's story deserves the attention of the Nation. If citizens are properly to assess what happened in Lamar, they should have the views of those who have the best interests of Darlington County at heart and are not merely seeking the exploitation of another "racial incident."

Mr. President, I ask unanimous consent that the article entitled "Writer Relates Lamar Side of Riot Story," written by Osta L. Warr, which appeared in the State newspaper on Wednesday, March 11, be printed in the RECORD.

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

WRITER RELATES LAMAR SIDE OF RIOT STORY

To the EDITOR:

At mid-morning of March 3, the Governor's office issued a news report stating that rioters at Lamar had overturned two buses loaded with school children. Immediately this false report was broadcast to every part of the nation, bringing down upon the town of Lamar a storm of unjust denunciation. The Governor was quick to condemn the men who had done this "unspeakable" deed.

Later this damaging libel was grudgingly corrected, without one word of apology or excuse. The buses had been entirely empty when overturned, it was admitted. Then followed a claim as false as the first, that only valiant efforts on the part of the officers had made possible the rescue of the children.

The occupants of the buses were never for one moment the object of the wrath of the crowd. No child was harmed beyond some accidental scratch, or was ever in any danger of any real harm. The fury of those few minutes was never for one moment directed at the children; but at the buses. In the eyes of the angry men and women these had come to serve as symbols of unfair and tyrannical orders and decisions which had pushed their fury past the boiling point. They vented their wrath that morning by turning two empty buses upon their sides.

Of the hundreds of confrontations viewed upon television during recent years, this was the smallest and least damaging that I ever remember seeing. Physical casualties of consequence? One citizen, hit in the temple with a tear gas canister fired on the level by an excited officer. Financial damage? Maybe a thousand dollars or two.

If false reports from official sources had not blown the matter out of all true proportions, it is doubtful if the incident would have made the front page of any save local newspapers.

Unmentioned anywhere was the fact that Lamar citizens had made every effort within their power to prevent the occurrence. On Monday, a push-and-shove confrontation between protesters and police had put the public pulse to racing mildly. By nightfall tension had reached an intensity the like of which none of us ever seen before.

So strong was our sense of alarm that the magistrate of the town arranged, with the aid of the sheriff, a conference with the county boards of education and trustees. Former Rep. W. J. Carter and I were delegated by the Lamar citizens present to describe the urgency of the situation to this group, which also included the board's attorney, the senator, the superintendent of education, and two members of the House of Representatives.

We described the seething situation and attendant dangers. We suggested that it might be wise not to operate the school next day. But if the decision should be to continue operation, we urged with all emphasis that the National Guard be on hand next morning. We felt certain that highway patrolmen alone would not be able to cope with the situation. Mr. Carter emphasized our plea that under no consideration should buses be routed to the school next day.

We have been told that these views were conveyed to the Governor, and that other pleas for Guardsmen were transmitted to him during the night. To all these urgent and desperate pleas the answer remained in the negative. If the National Guard had been present next morning, the incident would almost certainly not have occurred. The Guard was called to the scene and the school closed immediately after the clash.

We begged help from the Governor in that hour of peril, and could not get it. Where else could we turn? Hindsight would seem to indicate that we of Lamar understood the temper of our townsmen better than those less well acquainted with them.

But could they have been victims of a plan to incite them to violation of law, with deliberate entrapment as the goal? There are facts that arouse such a suspicion.

Recent protests and demonstrations had grown increasingly frustrating to officialdom. But so long as they had remained nonviolent, there had been no way of preventing them.

Here now was a chance to catch these dissidents with their tempers up, to encourage them to violation of law by limiting the peace-keeping force to a squad too small to effectively maintain that peace. Then maybe they could be jailed, and their nuisance brought to an end.

Next morning, in the face of every warning and plea, buses were driven past their usual entrance point along a completely unhampered road into the schoolyard, and routed straight before the faces of men and women tense and angry. Was this the deliberate flaunting of a red flag?

If such was the plan, its first half worked. The charge was immediately forthcoming, with a lot more power behind it than had been bargained for. Patrolmen and SLED agents were not able to arrest individuals one by one, as they had perhaps intended.

And on Wednesday when finally they had warrants, they served them with that vengeance. It was then that the knock on the door in the night, the universal symbol of the police state, echoed in the ears of several citizens of the county.

Wayne Seal, the Governor's representative, was on the scene to see that it was done that way, and to force those arrested to spend a night in the jail by announcing that bonds, of $5,000 each, could not be arranged until morning. Next day, somebody with a better sense of balance reduced the bond figure to $2,000. Before the first dime was needed, hundreds of thousands of dollars had been offered for that purpose.

Long before the Governor's appeal for a restoration of calm, many of us at Lamar had busied ourselves to that end. But our small successes in that direction have been far more than counterbalanced by the news releases from the Governor's office that some of the women of this area are soon to be arrested. The Governor should see to it that such arrests be made in a more civilized manner than the methods used.

The men of Darlington County remain uncowed and unawed. Through the years, I have heard it said that "Lamar folks just won't let themselves be pushed around." Until now I had never realized and appreciated the full strength of those words.

OSTA L. WARR.

A GREAT MOTION-PICTURE DOCUMENTARY—"MONTGOMERY TO MEMPHIS"

Mr. JAVITS. Mr. President, I would like to note for the information of the Senate that the senior Senator from Massachusetts (Mr. KENNEDY) and I were hosts last night at a previewing of the great documentary motion picture about the Reverend Dr. Martin Luther King entitled "Montgomery to Memphis."

It is one of the most moving documentaries I have ever seen. It will be shown at 8 p.m. on March 24 in 1,000 theaters in 300 cities throughout the Nation. It is hoped that Americans by the tens of thousands will turn out to see this extraordinary film, and will each pay $5 for the privilege so that the proceeds can go for the benefit of the Southern Christian Leadership Conference and the Martin Luther King Foundation.

I hope very much that every Member of the Senate will go to see this magnificent documentary testifying to the moral power of nonviolence at a time when we certainly need to come to an understanding of what is happening in this possibly most violent time in our Nation's history.

Perhaps the most moving portion of the film—and one that has particular meaning in these times of deepening crisis of alienation, polarization, violence, and hate—was that moment of pure poetry and love on the steps of the Lincoln Memorial on a sunny August day in 1963 when the Reverend Dr. King told black and white America of his "dream." It is a dream—tragically—still unrealized, but it is a dream that we as Senators and we as Americans must never forget. It is a dream that still lives in the memory of Martin Luther King. It is a dream that we must bring into all our deliberations as Senators whether they concern the desegregation of our public schools, the guarantee of the right to vote to all Americans, or the confirmation of Justices to the Supreme Court of the United States.

Therefore, let me quote from that portion of the Reverend Dr. King's message pertaining to his dream—a dream for all Americans—and I ask unanimous consent that this passage be inserted into the RECORD as an extension of my remarks;

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

I HAVE A DREAM

I say to you today, my friends, that in spite of the difficulties and frustrations of the moment I still have a dream. It is a dream deeply rooted in the American dream.

I have a dream that one day this Nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident; that all men are created equal."

I have a dream that one day on the red hills of Georgia the sons of former slaves and the former sons of slaveowners will be able to sit down together at the table of brotherhood.

I have a dream that one day even the State of Mississippi, a desert State sweltering with the heat of injustice and oppression, will be transformed into an oasis of freedom and justice.

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

I have a dream today.

I have a dream that one day the State of Alabama, whose Governor's lips are presently dripping with the words of interposition and nulification, will be transformed into a situation where little black boys and black girls will be able to join hands with little white

boys and white girls and walk together as sisters and brothers.

I have a dream today.

I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places will be made plains, and the crooked places will be made straight, and the glory of the Lord shall be revealed, and all flesh shall see it together.

This is our hope. This is the faith with which I return to the South. With this faith we will be able to hew out of the mountain of despair a stone of hope. With this faith we will be able to transform the jangling discords of our Nation into a beautiful symphony of brotherhood. With this faith we will be able to work together, to pray together, to struggle together, to go to jail together, to stand up for freedom together, knowing that we will be free one day.

This will be the day when all of God's children will be able to sing with new meaning "My country 'tis of thee, sweet land of liberty, of thee I sing. Land where my fathers died, land of the pilgrim's pride, from every mountainside, let freedom ring."

And if America is to be a great nation this must become true. So let freedom ring from the prodigious hilltops of New Hampshire. Let freedom ring from the mighty mountains of New York. Let freedom ring from the heightening Alleghenies of Pennsylvania.

Let freedom ring from the snowcapped Rockies of Colorado.

Let freedom ring from the curvacious peaks of California.

But not only that; let freedom ring from Stone Mountain of Georgia.

Let freedom ring from Lookout Mountain of Tennessee.

Let freedom ring from every hill and molehill of Mississippi. From every mountainside, let freedom ring.

When we let freedom ring, when we let it ring from every village and every hamlet, from every State and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, "Free at last; free at last; thank God Almightly, we are free at last."

RECENT WAVE OF TERRORIST BOMBINGS ACROSS THE NATION

Mr. EASTLAND. Mr. President, there is strong evidence today that the recent wave of terrorist bombings across the Nation are indeed connected with Cuba. I note the headlines of the afternoon press link victims of recent New York and Maryland bombings to visits in Cuba. The news accounts indicate that one victim spent 3 months in Cuba, and the other traveled as part of a student group going there to cut sugarcane.

The Subcommittee on Internal Security has been investigating this matter for sometime now, and, as chairman, I intend to make a detailed address in this Chamber within the next few days. It is my hope that we will hold hearings on this matter. I can state that we intend to get to the bottom of these allegations and put a stop to these tactics if at all possible.

The recent wave of rioting on college campuses and in our cities has now been accentuated by these terrorist bombings. Such tactics strike fear into the heart of every American and rightfully so. Cuba sits at our very doorstep and exports revolution and anarchy into every nation of this hemisphere.

Mr. President, at this very hour there are 687 students in Communist Cuba under the guise of canecutters. These people are not canecutters—but they are in Cuba to learn revolution.

They will return to this country and put to use what they have learned in Cuba.

We cannot afford to sit idly by while revolutionists stage riots in our major cities, disrupt our college campuses and now bomb our cities.

These people strike at the very heart of America. Their objective is the downfall of this Nation. We must assert our sworn duties here and now to see that these revolutionaries are deterred in their goal.

MR. MOYNIHAN'S MEMORANDUM TO THE PRESIDENT

Mr. LONG. Mr. President, there has been quite a flap in some liberal circles on the part of people who learned of a confidential memorandum addressed to the President by Mr. Pat Moynihan prior to the time the President formulated his message to Congress and the different procedure some of the people seem to think the President was being advised to follow from whatever desires he had or does have now to benefit the Negro community of our Nation.

Mr. President, I have before me an article from the Wall Street Journal which undertakes to set forth the contents of that memorandum, as well as an editorial on the same page entitled "Mr. Moynihan's Apostasy," which make clear to this Senator that the President seems to be receiving sensible, moderate advice to the effect that nothing was to be gained by escalating the rhetoric, and that something was to be gained by speaking softly in this matter, while efforts are made to better the conditions of the poor among the Negro community.

For the life of me, I can find nothing about this matter to arouse the kind of explosion that seems to have occurred in some local circles. I find myself in agreement with the editorial.

I ask unanimous consent to have printed in the RECORD the article entitled "Mr. Moynihan: 'What Has been Pulling Us Apart?' ", the editorial entitled "Mr. Moynihan's Apostasy," and an editorial entitled "The Moynihan Papers: Volume I, No. 2," which was printed in the Washington Post this morning, which seems to parallel my thinking.

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

[From the Wall Street Journal, Mar. 13, 1970]

MR. MOYNIHAN'S APOSTASY

The confidential memorandums of Presidential Counselor Daniel P. Moynihan are reaching the public domain because his enemies are leaking them to the New York Times. With enemies like that, who needs friends? In particular, Mr. Moynihan's preinaugural advice to the President, printed alongside, is a fascinatingly perceptive analysis of the nation's present condition.

The substance of the views for the moment aside, the relationship between their author and the reaction they produce is itself revealing. Mr. Moynihan, a long-standing Democrat and former official of the Kennedy and Johnson Administrations, is generally regarded as the most liberal of close Presidential advisers. Whoever leaked his memos presumably intended to somehow discredit him, and while conceivably this was done by foes on his right, just as possibly it was done by foes on his left.

The memos make it obvious that Mr. Moynihan failed to come down hard on the liberal side of intra-Administration battles over integration policy. The first memo leaked spelled out his prescription of "benign neglect," meaning nothing more sinister than policies directed at maintaining the rapid social and economic progress of Negroes without crisis-invoking rhetoric. It seems safe to assume the leak was intended to produce the effect it did, enraging civil rights leaders and their allies because of the incendiary phrase. It's noteworthy, too, that Mr. Moynihan had been forced out of his Democratic Administration post in a similar flap for observing that all was not well with the family structure of slum Negroes.

In any event, reaction to the memos clearly reveals the special animosity the liberal community holds toward Mr. Moynihan. It is not his flamboyance that causes the controversy but his apostasy. Few liberals forgive either his shaking of their easy assumptions or his embrace of Mr. Nixon. Even before the latest episode, you could hear the knives clicking in the catty commentary certain liberal writers directed at him. And now many liberals are obviously tempted by the conclusion that he is merely ingratiating himself with the President, and therefore the substance of his views can be safely dismissed.

This attitude greatly underestimates the intellectual peril to the liberal creed. The truth is that Mr. Moynihan has never taken his bearings from stone-inscribed dogma, but always from the insights of social science. The crux of it is that the latter has increasingly worked to undermine the former. Anyone who thinks this merely a matter of pleasing the President should look closely at what is happening among those outside government who are generally associated with Mr. Moynihan's academic views.

In fact, a cutting edge of social science is actively engaged in debunking much of the liberal creed. One must not exaggerate; such views are scarcely the prevailing ones among social scientists, and the men involved are certainly not becoming conservatives in any ideological sense. But the debunkers are often among the most prominent names in their fields, men like Edward C. Banfield, Irving Kristol, Warren E. Miller. More and more often, their learning is forcing them to prove themselves social scientists first and liberals way second.

Mr. Moynihan has pursued the debunking far more systematically than most (along with Mr. Banfield, also of the MIT-Harvard Urban Studies center). As his pre-inaugural memo suggests, he seems to have concluded that liberal tenets are often not the solutions but the problems. The crisis in the slums is that unrealistic rhetoric has obscured real progress and rubbed raw the real discontents. The crisis over Vietnam arises from failing to win. Discontent among the intellectual class reflects its preference of wrecking to building. And these are the forces that threaten to tear this society apart.

Couched as they are in deep social and historical understanding, these views are not easily dismissed. Even those who would quarrel must admit they are the product of a thoughtful and informed mind. A good public debate over them would contribute much to our understanding, and they richly merit the intense exposure the current little episode gives them. Whoever put Mr. Moynihan's thoughts before the public has performed us all a service.

MR. MOYNIHAN: "WHAT HAS BEEN PULLING US APART?"

It has fallen to you to assume the governance of a deeply divided country. And to do so with a divided Government. Other Presidents—Franklin Roosevelt, for example—have taken office in moments of crisis, but the crises were so widely perceived as in a sense to unite the country and to create a great outpouring of support for the President as the man who would have to deal with the common danger.

Neither Lincoln nor Wilson, the two predecessors whose situations most resembled yours, in terms of the popular vote and the state of then current political questions, had any such fortune. No one would now doubt that they proved to be two of our greatest leaders, nor yet that their Administrations achieved great things. But, alas, at what cost to themselves.

A divided nation makes terrible demands on the President. It would seem important to try to anticipate some of them, at least, and to ponder whether there is not some common element in each that might give a measure of coherence and unity to the President's own responses and, by a process of diffusion, to provide a guide for the Administration as a whole.

ERODED AUTHORITY

I believe there is such a common element. In one form or another all of the major domestic problems facing you derive from the erosion of the authority of the institutions of American society. This is a mysterious process of which the most that can be said is that once it starts it tends not to stop.

It can be stopped: The English, for example, managed to halt and even reverse the process in the period, roughly, 1820–40. But more commonly, those in power neglect the problem at first and misunderstand it later; concessions come too late and are too little; the failure of concessions leads to equally unavailing attempts at repression; and so events spiral downward toward instability.

The process is little understood. All we know is that the sense of institutions being legitimate—especially the institutions of government—is the glue that holds societies together. When it weakens, things come unstuck.

Americans, until presently at least, have not been nearly so concerned with such matters. American society has been so stable for so long that the prospect of instability has had no very great meaning for us. (As I count, there are but nine nations that both existed as independent nations in 1914 and have not had their form of government changed by invasion or revolution since.)

Moreover, we retain a tradition of revolutionary rhetoric that gives an advantage to those who challenge authority rather than those who uphold it. Too little heed is given the experience of the 20th century in which it has been the authority of democratic institutions that has been challenged by totalitarians of the left and the right.

Even the term "authority" has acquired for many a sinister cast, largely one suspects from its association with the term "authoritarian." Yet it remains the case that relationships based on authority are consensual ones: That is to say they are based on common agreement to behave in certain ways.

It is said that freedom lives in the interstices of authority. When the structure collapses, freedom disappears, and society is governed by relationships based on power.

Increasing numbers of Americans seem of late to have sensed this, and to have become actively concerned about the drift of events. Your election was in a sense the first major consequence of that mounting concern. Your Administration represents the first significant opportunity to change the direction in which events move.

Your task, then, is clear: To restore the authority of American institutions. Not, certainly, under that name, but with a clear sense that what is at issue is the continued acceptance by the great mass of the people of the legitimacy and efficacy of the present arrangements of American society, and of our processes for changing those arrangements.

For that purpose the theme "forward together" responds not only to the deepest need of the moment, but also, increasingly, to a clearly perceived need, as the facts of disunity more and more impress themselves on the nation's consciousness.

What has been pulling us apart? One wishes one knew. Yet there are a number of near- and long-term developments that can be discerned and surely contribute significantly to what is going on.

THE NEGRO REVOLUTION

Of the near-term events, the two most conspicuous are the Negro revolution and the war in Vietnam. Although seemingly unrelated, they have much in common as to origins, and even more as to the process by which they have brought on mounting levels of disunity.

The French philosopher George Bernanos once wrote: "There are no more corrupting lies than problems poorly stated." I, at least, feel that this goes to the heart of much of the present turmoil of race relations and foreign policy. In a word, those in power have allowed domestic dislocations that accompany successful social changes to be interpreted as irrefutable evidence that the society refuses to change; they have permitted foreign policy failures arising from mistaken judgments to be taken as incontrovertible proof that the society has gone mad as well.

The fact is that with respect to Negro Americans we have seen incredible progress since, roughly, the Brown v. Board of Education decision of 1954 and President Eisenhower's subsequent decision to send Federal troops to Little Rock, thus commencing the second Reconstruction.

Nowhere in history is there to be encountered an effort to bring a suppressed people into the mainstream of society comparable to the public and private initiatives on behalf of Negro Americans in recent years.

As I would like to discuss in a later memorandum, the results have been dramatic. Yet it was only after that effort had begun, and had been under way for some time, that it became possible to see the true horror of the situation white America had forced on black America and the deep disabilities that came about in consequence.

The first to see this, of course, were the blacks themselves. The result on the part of many was a revulsion against white society that has only just begun to run its course. Large numbers of middle-class, educated blacks, especially young ones, have come to see American society as hateful and illegitimate, lacking any true claim on their allegiance. Well they might.

The problem is not that one group in the population is beginning to react to centuries of barbarism by another group. The problem is that this cultural reaction among black militants is accompanied by the existence of a large, disorganized urban lower class which, like such groups everywhere, is unstable and essentially violent.

This fact of lower class violence has nothing to do with race. It is purely a matter of social class. But since Watts, the media of public opinion—the press, television, the Presidency itself—have combined to insist that race is the issue.

As a result, middle class blacks caught up in a cultural revolution have been able, in effect, to back up their demands. This has led to a predictable white counter-reaction. And so on. In the process, we have almost deliberately obscured the extraordinary progress, and commitment to progress, which the nation as a whole has made, which white America has not abandoned, and which increasingly black America is learning to make use of.

To the contrary, it has been the failures of policy that have seemed ever more prominent. The essence of the Negro problem in America at this time is that despite great national commitments, and great progress, a large mass of the black population remains poor, disorganized, and discriminated against.

These facts are increasingly interpreted as proof that the national commitment is flawed, if not indeed fraudulent, that the society is irredeemably "racist," etc.

This interpretation is made by middle-class blacks and whites whom outwardly at least, society would seem to have treated very well, but the continued existence of black poverty makes their argument hard to assail. Moreover, increasingly that argument is directed not to particulars, but to fundamental questions as to the legtimacy of American society.

DISASTER OF VIETNAM

Vietnam has been a domestic disaster of the same proportion, and for much the same reason. As best I can discern, the war was begun with the very highest of motives at the behest of men such as McNamara, Bundy and Rusk in a fairly consistent pursuit of the post-war American policy of opposing Communist expansion and simultaneously encouraging political democracy and economic development in the nations on the Communist perimeter, and elsewhere.

At the risk of seeming cynical, I would argue that the war in Vietnam has become a disastrous mistake because we have lost it. I quite accept Henry Kissinger's splendid formulation that a conventional army loses if it does not win, the opposite being the case for a guerrilla force. We have not been able to win.

Had the large-scale fighting by American forces been over by mid-1967 (which is my impression of what Bundy anticipated in mid-1965), had the children of the middle class accordingly continued to enjoy draft exemption, had there been no inflation, no surtax, no Tet offensive, then I very much fear there would be abroad at this point at most a modicum of moral outrage.

But this is not what happened. The war has not gone well, and increasingly in an almost primitive reaction—to which modern societies are as much exposed as any Stone Age clan—it has been judged that this is because the gods are against it.

In modern parlance this means that the evil military industrial complex has embarked on a racist colonialist adventure. (I have heard the head of SNCC state that we were in Vietnam "for the rice supplies.")

But the essential point is that we have been losing a war, and this more than any single thing erodes the authority of a Government, however stable, just, well intentioned or whatever.

I would imagine that the desire not to be the first President to "lose" a war has been much in President Johnson's mind over the past years, and explains some of his conduct. But the fact is that he could not win, and the all-important accompanying fact is that the semi-violent domestic protest that arose in consequence forced him to resign.

In a sense he was the first American President to be toppled by a mob. No matter that it was a mob of college professors, millionaires, flower children, and Radcliffe girls.

It was a mob that by early 1968 had effectively physically separated the Presidency from the people. (You may recall that seeking to attend the funeral of Cardinal Spellman, Johnson slipped in the back door of St. Patrick's Cathedral like a medieval felon seeking sanctuary.)

As with the case of the most militant blacks, success for the antiwar protesters has seemed only to confirm their detestation of society as it now exists. Increasingly they declare the society to be illegitimate, while men such as William Sloan Coffin, Jr., the chaplain at Yale, openly espouse violence as the necessary route of moral regeneration.

A COUNTERACTION

The successful extremism of the black militants and the anti-war protesters—by and large they have had their way—has now clearly begun to arouse fears and thoughts of extreme actions by other groups. George Wallace, a fourth-rate regional demagogue, won 13% of the national vote and at one point in the campaign probably had the sympathy of a quarter of the electorate, largely in the working class.

Among Jews—I draw your attention to this—there is a rising concern, in some quarters approaching alarm, over black anti-Semitism. They foresee Negro political power driving them from civil service jobs, as in the New York City school system. They see anti-Semitism becoming an "accepted" political posture. With special dread, they see a not distant future when the political leaders of the country might have to weigh the competing claims of 10 million black voters who had become passionately pro-Arab as against one or two million pro-Israel Jewish voters.

In the meantime, we must await the reaction of the armed forces, and the veterans of Vietnam to whatever settlement you get there. No officer corps ever lost a war, and this one surely would have no difficulty finding symbols of those at home who betrayed it. All in all there are good reasons to expect a busy eight years in the White House.

There is a longer term development contributing to the present chaos, which bears mentioning. Since about 1840 the cultural elite have pretty generally rejected the values and activities of the larger society.

It has been said of America that the culture will not approve that which the policy strives to provide. For a brief period, associated with the depression, World War II, and the Cold War there was something of a truce in this protracted struggle. That, I fear, is now over. The leading cultural figures are going—have gone—into opposition once again. This time they take with them a vastly more numerous following of educated, middle class persons, especially young ones, who share their feelings and who do not "need the straight" world.

It is their pleasure to cause trouble, to be against. And they are hell bent for a good time. President Johnson took all this personally, but I have the impression that you will make no such mistake!

It is, of course, easier to describe these situations than to suggest what is to be done about them. However, a certain number of general postures do seem to follow from the theme "bring us together." I would list five:

First, the single most important task is to maintain the rate of economic expansion. If a serious economic recession were to come along to compound the controversies of race, Vietnam, and cultural alienation, the nation could indeed approach instability.

It would be my judgment that the great prosperity of the 1960s is the primary reason we have been able to weather this much internal dissension. The lot of Negroes has steadily improved, and so has that of most everyone else. Black demands for a greater share have thus been less threatening.

The war has been costly, but largely has been paid for through annual fiscal increments and recent deficits. Consumption has been affected not at all. If this situation were to reverse itself, your ability to meet black needs, the tolerance of the rest of the society for your efforts, the general willingness to see military efforts proceed, would all be grievously diminished.

Second, it would seem most important to de-escalate the rhetoric of crisis about the internal state of the society in general, and in particular about those problems—e.g., crime, de facto segregation, low educational achievement—which Government has relatively little power to influence in the present state of knowledge and available resources.

This does not mean reducing efforts. Not at all. But it does mean trying to create some equivalence between what Government can do about certain problems and how much attention it draws to them. For this purpose the theme you struck in presenting your Cabinet on television seems perfect: Yours is an Administration of men with wide-ranging interests and competence whose first concern is the effective delivery of Government services.

There is a risk here of being accused of caring less than your predecessors, but even that will do no great harm if you can simultaneously demonstrate that you do more. It is out of such perceptions that the authority of Government is enhanced.

DE-ESCALATE RHETORIC

It would seem likely that a powerful approach to this issue will be to stress the needs and aspirations of groups such as Mexican-Americans, Puerto Ricans, American Indians and others, which have also been excluded and exploited by the larger society. This, of course, is something you would want to do in any event.

Third, the Negro lower class must be dissolved. This is the work of a generation, but it is time it began to be understood as a clear national goal. By lower class I mean the low income, marginally employed, poorly educated, disorganized slum dwellers who have piled up in our central cities over the past quarter century. I would estimate they make up almost one half of the total Negro population.

They are not going to become capitalists, nor even middle class functionaries. But it is fully reasonable to conceive of them being transformed into a stable working class population: Truck drivers, mail carriers, assembly line workers—people with dignity, purpose, and in the United States a very good standard of living indeed. Common justice, and common sense, demands that this be done.

It is the existence of this lower class, with its high rates of crime, dependency, and general disorderliness, that causes nearby whites (that is to say working class whites, the liberals are all in the suburbs) to fear Negroes and to seek by various ways to avoid and constrain them.

It is this group that black extremists use to threaten white society with the prospect of mass arson and pillage. It is also this group that terrorizes and plunders the stable elements of the Negro community—trapped by white prejudices in the slums, and forced to live cheek by jowl with a murderous slum population. Take the urban lower class out of the picture and the Negro cultural revolution becomes an exciting and constructive development.

Fourth, it would seem devoutly to be wished that you not become personally identified with the war in Vietnam. You have available to you far more competent advice than mine in this area, and I am sure you will wish to proceed in terms of the foreign policy interests of the nation in broader terms, but I do urge that every effort be made to avoid the ugly physical harassment and savage personal attacks that brought President Johnson's Administration to an end.

The dignity of the Presidency as the symbolic head of state as well as of functioning leader of the Government must be restored. Alas, it is in the power of the middle class mob to prevent this. I would far rather see it concentrate, as *faute de mieux* it now seems to be doing, on attacking liberal college presidents as "racist pigs."

I fear the blunt truth is that ending the draft would be the single most important step you could take in this direction. The children of the upper middle class will not be conscripted.

In any event, the present system does cast a pall of anxiety and uncertainty over the lives of that quarter of the young male population which does in fact require four to eight to 10 years of college work to prepare for careers which almost all agree are socially desirable, even necessary.

Fifth, it would seem important to stress those things Americans share in common, rather than those things that distinguish them one from the other; thus the war on poverty defined a large portion of the population as somehow living apart from the rest.

I would seek programs that stress problems and circumstances that all share, and especially problems which working people share with the poor. Too frequently of late the liberal upper middle class has proposed to solve problems of those at the bottom at the expense, or seeming expense, of those in between.

Obviously the theme "forward together" is essential here, and there are other symbols at hand of which I would think the approaching 200th anniversary of the founding of the Republic is perhaps the most powerful.

In the final months of your second term you will preside over the anniversary ceremonies of July 4, 1976. It would seem an incomparable opportunity to begin now to define the goals you would hope to see achieved by that time, trying to make them truly national goals to which all may subscribe, and from which as many as possible will benefit.

Hopefully our 200th anniversary will see the nation somewhat more united than were those 13 colonies!

[From the Washington Post, Mar. 13, 1970]

THE MOYNIHAN PAPERS: VOL. I, NO. 2

There are several things to be said about Mr. Moynihan's communication of Jan. 3, 1969, to the President which has found its way into the press. One—and perhaps the most important—is that it is an impressive document, well-reasoned and to the point. We mean to dwell on this a little and to provide quotations from the text, because you could get the idea from various accounts of what is in the memo that it was making points directly opposed to those it actually made. Somehow, when a black activist or a white liberal inveighs against the conditions under which we have forced large segments of our black population to live, it is regarded as enlightened, whereas when Mr. Moynihan makes the same point, people don't say, "Right on!"—they say, "Right wing!"

Our colleagues at the New York Times, for instance, discerned in this memo, which Mr. Moynihan wrote the President on the eve of his inauguration, something consistent with a policy of "de-escalating progress toward an integrated society and of appeasing white backlash sentiment." They further viewed it—along with Mr. Moynihan's other leaked works—as providing "a sophisticated rationale for racial retrogression." For reasons of basest self-interest we will defend to the death the right of editorial writers to interpret documents in ways with which we (or others) disagree. But we believe that the reverse of this interpretation is true: the whole burden of Mr. Moynihan's Jan. 3 argument, as we read it, is that "common justice" and "common sense"—his terms—require that the *causes* of racial tension be relieved and that this be done in time to avert (1) further violence and (2) resulting white repression.

Here, for example, is Mr. Moynihan on the perspective in which such progress toward common justice as has already been made should be viewed:

"The fact is that with respect to Negro Americans we have seen incredible progress since, roughly, the *Brown* v. *Board of Education* decision of 1954 and President Eisenhower's subsequent decision to send Federal troops to Little Rock, thus commencing the second Reconstruction . . . Yet it was only after that effort had begun, and had been under way for some time, that it became possible to see the true horror of the situation white America had forced on black America and the deep disabilities that came about in consequence. The first to see this, of course, were the blacks themselves . . . Large numbers of middle-class, educated blacks, especially young ones, have come to see American society as hateful and illegitimate, lacking any true claim on their allegiance. Well they might."

Mr. Moynihan, however, does not regard this perception of injustice or the feelings which flow from it as the main source of the trouble or as the appropriate target for administration heavy-fire:

"The essence of the Negro problem in America at this time is that despite great national commitments, and great progress, a large mass of the black population remains poor, disorganized, and discriminated against."

Mr. Moynihan's recommendations included "dissolving" this Negro lower class—"the low income, marginally employed, poorly educated, disorganized slum dwellers." Had he used another verb such as "assisting" or "saving" or "helping" (which is what that section of his memo describes) he might have got a little more credit for what he said. But one can hardly be sure of that, since so many accounts of his argument have stood his principal thesis regarding the black lower class on its head.

We have in mind Mr. Moynihan's observation that "like such groups everywhere," this group is "unstable and essentially violent," and his conclusion: "This fact of lower class violence *has nothing to do with race. It is purely a matter of social class.*" We have added the emphasis because this, unaccountably, is the part of Mr. Moynihan's memo that appears to have caused the most trouble, suggesting to some that, despite the explicit confirmation of the responsibility of racism for the black slum-dweller's plight that runs through this memo, Mr. Moynihan does not think race has anything to do with that plight. The (widely missed) point is that in characterizing black slum violence as a manifestation of class attitudes rather than racial ones, as an outgrowth of class conditions rather than characteristics of race, Mr. Moynihan was making what has always been regarded as the indispensable liberal and/or enlightened argument in these matters. It is generally applauded by Mr. Moynihan's critics when it is otherwise stated as the fact that black slum-dwellers tend to violent behavior because they are poor and misused, not because they are black. That racial discrimination ("centuries of barbarism") accounts for their poverty and misuse is stated with such clarity in Mr. Moynihan's memo that it seems incredible for his point about race-versus-class to have got so distorted in the retelling.

At the outset we remarked there were several things to be said about this memo; but setting its arguments straight seemed to come first. We mean to get around to a second aspect of this whole affair—namely, the manner in which these leaked documents have been promoted and transformed in such a way as to suggest that we are present at a public hanging. But that—and a great deal of head-scratching over the merits and dangers of the leak—will come later.

DEATH OF FORMER SENATOR HOMER T. BONE

Mr. MAGNUSON. Mr. President, with a sense of great sorrow I announce to the Senate the passing yesterday of a former distinguished Member of this body, Homer T. Bone of the State of Washington. He was 87 years old. He served here for two terms with great distinction. I am sure those who served with him would agree with me that he was one of the most brilliant men ever to grace this body.

He was a determined advocate of the development of power through the use of natural resources, particularly hydroelectric development. Out in the Pacific Northwest we considered him to be the father of public power, and also the Rural Electrification Administration.

Mr. President, untold millions of people have benefited by his early leadership in this field. I recall an incident many years ago in which he participated. I was a member of my State legislature in 1933. The late Senator Bone had been a member of the State legislature prior to that time. He had fought long and valiantly to reduce power rates in the State of Washington and in the entire Pacific Northwest, through the development of public power, which led to the great powerplant of Seattle City Light, and many other city powerplants throughout the country. He ran into a sort of roadblock in those days with the private power people. It became a considerable political fight, although it is not any more. Private and public power in the Pacific Northwest now work together aided by what is known as the Bonneville Power Administration.

Homer T. Bone had been trying to have passed in the State legislature what was known as the Bone power bill. My colleagues will remember that the city of Seattle was served by a municipal powerplant. Outside the city limits service came from a private power group. In those days the city limits of Seattle were at 85th Street. All of that area has grown up, but that was the city limit. It was found that the people on the city side were paying one-half the amount for city light as compared to those who lived on the other side.

The bill that was introduced caused more furor in our part of the country than anything I have ever known. It would allow the Seattle City Light Co. to service people outside the city limits. The bill was passed. I was in the legislature when it was passed and I had the privilege of managing the bill on the floor of the house. From thereon we had lower power rates, and we have in our area now a combination of public and private power interest.

As far as I am concerned he was the father of public power developed by our great natural resources in the Pacific Northwest. He left the Senate in 1944. He had had a mishap in which he had fallen down and broken his hip and some other bone troubles and he did not want to campaign again for the Senate that year. He often said he did not want to go out on the campaign trail with crutches. He was a great friend of Franklin D. Roosevelt. Roosevelt was persuaded, because of his brilliant mind and brilliant career, to recommend him for the Ninth Circuit Court of Appeals. He was made a judge. He served with great distinction on the circuit court of appeals for over 10 years. He retired from the circuit court and continued to live at the site of the court in San Francisco where he participated in many decisions. He was called in on numerous cases and worked until almost 3 or 4 years ago. However, he had persistent trouble with bone problems and decided to retire completely and go back to his hometown in Tacoma.

Among other things, he wrote some great decisions on the circuit court of appeals, so lawyers tell me. They were masterpieces in the law. My colleague and I would agree that he was one of the most articulate men we ever knew. He was brief and to the point, and his speeches and opinions were brilliant. One did not have to guess about any of his meanings. He meant what he said and he said it clearly with almost classic use of English. He was a close personal friend of mine for over 40 years. As a matter of fact, I succeeded Homer Bone in the Senate. I agree with his many friends who have also lost a friend and a great American.

His sole survivor is his son, Homer T. Bone, Jr. He has a brother-in-law in Tacoma, John Coffee, who served in the other body with distinction for many years.

There are many Senators who served with Homer T. Bone and who would probably believe we have located a new or popular issue with our rhetoric in the so-called military-industrial complex. Homer T. Bone was known here during the period of World War II for calling attention to those who profited during the course of World War II from military contracts and industry. It was his voice that first called attention to some of the abuses that can occur during a large and great war, as occurred in World War II,

We will all miss him but all remember Homer T. Bone.

I yield to my colleague from Washington.

Mr. JACKSON. Mr. President, I wish to associate myself with the fine remarks made by my senior colleague in connection with the passing of Senator Homer T. Bone.

He was indeed one of the most colorful persons in public life in the Pacific Northwest in the 1920's, the 1930's, and the 1940's.

He was a person of singular purpose. He made it a point to take on one issue and stay with that issue year in and year out. This was especially true of the public power program. But his interests transcended that particular program.

After he came to the Senate, it would be my guess that one of the accomplishments in which he took greatest pride was the passage of legislation that made possible the National Cancer Institute. My distinguished senior colleague (Mr. MAGNUSON) was a cosponsor of that particular measure in the House of Representatives at the time.

Senator Bone was a man of great in-

tegrity and, as my colleague has mentioned, he was extremely articulate. He was a most effective advocate. He was a loyal friend. He was a man who could be depended upon.

He distinguished himself during the period of his service on the circuit court of appeals from 1944 to 1956.

He leaves a son, Homer T. Bone, Jr., and a grandson, Gregory Scott Bone, both of California; and a brother-in-law and a sister-in-law, Mr. and Mrs. John M. Coffee, of Tacoma, Wash. Mr. Coffee was formerly a U.S. Representative from Washington.

I convey to them my deepest sympathy in the passing of a great public figure and an outstanding jurist.

Mr. MAGNUSON. I thank my colleague.

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

Mr. MAGNUSON. I yield to the distinguished majority leader.

Mr. MANSFIELD. Mr. President, I want to join both Senators from Washington in expressing my sorrow on the passing of a former colleague of this body, Senator Homer T. Bone. Senator Bone used to come to Montana quite often in company with Senator Murray, and it was a joy and a pleasure to listen to him and to visit with him and to be the beneficiary of his wise advice and counsel.

There comes a time for all of us, and even though it may be anticipated and expected, it nevertheless comes as shock when the time comes for someone close to pass on.

As a Member of this body from a sister State of the Northwest, I want to join Senators MAGNUSON and JACKSON in expressing my feelings, and I am sure the feelings of the people of the country as a whole, in the passing of a man who made his mark in this body and in the country.

S. 3593—INTRODUCTION OF FEDERAL ECONOMY ACT OF 1970

Mr. WILLIAMS of Delaware. Mr. President, under date of February 26 the President sent to the Congress a proposed reduction, termination, or restructuring of 57 programs which are either obsolete, in low priority, or in need of basic reform.

The approval of these recommended changes would save a total of $2.5 billion in fiscal year 1971, and of this amount $1.4 billion savings would be by administrative action and $1.1 billion savings would require congressional approval.

At a time when our Government is operating at an annual deficit of approximately $8 billion Congress should give full support to the administration toward this economy goal.

Today I am introducing a bill which will carry out that part of the administration's recommendation which needs legislative action.

This bill is very properly being labeled the Federal Economy Act of 1970.

At this point I read in the RECORD an excerpt from the President's message outlining the necessity for the enactment of this legislative proposal.

I propose reduction, termination or restructuring of 57 programs which are obsolete, low priority or in need of basic reform. These program changes would save a total of $2.5 billion in the fiscal year 1971. Of this amount, $1.1 billion saving require Congressional action—roughly the equivalent of the amount by which the 1971 budget is in surplus.

No government program should be permitted to have a life of its own, immune from periodic review of its effectiveness and its place in our list of national priorities.

Too often in the past, "sacred cows" that have outlived their usefulness or need drastic revamping have been perpetuated because of the influence of special interest groups. Others have hung on because they were "too small" to be worthy of attention.

At a time when every dollar of government spending must be scrutinized, we cannot afford to let mere inertia drain away our resources.

Some of these programs are the objects of great affection by the groups they benefit. But when they no longer serve the general public interest, they must be repealed or reformed.

No program should be too small to escape scrutiny, a small item may be termed a "drop in the bucket" of a $200.8 billion budget, but these drops have a way of adding up. Every dollar was sent to the Treasury by some taxpayer who has a right to demand that it be well spent.

As an extreme example, the government since 1897 has had a special board of tea-tasters. At one time in the dim past, there may have been good reason to single out tea for such special taste tests; but that reason no longer exists. Nevertheless, a separate tea-tasting board has gone right along, at the taxpayer's expense, because nobody up to now took the trouble to take a hard look at why it was in existence. The general attitude was: It did not cost much, it provided a few jobs, so why upset the teacart?

That attitude should have no place in this government. The taxpayer's dollar deserves to be treated with more respect.

Mr. MANSFIELD subsequently said: Mr. President, I ask unanimous consent that the bill introduced by the Senator from Delaware (Mr. WILLIAMS) be referred to the following committees for their consideration of the subject matter falling within their respective jurisdictions:

The Committee on Commerce, the Committee on Agriculture and Forestry, the Committee on Finance, and the Committee on Labor and Public Welfare.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred to the committees as requested by the Senator from Montana.

The bill (S. 3593) to reduce budget outlays by restructuring or terminating certain outmoded or uneconomic Federal programs, introduced by Mr. WILLIAMS of Delaware, was received, read twice by its title, and referred to the Committee on Agriculture and Forestry, the Committee on Commerce, the Committee on Finance, and the Committee on Labor and Public Welfare.

PROPAGANDA THROUGH USE OF MOTION PICTURES

Mr. MURPHY. Mr. President, many times during my membership in this distinguished body I have talked about the importance of propaganda and the use of motion pictures in that field. I have talked about the high hope that the propaganda—and I am using that term in the best usage of that word—might be utilized so the true story of our country, our designs and desires throughout the world, might be told.

I find there is evidence that those who disagree with our system of government and our form of life are beginning to use it, and I am afraid quite effectively.

I have here a series of articles from the Santa Monica, Calif., Evening Outlook, written by Williamson Good, the first of which is dated February 24, 1970. This article is entitled "Communist Propaganda Films Shown at Los Angeles Public Libraries."

The article begins:

Our job is to make propaganda useful for the education of broad sections of the people about the necessity for the revolutionary Socialist transformation of American society.

Nothing could be clearer than that; I do not think it needs any explanation or translation. To achieve that objective, there is a company or a group, I do not know which, called "The Newsreel," and they are distributing these Communist propaganda films to libraries and colleges. They have shown them at UCLA. The ones to which particular reference is made here were shown at UCLA following a lecture by Professor Angela Davis, who I believe is an admitted member of the Communist Party. I am not certain of that, but I believe she is.

The title of one of the films being shown is "Off the Pig." Produced by San Francisco Newsreel, this is a Black Panther recruiting film—"Off the Pig" means "kill the police." This is one of their most popular films.

Then there is another one called "The Accusation." They describe this film in their catalog as a compilation of news footage and stills of American atrocities in Vietnam.

One of my close friends in the intelligence business in the Far East, a year and a half ago, told me that he would not be surprised if atrocity films would be brought into this country; and, according to his information, they would be infiltrated through Canadian sources at a certain time—films that had been made a year, a year and a half, or 2 years ago in Hanoi—they would be systematically released, and there would be a great humane outcry about American atrocities.

This film was produced by the North Vietnamese with British narration for the Bertrand Russell International War Crimes Tribunal which was held in Stockholm, Sweden. So, you see, as we study these matters out, the international aspect comes to the surface.

There was another film called "Vietnam, Land of Fire," which the catalog states "Explicitly documents U.S. military's torture and murder of civilians in Vietnam." It was produced by the North Vietnamese.

And there is one produced in Communist Cuba called "Hasta La Victoria Siempre." This is a strong indictment of U.S. imperialist control as a reason for the poverty in Bolivia. It features speeches by Che Guevara, the Cuban revolutionary who, together with Mao Tse-tung, has become the hero of some

younger people who are inclined toward revolution, and who, I am afraid, have not done their homework and do not really know the elements that they are dealing with in these matters.

A second article, under date of February 25, explains how these films seek to recruit revolutionaries on the campuses. These are campuses that are sustained mainly through the efforts of the American taxpayers—that great silent majority—and these are the uses that are being applied to some of the campuses facilities by those who would destroy the very system that makes those facilities possible; and, may I say, the best and most productive system that we have found.

The third of this series of articles by the same writer goes into the matter of the school dropout. It shows how films are used to encourage youngsters to drop out—extremely well made and carefully made films, exposing full knowledge of the art and of the use of the art to persuasively show the reasons, create the enthusiasm, and exploit the inclination to drop out of school. There is one which is very exciting, where the youngster involved runs first to his parents, then to his professors, and all the way down the line, saying, "I quit, I quit, I quit."

I have spent a great deal of time, as have many of my colleagues, trying to figure out how to cure the dropout problem; and here we have this same group, using this same type of propaganda—well-made, insidious, clever films, not readily discernible for what they are unless you have had some experience in the field.

I find that Federal funds are also being used to help pay for the showings, as the fourth article points out.

Mr. President, I think this is most disturbing. I think it absolutely requires our immediate attention. I intend to find out all the details and speak on this matter at length later, and, if necessary, to introduce legislation, in the hope that the general welfare of this great Nation and the national security may be preserved and the wishes of the great majority of the people about these matters presented.

So, Mr. President, I ask unanimous consent that this series of four editorials from the Santa Monica Evening Outlook be printed in the RECORD at this point.

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

COMMUNIST PROPAGANDA FILMS SHOWN AT LOS ANGELES PUBLIC LIBRARIES

(By Williamson Good)

"Our job is to make propaganda useful for the education of broad sections of the people about the necessity for the revolutionary socialist transformation of American society."

Such is the stated objective of "The Newsreel," a national organization of left-wing film producers and distributors.

To achieve this objective, Newsreel is distributing foreign Communist propaganda films in the greater Los Angeles area and elsewhere. They have been shown to classes at UCLA; at a lecture by Communist professor Angela Davis at USC; at a benefit for a "movement coffee house" at UC Irvine; at a program sponsored by the Black Students Union at East Los Angeles City College, and at the Venice Public Library.

A program featuring Communist films and other revolutionary "newsreels" has been underway at the Lincoln Heights branch of the public library for almost six months. In addition, these films can be seen most any week at the "Haymarket" on North Hoover St., at the "Ash Grove" on Melrose and in Newport at "Bird in a Gilded Cage."

To complement foreign Communist films, Newsreel shows many of its own domestic propaganda films as well as films produced by others. Newsreel of Los Angeles is located at 188 W. 39th St.

Newsreel is no small-time outfit. A financial prospectus for Los Angeles Newsreel alone showed an annual budget of $94,814. This amount—to cover the period from June 1969 to June 1970—included $8,030 for two films to be produced on Venice and its problems in race and police relations.

From January to June of 1969, the prospectus claims, over 900 separate showings of Newsreels were held in every state in the West. In Southern California alone, "46 groups (are) now using Newsreels." Other full-time Newsreel production and distribution offices are operating in San Francisco, New York, Chicago, Boston, Washington, D.C., and Atlanta.

Newsreel is especially interested in getting their films shown to students. "To move against the repression and manipulation of the educational system," wrote San Francisco Newsreel in the December "Movement" newsletter, a radical monthly, "we must *educate* (their emphasis) young people to the necessity of building a powerful revolutionary movement." Newsreel has an ample stock of films for this purpose. Their slick-cover, 12-page catalogue describes over 60 of them.

The purpose of individual films varies. Some, in the words of New York Newsreel, "must aim at neutralizing opposition; some must aim at eliciting support or mobilizing; some aim at increasing the sense of what is relevant, raising the imaginative possibilities . . . some aim at converting specific groups of people."

Among Newsreel's stock of films are:

"Off the Pig." Produced by San Francisco Newsreel, this is the Black Panther recruiting film. "Off the Pig" (which means "kill the police") is one of Newsreel's most popular films.

"The Accusation," Newsreel's catalogue describes this film as "a compilation of newsfootage and stills of American atrocities in Vietnam. It was produced by the North Vietnamese with English narration for the Bertrand Russell International War Crimes Tribunal in Stockholm."

"Vietnam, Land of Fire." States the catalogue: "Explicitly documents U.S. military's torture and murder of civilians in Vietnam." It was produced by the North Vietnamese.

"Hasta La Victoria Siempre." Produced in Communist Cuba, this is "a strong indictment of U.S. imperialist control as reason for the poverty in Bolivia." It features speeches by Che Guevara, Cuban revolutionary killed while making revolution in Bolivia.

The showings of these films do not present opposing viewpoints; they are instead billed as newsreels of documentaries. Any discussion following the films is very carefully controlled, and when a speaker accompanies the films, questions are often planted in the audience to enable a speaker to make his point without appearing to lecture.

NEWSREEL FILMS SEEK CAMPUS RECRUITS FOR U.S. REVOLUTION

(By Williamson Good)

"We must educate young people to the necessity of building a powerful revolutionary movement," states Newsreel, a national "collective" of revolutionary film producers and distributors. With branches in six major cities and contacts nationwide. Newsreel is a major outlet for progaganda films produced in Cuba and North Vietnam.

Anyone who has ever attended a showing of Newsreels on a college campus can readily appreciate the role these films play in building the revolutionary movement which Newsreel seeks to build. Foreign and domestic films alike are highly professional, and as such, carry the conviction that "seeing is believing." When martial music is added, the films then appeal to the students' emotions as well as their intellect.

On campus, the films are frequently accompanied by a speaker whose role is to answer questions and remove any doubts that arise. One such event took place on Sunday afternoon, Oct. 5, at the University of California at Irvine.

Two of the films shown were "Hanoi 13" and "FALN." The Newsreel catalogue gives excellent descriptions of both.

"Hanoi 13" was produced by a "team of Cuban filmmakers (who) have documented everyday productive activity around Hanoi—building irrigation ditches, planting in rice paddies . . . as necessary for their survival and self-defense. During the bombing raid, peasants and workers form armed defense units so efficiently that the productive life of the nation is not interrupted."

"Hanoi 13" was in English and obviously aimed at an American audience. Whenever American planes were shown making their bombing runs, the audience hissed and booed. When one was shot down, the audience cheered.

"FALN" was "compiled in 1965 by Americans from actual footage" taken by Communist guerrillas in Venezuela. It depicted the United States as an imperialist power allegedly grinding the peasants into the most degrading poverty. The Communist guerrillas were shown as the friends of the peasants and as fighters for peace and justice.

The films were followed by a speaker, revolutionary priest Blase Bonpane, who was suspended from the Maryknoll Fathers. He has recently denied charges that he was expelled from Guatemala for training armed guerrillas, yet the left-wing and Communist press has always referred to him as a "priest expelled from Guatemala for aiding the guerrilla movement."

A highly skillful and persuasive speaker, Bonpane attacked the Communist party USA for being conservative. He said the reason so many faculty members at UCLA were concerned over the Angela Davis case was that there were "perhaps a thousand" of them who considered themselves to the left of the Communist party.

Newsreel's film catalogue says, "We want people to work with our films as catalysts for political discussions about social change in America; we want you to relate the questions in the films to issues in your own communities. Without these kind of discussions, our films would not be complete." Bonpane's appearance completed the afternoon.

Newsreel films were shown at the University of Southern California following an address by USLA Communist professor Angela Davis which was attended by several hundred people.

The highlight of the film showing was "On Strike," a domestic propaganda film produced by San Francisco Newsreel which deals with the student strike which disrupted San Francisco State College for most of the 1968–69 school year.

"On Strike" is a thoroughly professional film. It is a withering attack on San Francisco State, the tracking system, capitalism, and most particularly S. I. Hayakawa, president of the beleaguered college.

At nicely spaced intervals, the film showed students battling police. These sequences invariably included an instance of a policeman beating a student. The film editing was such that no student provocation whatever was shown. Each time such a sequence was shown, the audience booed. And then, when emotion was worked up against police, a stu-

dent was shown attacking police. The audience burst into spontaneous applause.

Both at USC and UC Irvine, there were no opposing viewpoint presented. The films were explicitly used to sway those who might be bordering on active support for New Left causes; they also served to encourage and inspire those already committed.

Communism, Marxism or socialism are rarely mentioned in Newsreel films. Yet no one in the audience can fail to know that Marxist socialism is the alternative posed to our present system by each one of the Newsreel films.

San Francisco Newsreel has written that its members actively study Marxism-Leninism. That orientation is clearly shown in the films which Newsreel itself has produced and in those which it has imported from Communist countries.

NEWSREEL FILMS AT LOS ANGELES LIBRARY URGE STUDENTS TO "DROP OUT"

(By Williamson Good)

For six months, the Lincoln Heights branch of the Los Angeles Public Library has been regularly showing Communist propaganda films from Cuba and North Vietnam. These films and others were provided free to the library by the "The Newsreel," a national "collective" of revolutionary film distributors and producers. Newsreel explicitly urges the "necessity for revolutionary Socialist transformation of American society."

The film program began last summer when Al Korpella—described by head librarian Mrs. Hermia M. Davis as a "person in the community"—approached Joe Buelna at Lincoln Heights Library and expressed a desire to run a film program. According to Korpella, Mr. Buelna introduced him to sources of film, and the program got under way. The films were shown approximately every three weeks on a Friday night in the library's main reading room from 9 p.m. until midnight.

"School is Revolting" was the title of a showing held last November 7. Only two of the six or seven films screened that evening were Newsreels; some of the others came from the Visual Aids Department of the Los Angeles Public Library. The theme of the first part of the evening was "Drop Out of School." Three films dealt with this subject.

Of these the most skillful was "No Reason to Stay," a property of the library. It opened with a shot of a clean-cut young man going down a hill in New York's Central Park on a sled with his pretty girlfriend. Life on the outside of school was shown as exciting, as fun. But before long the film switched to a shot of one of New York City's drab school buildings which was surrounded by a chain-link fence. The message was clear: School fenced them in.

Before long, the hero of the story was having to contend with a history teacher who required only memorization, a French teacher who required the entire class to conjugate verbs in unison, an English teacher who endelssly recited ridiculous poetry.

Each of the some 50 high school students in the audience could identify some aspect of his own school life in that film. Each had had some teacher who had frustrated him and no doubt made him want to drop out. But the young man in the movie didn't have a single good teacher, and the movie built up in him a frustration which the members of the audience could not help but feel themselves.

Finally, the pressure built until the boy couldn't stand it any longer. Rather than drop out passively, he jumped up, ran out of class, barged into the principal's office and shouted, "I quit!" And then to his mother's advertising office—"I quit." And then to his father's corporation board meeting—"I quit!" The overwhelming implication of the film was that those watching it should do likewise.

"That's Me" starring popular screen star Alan Arkin followed "No Reason To Stay." This film is also owned by the Los Angeles library system—showed a social worker talking with a young Puerto Rican dropout to try and get him to drop back into the system. The Puerto Rican, played by Arkin, succeeded in talking the social worker into dropping out. Again, the message of the film was: Drop out.

Why would leftist revolutionaries encourage people to drop out of school? To alienate them from the school and thus from the system. When a student gives up the system he now has, he will be open to another. Before he can be "turned on" to socialism, he must first be "turned off" to America. The "drop-out" films were clearly designed to bring out a sense of frustration in the students and thus alienate them.

Following the turn-off films, there were two Newsreels designed to turn students on to socialism. The first was "Historia De Una Batalla" (Story Of a Battle) which was produced in Communist Cuba in 1961. The film opened with a shot of a trainload of happy, revolutionary teachers going into the Cuban mountains to teach illiterate peasants. Whereas the educational system in the United States had been depicted as dull, gray, blah and compulsory, the Cuban propaganda film showed Cuban education as exciting, colorful and voluntary. Thus, after having subjected the students to a withering attack on the educational system of the United States, they were offered the Communist system of Cuba as an alternative.

FEDERAL FUNDS HELP FINANCE SHOWINGS OF COMMUNIST FILMS

(By Williamson Good)

Mrs. Hermia M. Davis, head librarian at Lincoln Heights Public Library, was present in the library the evening of Feb. 6 when two Communist propaganda films were shown in the "Free Flics" series which has been running there for some six months.

Although it was readily apparent at the beginning of both films that one was produced in Cuba and the other in North Vietnam, Mrs. Davis denied being aware that any of the films shown in her library were Communist propaganda. She also denied any knowledge that the people running the "Free Flics" had passed out a flyer urging contributions to The Newsreel—the national organization which distributes Communist propaganda films as well as its own productions, which urge "revolutionary Socialist transformation of American society."

The flyer stated: "Free Flics is proud of its association with Newsreel of Los Angeles. They have been most cooperative and generous, making their films available to us free of charge. Making and distributing films is obviously not free. Newsreel needs money! We hope that you will come to their aid with whatever you have available."

In a telephone interview, Mrs. Davis said that the "Free Flics" series was consistent with one of the purposes of the Library Services and Construction Act—known as the "Federal Project"—which was passed by Congress in 1965. This act appropriated money to pay salaries of library employes whose function was to "create services which would bring disadvantaged people to the library." Instead, they brought in leftist revolutionaries.

Lincoln Heights is not the only public library which has felt that "Newsreels" are consistent with the purposes of the "Federal Project." At the Venice Public Library, a series of Newsreel showings was arranged by Miss Averill Adams, a "community aide" whose salary was paid with funds from the "Federal Project."

On Oct. 2, "Threatening Sky," produced in North Vietnam and "Off the Pig," the Black Panther recruitment film, were shown. Newsreel even provided its own publicity for this. The leaflet was headlined "Power to the People" and it announced "The Venice Library will show such films, made by Newsreel."

The librarian at the Venice Public Library when these films were shown was Mrs. Gloria Joyce Elliot who has since transferred to the Baldwin Park library. She said she did not attend any of the film showings and was not aware that any were produced in Cuba or North Vietnam.

The Newsreel showings at the Venice Public library were finally stopped after a showing on Oct. 15 which, ironically, did not include any Newsreels.

Library publicity had advertised "Come Back Africa," a film on South Africa. No other films were mentioned.

As the audience of some 60 people were waiting for the show to start, a young black woman announced that a short documentary would be shown first. About this time, five black men, clad in black leather jackets, arrived and sat down in the audience. The "documentary" was "Huey's Birthday," a film promoting the Black Panthers. During the film, the five men instigated applause and cheering. When the film was over, they got up and left. No further revolutionary films have since been allowed in the Venice Public Library.

Would Mrs. Gale, head librarian, have allowed the films if she had known some of them were Communist propaganda? "That's hard to say," she said, "but as long as you have open discussion afterward, you can use almost any film as a springboard."

Averill Adams, who obtained the Newsreels, has since left the library and now works for the Venice Post Office. She was completely uncooperative in answering questions about her association with Newsreel.

What can or should be done about our public facilities being used to show Communist and other revolutionary films? Possibly the best approach would be for the people to insist that academic freedom be preserved in public institutions.

Committees of concerned citizens should be formed to attend library and school functions. They should insist that Communist propaganda films be labeled as such, rather than presented as newsreels or documentaries. They should insist that both sides be presented.

The Los Angeles area has many people in it who have fled the boot of Communist repression. The public should insist that these people be given equal time in public facilities to present an opposing viewpoint.

Censorship never has and never will achieve the preservation of a free society. Only a free exchange of ideas can preserve it. The public, which largely opposes Newsreel's call for "revolutionary Socialist transformation of American society," should see to it that those who use public facilities for this end do not go unchallenged.

VOTING RIGHTS ACT AMENDMENTS OF 1969

Mr. COOK. Mr. President, I wish to thank the Senator from Alabama for permitting me to take the floor, and also to thank the distinguished majority leader for his kind remarks in regard to the passage of the 1965 voting rights extension and the Scott-Hart amendment, with the 18-year-old voting provision.

Mr. President, as Senators know, my State has voted 18-, 19-, and 20-year-olds since 1955. I must join the distinguished majority leader in saying that I truly believe history was made in this body today. I think history was made for an extremely articulate portion of our society—that group of 18-, 19-, and 20-

year-olds, who represent over 11 million adult Americans—and I congratulate the Senator from Montana for staying tenaciously with his amendment in the wake of criticism from the House of Representatives that it would not be accepted.

I can only say to those in the House who will be charged with the consideration of this matter that I hope, as they go to conference, if they have to, they will go with the understanding that this is a remarkable nation, a remarkable society, where a man can go into a committee meeting or into a conference holding the fate of the franchise of more than 11 million people in his hands; and I hope that when they go into that conference, they will realize and understand that there are two States in this Union which permit 18-year-olds to vote, the State of Kentucky and the State of Georgia; that the State of Alaska permits 19- and 20-year-olds to vote; and the State of Hawaii, 20-year-olds.

I hope the conferees will go into that room understanding that as long as there are some 400,000 of this class who are now franchised, they should realize their responsibility to permit the remainder of the class to be franchised.

I can only thank the distinguished majority leader for bringing forth an amendment and forcing it to its conclusion by the processes of a free society, in a free debate on the floor of the U.S. Senate, fulfilling something that is very dear to me. I thank him very, very much.

Mr. MANSFIELD. Mr. President, I wish to thank the distinguished Senator from Kentucky for the remarks just made, and to call to his attention that any credit for the passage of the amendment reducing the voting age to 18 should go to both parties and, if I may say so, to the present administration, because I know of no Member of this Chamber who was averse to giving the vote to the 18-year-olds. They were just apart on the method to be used.

So far as the administration is concerned, it, likewise, was in favor of the vote for the 18-year-olds.

So I would say that the credit can be spread around equably; that the chief beneficiaries, hopefully, if this measure is agreed to in the House and is upheld in the courts, will bring about changes desired within the system rather than without; and that through the infusion of new blood, new vigor, new capabilities, clearer visions, and clearer heads, they will be able to do a better job of looking after the affairs of this country than many of us who have gone before them but who have been charged with the responsibilities.

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

Mr. MANSFIELD. I yield.

Mr. HOLLAND. Mr. President, I had not expected to say anything about the passage of the Voting Rights Act with the amendment as to 18-year-olds attached; but in view of the fact that the distinguished majority leader said he knew of no Member of the Senate who was not in favor of granting the voting right to 18-year-olds, either by statute or by constitutional amendment—the only difference being as to the method—I want to make it clear that there are Members of the Senate, of whom I am one, who are opposed to the granting of the voting right to 18-year-olds. We were particularly against the proposed granting by statutory enactment, which we think cannot be done legally under the Constitution.

In opposing the granting of the voting right to citizens 18 years old, the Senator from Florida thinks that he and others who feel as he does side decidedly with the majority expression of the citizens in all parts of the United States whose voice has been heard on this subject in recent years.

The Senator from Kentucky, who now graces the chair as the Presiding Officer, spoke of the fact that his State did in 1955, as a constitutional amendment, adopt the 18-year-old voting age, which was of course completely constitutional, completely within the judgment of the citizens of the State of Kentucky, and no one could have any criticism about that whatever. But since that date no State has followed that course. To the contrary, in recent years the 11 States which actually submitted this question to their citizens found the question voted down by the vote of their citizens in every case.

I placed a list of these 11 States in the RECORD a few days ago, and I think that RECORD shows with great force that the great majority of the people in those States, which lie in all parts of the United States, have expressed very clearly their disapproval of the granting of voting to 18-year-old citizens.

As to which point of view is sound, only time can tell; and only the decisions of the Supreme Court can say what is constitutional and what is not, so far as the method of approach is concerned.

But I do want the RECORD to show that there are Members of the Senate who disapprove the granting of the voting right to citizens 18 years of age, for many reasons which appear in the arguments in the RECORD, and the Senator from Florida is one of those Senators. He feels that for the Senate—and for the House, if it should later do it—to vote by statute such a provision is simply flying in the face of tremendous expressions of our citizens in at least 11 States in recent years to the contrary.

In addition to those 11 States where the people themselves have voted down this provision, there are several other States in which, in constitutional conventions, the effort has been made to write this into the proposed new constitution, and it has been rejected. Every State, I think, without exception, has had this question considered in its legislature—in my own State several times—and in each instance the legislature has refused to submit a constitutional amendment on this subject.

So that the Senator from Florida feels that the great majority of expressions in recent years of legislatures and of voters in State elections—with all credit to the State of Kentucky and to the State of Georgia, both of which have seen fit, within their rights and within the conscience of their citizens, to adopt the 18-year-old rule—have been against this course. That is entirely beside the question of constitutionality of the Senate action, which itself is a very grave one.

With all respect to the majority leader for his perseverance and for his soundness of conscience, and with similar respect to every Senator who has voted as the majority leader has voted—because certainly I do not question anybody's motives—I just want to make it very clear that it would be a mistake to assume that all Members of the Senate approve the granting of the voting right to 18-year-olds.

I thank the Senator for yielding.

Mr. MANSFIELD. Mr. President, I appreciate the remarks of the distinguished Senator from Florida. I see that we are in almost total disagreement on the question of the 18-year-olds.

I am glad, though, that the Senate, for the first time in my memory, has had a chance to face up to this particular question and has, so to speak, bit the bullet and at least has paved the way for the first time to allow the franchise to these people, who are responsible in so many ways but who are not given the main responsibility which would allow them to exercise a little bit of that responsibility, at least, in the making of policy—policy which, all too often, they are called upon to carry out without their consent and without their views being made known.

EXTENSION OF TIME FOR SPECIAL COMMITTEE ON AGING TO FILE REPORT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time for filing the report of the Special Committee on Aging be extended to April 17, 1970.

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

ORDER FOR ADJOURNMENT TO MONDAY, MARCH 16, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon on Monday next.

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

RELIEF OF MARIE-LOUISE (MARY LOUISE) PIERCE

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 495.

The PRESIDING OFFICER (Mr. COOK) laid before the Senate the amendment of the House of Representatives to the bill (S. 495) for the relief of Marie-Louise (Mary Louise) Pierce which was to strike out lines 3 through 7, inclusive, and insert:

That, notwithstanding the provisions of section 212(a) (3) and (4) of the Immigration and Nationality Act, Marie-Louise (Mary Louise) Pierce may be issued a visa and admitted to the United States for per-

manent residence if she is found to be otherwise admissible under the provisions of that Act:

Mr. MANSFIELD. Mr. President, on February 17, 1969, the Senate passed S. 295 to grant the status of permanent residence in the United States to the wife of a U.S. citizen and to provide for the posting of a bond as a guaranty that she would not become a public charge.

On February 17, 1970, the House of Representatives passed S. 495, with an amendment to provide for a waiver of the grounds for exclusion relating to one who has suffered from mental illness and who has a mental defect. Under this amendment the beneficiary must make specific application with the immigration service for an adjustment of status to permanent residence. Medical information in the case is favorable, and it is stated that the beneficiary responds well to treatment, which is required infrequently.

I move that the Senate concur in the House amendment to S. 495.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Mr. MANSFIELD. Mr. President, I ask unanimous consent that a statement by the Senator from Washington (Mr. JACKSON) relative to the implementation of the National Environmental Policy Act of 1969, as corrected in certain aspects, and Executive Order 11514 and a press release be printed in the RECORD.

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

STATEMENT BY SENATOR JACKSON

Mr. JACKSON. Mr. President, during Senate debate on adoption of the Conference Report on S. 1075, the "National Environmental Policy Act of 1969", I noted that a "statement of environmental policy is more than a statement of what we believe as a people and as a Nation. It establishes priorities and gives expression to our national goals and aspirations. It provides a statutory foundation to which administrators may refer for guidance in making decisions which find environmental values in conflict with other values."

During the debate I also said that "while the National Environmental Policy Act of 1969 is not a panacea for the Nation's environmental problems, it is a starting point. A great deal more, however, remains to be done by the Federal Government, both in the form of legislation and executive action, if mankind and human dignity are not to be ground down in the years ahead by the expansive and impersonal technology modern science has created."

On March 5, the President issued an Executive Order designed to implement the National Environmental Policy Act. Because the effectiveness of this important measure will depend in large measure on how vigorously the Act is administered by the Executive Branch, I wish to call the Order to the attention of the Senate.

In a related development, the Department of Transportation announced earlier today that Federal Funds for additional runways at the John F. Kennedy International Airport will not be approved pending the results of an environmental study by the National Academy of Sciences. The Department's action was based on the National Environmental Policy Act of 1969, the Executive Order and a Departmental memorandum implementing the Act within the Department of Transportation.

Because the Department of Transportation is one of the first Departments to base an administrative action directly upon the Act, and because this action represents a vigorous endorsement of both the spirit and the provisions of the statute, I wish to bring the action to the attention of my colleagues in the Senate.

I ask unanimous consent that the Executive Order and the March 13 press release of the Department of Transportation be included in the record along with the Department's February 27 memorandum implementing the Environmental Policy Act of 1969. I share Secretary Volpe's desire that the activities of the Department of Transportation serve as an example for other agencies of government in the implementation of this important measure.

[Executive Order 11514, Mar. 5, 1970]

PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91–190, approved January 1, 1970), it is ordered as follows:

SECTION 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

SEC. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entitles, as appropriate.

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

SEC. 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue guidelines to Federal agencies for the preparation of detailed statements on proposals for legislation and other Federal actions affecting the environment, as required by section 102(2)(C) of the Act.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of

preventing or reducing adverse effects from such technologies.

SEC. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget,", the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91–190) shall assist the President in directing the affairs of the Cabinet Committee."

(5) By deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91–190)".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

RICHARD NIXON.

THE WHITE HOUSE, *March 5, 1970.*

[Filed with the Office of the Federal Register, 2:29 p.m., March 5, 1970]

DEPARTMENT OF TRANSPORTATION NEWS RELEASE

Secretary of Transportation John A. Volpe today said he will not approve use of Federal funds for additional runways at John F. Kennedy International Airport in New York, pending the results of an environmental study by the National Academy of Sciences.

Secretary Volpe's announcement is a continuation of Department of Transportation policy that gives the highest priority to environmental factors before approval is given for use of Federal funds for any transportation project.

The New York decision also is in conformity with the National Environmental Policy Act of 1969, which President Nixon signed into law on January 1. Secretary Volpe in a recent memorandum, told Departmental policy makers to consider any proposed action that may affect the environment as one that could significantly affect the environment. He also spelled out Departmental policy on environmental matters.

In his announcement today, Secretary Volpe said the Department would cooperate fully with the National Academy of Sciences in its study since "the results of this study could be of great benefit to us in our efforts to deal with similar situations across the country.

"I recognize the critical need for additional airport capacity in New York and in other major cities," Secretary Volpe said. "I also recognize the need for additional highways and other transportation corridors. But I am not going to approve the use of Federal funds for these airports and corridors unless and until I am satisfied that the price of this additional mobility is not irreparable damage to the quality of the environment.

"I am determined that this Department will become the leader in preserving, protecting, and restoring our environment and appreciably improving the quality of American life."

He stressed that any actions taken to improve the three major New York-New Jersey airports must not have the effect of increasing overall community noise exposure, increasing air pollution or otherwise causing harm to the area's ecology.

"The airports of New York, as well as those across the country, must be compatible neighbors to the areas they serve," Secretary Volpe said.

Further, Secretary Volpe said that all Department of Transportation efforts to resolve New York's airport problems would be fully coordinated with the Department of the Interior because of the proposed Gateway National Recreation Area. No decisions have been made concerning proposed improvements to JFK Airport and they will not be made until the environmental/ecological reviews are completed. In addition, all study results will be made available to the Council of Environmental Quality for its review and comment.

"Situations such as that in New York are becoming more common," Secretary Volpe said, "and the Federal Government's role—and interest—in them is increasing. The recent growth in commercial aviation and the development of new aviation technology have generated urgent needs throughout the United States, both for new airports and an expansion of existing facilities—either of which can have a serious impact on the environment.

"This is true for every mode of transportation, and it is a problem at which my memorandum to Departmental policymakers was directed," the Secretary said.

That directive orders that all proposed actions deemed likely to affect environmental quality be accompanied by a detailed statement outlining the possible impact of the action on the environment. The Secretary designated J. D. Braman, Assistant Secretary of Transportation for Environment and Urban Systems, to oversee the Department's response to the National Environmental Policy Act, signed into law by President Nixon on January 1, and to compile the material far the July 1 report required by the new law.

Secretary Volpe noted that positive action by government often is required to ensure that genuine needs for additional facilities are not met at the expense of irrevocable harm to the quality and nature of the environment. An excellent example of this may be seen in the recent proposal to build a jetport near the Everglades National Park in South Florida. The Department of Transportation, working with the Department of the Interior, successfully concluded an agreement with the local authorities to safeguard the National Park by requiring the local authority to find another site for the proposed airport.

In conformance with this Departmental policy, Federal Aviation Administrator John H. Shaffer today announced that the Federal Aviation Administration will not consider any applications for Federal aid for additional runways at New York Airports without assurances that there will be no unacceptable environmental or ecological impact. Mr. Shaffer stressed the necessity for balancing the increasing transportation needs of the New York area with the absolute requirement that all steps be taken to achieve excellence in environmental quality.

The FAA will release a limited study which analyzes the technical considerations concerning the airport capacity of the New York-New Jersey metropolitan region. This study provides a basis, along with the National Acadamy of Sciences Study, for further efforts to determine how airport capacity can be increased and the area's ecological and environmental quality enhanced.

The limited study released by the FAA for printing is in two parts, "Analytical Study of Air Traffic Capacity in the New York Metropolitan Area" and "New York Traffic Capacity Study (Real Time Simulation)." The study examines the capacity of the system of airports serving the New York area, concentrating on Newark, LaGuardia and Kennedy. It assumes that additional parallel runways are added at Newark and Kennedy. The reports also consider several improvements to the air traffic control system, such as the use of area navigation routes, standard instrument departure and arrival procedures, and computer-aided approach spacing and sequencing. The effect of regulating or limiting traffic during peak hours is also examined.

The first part of the study uses analytical and mathematical techniques to estimate capacity. The second part is a real time simulation study conducted on the air traffic control simulation system at the FAA's National Aviation Facilities Experimental Center. The simulation system, which includes controllers, control equipment, such as radars, and simulated aircraft, permits study of all elements of the system simultaneously.

The addition of runways at Kennedy and Newark would provide substantial peak-hour airport capacity increases depending upon the noise abatement procedures used and the degree of success resulting from the recently developed metroplex plan.

Substantial increases in air traffic capacity are obtained from the revised route structures, standard departure and arrival procedures, and automated control aids. These or other improvements are necessary to prevent control positions from becoming overloaded at traffic demands equivalent to the maximum capacity of the reconfigured airports.

In releasing the report for printing, Mr. Shaffer emphasized that it is only a part of a total study effort. Studies considering the impact of the expansion plan on the environment, and the plan's relationship to the total transportation needs of the New York area, must be conducted before the overall feasibility can be determined.

Copies of the report should be available from the Clearinghouse for Federal Scientific and Technical Information, Springfield, Virginia 22151, by April 1st.

MEMORANDUM ON PUBLIC LAW 91–190: THE ENVIRONMENTAL POLICY ACT OF 1969

From the Secretary.

To the Under Secretary, the Assistant Secretaries, the General Counsel, the Administrators, Deputy Under Secretary.

On 1 January 1970, President Nixon signed into law the National Environmental Policy Act of 1969, P.L. 91–190, and said, "It is particularly fitting that my first official act in this new decade is to approve the National Environmental Policy Act." He continued, "We are determined that the decade of the '70's will be known as the time when this country regained a productive harmony between man and nature." The President added that he was convinced that the years immediately ahead "must be the years when America pays its debt to the past by reclaiming the purity of its air, its waters, and our living environment. It is literally now or never."

While the Department of Transportation has already taken significant steps to see that environmental considerations are given increased attention and weight in its policies and programs, steps which include the establishment of the Office of Environment and Urban Systems, we shall have to take additional steps in order to bring this Department's activities into line with those specified by P.L. 91–190.

I should like to review for you some possibilities in this regard which may affect operations within the Department and within the Administration.

First of all, the law declares a national environmental policy which calls on the Federal Government in cooperation with State and local governments and other con-

cerned public and private organizations "to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." The Act continues by calling on the Federal Government "to use all practicable means . . . to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

* * * * *

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

(3) Attain the widest range of beneficial uses of the environment . . .

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

* * * * *

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

From the standpoint of the Department of Transportation, however, the most important section of the Act, Section 102, calls on all Federal agencies to

"(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(B) Identify and develop methods and procedures . . . which will insure that presently unquantified environmental amenities and values may be give appropriate consideration in decision making along with economic and technical considerations."

Insofar as day-to-day activities of the Department are concerned, the law also calls for a "detailed statement" by the responsible Federal official "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment . . . on

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

There are other important requirements as well.

For puropses of interpreting this provision of the law for the Department of Transportation, all actions and programs which affect the environment or have the potential for affecting the environment are to be considered "major Federal actions significantly affecting the quality of the human environment" and all such actions and programs should include a detailed statement as specified. Each Administration is to prepare a policy issuance and establish workable procedure to assure that the required statement accompanies every project to be financed in whole or part by this Department. To assure a responsive and consistent approach to these policy issuances and procedures throughout the Department, they are to be coordinated by the Office of the Assistant Secretary for Environment and Urban Systems, in consultation with the General Counsel's Office.

I have asked the Assistant Secretary for Environment and Urban Systems, in cooperation with the General Counsel, to oversee the Department's response to this Act, both in terms of policies and procedures. I shall further expect all officials at the policy-making level of the Department and the Administrations to become familiar with this new law and its implications for planning and operations at all levels of government.

In addition, all elements of the Department should anticipate the need for instructing field personnel as to the intent and demands of this new law. Further, it would seem advisable to incorporate responses to the requirements set forth in this legislation into PPBS memoranda and other budget documents. Possibly it may also prove necessary to re-examine personnel allocations in order to determine where and how new or different personnel may be required in order to meet the requirement of the law.

The Environmental Quality Act also requires that the President shall submit annual Environmental Quality Reports, to include measures of current environmental quality, steps taken to meet the requirements of this law, and recommendations for additional action. The first such report is due on July 1, 1970. To help meet this urgent reporting requirement, each Administration is requested to furnish to me on or before March 9, 1970, a statement of tentative plans for meeting the mandate of P.L. 91-190. I have asked the Assistant Secretary for Environment and Urban Systems to coordinate the Department's contribution to this report and to cooperate with the newly established Council on Environmental Quality, both for purposes of this report and other Council matters relating to transportation.

I am confident that the Department's record of conformance and responsiveness to this law will set an example for the other agencies of the Government and I seek your wholehearted cooperation in establishing such a record.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar, with the exception of Calendar No. 21, message No. 1.

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

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

The nominations on the executive calendar will be stated, beginning with U.S. marshals.

U.S. MARSHALS

The bill clerk proceeded to read sundry nominations of U.S. marshals.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

DEPARTMENT OF DEFENSE

The bill clerk read the nomination of Theodore C. Marrs, of Alabama, to be Deputy Assistant Secretary of Defense for Reserve Affairs.

Mr. THURMOND. Mr. President, it was with distinct honor that on February 26, 1970, I presented to the Senate from the Committee on Armed Services the nomination of Dr. Theodore C. Marrs to be Deputy Assistant Secretary of Defense for Reserve Affairs.

This high post to which Dr. Marrs has been nominated is one of the most important positions in the Department of Defense as he will be the chief civilian responsible for the Reserve programs of the various services in our Defense Establishment.

It has always been my conviction that the overall military strength of our country is directly related to the strength of our Reserves. Therefore, the continued strength of our Reserve program over which Dr. Marrs will preside is of critical importance to our national defense.

Mr. President, this point is amply demonstrated by the fact that our total nonactive duty Reserve Forces number 3,356,000 personnel. Of this number 2,411,000 are Ready Reserves, 398,000 are Standby Reserves, and 547,000 are Retired Reserves.

As Deputy for Reserve Affairs in the Office of the Secretary of the Air Force, Dr. Marrs has had the responsibility at policy level for the Air Force Reserve, the Air National Guard, the Air Force ROTC programs, and the Civil Air Patrol. This has resulted in Dr. Marrs' association with the leaders of Reserve Forces of the Army, Navy, and Marine Corps, with foreign Reserve representatives, and with the Congress. He is well known as a participating member of the Reserve Officers Association and the National Guard Association.

Mr. President, Dr. Marrs retired from the active practice of medicine 7 years ago to serve in Government. After a productive year as special assistant to the Surgeon General of the Air Force he was asked to assume his position in the nonmedical reserve field.

He was born in Rutherfordton, N.C., on August 29, 1918. He attended the University of Tennessee at Knoxville and completed medical college there in 1940. Following graduation he completed a residency in pediatrics at Henry Ford Hospital in Detroit, Mich. He was active in certain classified missions, wrote papers on industrial medicine and pioneered use of electroencephalography in pediatrics and in aviation medicine.

During the period from 1945 to 1951, Dr. Marrs maintained an office for medical practice in Montgomery, Ala. During this time he was instrumental in organizing and managing a number of successful medical facilities. These activities included service as president of the board and chief of pediatrics at Jackson Hospital and Clinic, Montgomery, Ala., a 500-bed hospital with a staff of 40 doctors; president and medical director of Pineview Manor for the Handicapped, Montgomery, Ala.; medical director of the Elks Memorial Clinic for the Handicapped, Montgomery, Ala.; medical consultant for Carlson School, Pompano Beach, Fla., and Laradon Hall, Denver, Colo.; and national consultant to the

United Cerebral Palsy Association during which time Dr. Marrs pioneered development of schools or clinics for handicapped children in 30 cities.

In the area of industrial medicine and aerospace medicine he has served as consultant to numerous aerospace corporations; vice president and one of the founders of Spacelabs, Inc.; completed courses in occupational health, aviation medicine, space operations, medical aspects of missile operations, and aviation medicine and written papers on aviation and industrial medicine subjects.

In the area of military medical administration Dr. Marrs has served successively as flight surgeon, tactical hospital commander, chief of outpatient clinic, base hospital commander, member of the Medical Reserve Advisory Council, and special assistant to the Surgeon General of the Air Force.

As special assistant to the Surgeon General he was a principal in reorganizing the Medical Reserve program in accord with current Air Force needs.

He has worked with CIA in paramilitary and other areas.

Dr. Marrs has been on the Governor's Committee for the Handicapped under five Alabama Governors and on the President's Committee for the Handicapped under three Presidents.

He is a member of the American Board of Pediatrics, the Royal Society of Health, the Association of Military Surgeons, the Aerospace Medical Association, and the Society of U.S. Flight Surgeons.

He has been cited on numerous occasions for his contributions in intelligence areas and medical areas. He has consistently received outstanding performance ratings in his present civil service assignment, and he has been awarded the decoration for exceptional civilian service. The Air Force Association, National Guard Association, Reserve Officers Training Corps, Arnold Air Society, the Polio Foundation, the Nicaraguan Medical Service, the Guatamalan Health Association, the American Association on Mental Deficiency, the American Physicians Art Association, the Mental Health Association, the National Society for Crippled Children and Adults, and other organizations have cited him for his contributions in this area.

Dr. Marrs also has an outstanding career as an Air Force reservist. His various duty assignments included a tour, beginning October 1, 1961, as commander of the 117th Tactical Hospital, Dreaux Airbase, France. On October 1, 1963, he was named assistant to the Surgeon General of the Air Force for Reserve Affairs and in 1964 became a colonel in the Air Force Standby Reserve. On February 16, 1968, he was promoted to brigadier general in the USAFR and on December 21, 1968, he was designated as a mobilization assistant to the Surgeon General of the Air Force.

Mr. President, the Armed Services Committee was unanimous in its approval of Dr. Marrs and it is believed he will render our Nation an outstanding service in this high post.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Theodore C. Marrs, of Alabama, to be Deputy Assistant Secretary of Defense for Reserve Affairs?

The nomination was confirmed.

FEDERAL DEPOSIT INSURANCE CORPORATION

The bill clerk read the nomination of Frank Wille, of New York, to be a member of the Board of Directors of the Federal Deposit Insurance Corporation for a term of 6 years.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

THE DEPARTMENT OF TRANSPORTATION

The bill clerk read the name of Robert H. Cannon, Jr., of California, to be an Assistant Secretary of Transportation.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

U.S. COAST GUARD

The bill clerk proceeded to read sundry nominations in the U.S. Coast Guard.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

PUBLIC PRINTER

The bill clerk read the nomination of Adolphus Nichols Spence II, of Virginia, to be the Public Printer.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

U.S. AIR FORCE—U.S. ARMY—U.S. NAVY

The bill clerk proceeded to read sundry nominations in the U.S. Air Force, the U.S. Army, and the U.S. Navy.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE ENVIRONMENTAL SCIENCE SERVICES ADMINISTRATION, IN THE ARMY, IN THE NAVY, AND IN THE MARINE CORPS

The bill clerk proceeded to read sundry nominations in the Environmental Science Services Administration, in the Army, in the Navy, and in the Marine Corps, which had been placed on the Secretary's desk.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

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

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

WITHDRAWAL OF UNITED STATES-MEXICAN BROADCASTING PROTOCOL

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Montana will state it.

Mr. MANSFIELD. Do I correctly understand that Senate Executive Resolution No. 1, 91st Congress, second session, on the withdrawal of a United States-Mexican broadcasting protocol, reported by the Committee on Foreign Relations favorably, is subject to consideration only on the basis of a majority vote?

The PRESIDING OFFICER. The Chair would inform the Senator from Montana that he is correct.

Mr. MANSFIELD. Mr. President, I thank the Chair. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Senate Executive Resolution No. 1, 91st Congress, second session, withdrawal of United States-Mexican broadcasting protocol.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider Senate Executive Resolution No. 1, 91st Congress, second session, withdrawal of United States-Mexican broadcasting procotol.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to.

SUPREME COURT OF THE UNITED STATES

Mr. MANSFIELD. Now, Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the nomination of George Harrold Carswell, of Florida, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The clerk will state the nomination.

The bill clerk read the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. Is there objection to the consideration of this nomination?

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

Mr. SCOTT. Mr. President, may I be recognized?

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCOTT. Mr. President, the Senate of the United States is asked to decide whether it will advise and consent to the nomination of Judge George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

The majority and minority views of the Senate Judiciary Committee have been printed and we have been treated to a variety of statements, both by Sen-

ators and by those outside the Senate, as to why they oppose Judge Carswell's confirmation. These arguments have seemed to me to boil down to basically two: first, that Judge Carswell, during his tenure as a judge of the Federal district and circuit courts has not been sufficiently "pro-civil rights" in his decisions; and, second, that Judge Carswell is not sufficiently "distinguished" to be an Associate Justice of the Supreme Court of the United States.

Let me first address myself to this question of "distinction" in judicial nominees. I find it a very difficult notion either to define or to explain. I take it that no one seriously questions Judge Carswell's integrity, judicial temperament, or professional competence. The American Bar Association's standing committee on the Federal judiciary has spoken rather emphatically on that subject, in discharging its obligation to determine whether or not a man nominated to be a Justice of the Supreme Court is or is not qualified for that position.

That committee unanimously found Judge Carswell to be qualified and so advised the chairman of the Senate Judiciary Committee on January 26; asked by opponents of the nominee, after the conclusion of the hearings before the Senate Judiciary Committee, to reconsider its position, the committee unanimously reaffirmed its earlier determination.

The committee's communication to the chairman of the Senate Judiciary Committee points out the difference between the question of professional competence and other factors that the President or the Senate may wish to consider in evaluating a nominee. I quote from a paragraph of Judge Walsh's letter to Senator EASTLAND:

> With respect to nominations for the Supreme Court, the Committee has traditionally limited its investigation to the opinions of a cross-section of the best informed judges and lawyers as to the integrity, judicial temperament and professional competence of the proposed nominee. It has always recognized that the selection of a member to the Supreme Court involves many other factors of a broad political and ideological nature within the discretion of the President and the Senate but beyond the special competence of this Committee.

If 12 members of the American Bar Association, specially appointed by my good friend and fellow Pennsylvanian, Bernard G. Segal, president of the association, to discharge this important responsibility, have concluded that Judge Carswell is qualified as to "integrity, judicial temperament and professional competence" and have reached that conclusion on the basis of an investigation of "the opinions of a cross-section of the best informed judges and lawyers," that part of the inquiry is for me at an end.

I think the "lack of distinction" argument is really a make-weight for those whose real ground of objection is that the nominee is not sufficiently in accord with their views. He may not be in accord with many of my views, for that matter. But, to the extent that the lack-of-distinction argument suggests that Judge Carswell lacks either integrity, judicial temperament or professional competence, it is rebutted by the unanimous opinion of the American Bar Association's Standing Committee on the Federal Judiciary.

To the extent that it suggests disapproval of Judge Carswell's judicial philosophy, it is really not grounded on "distinction" at all, but on ideological considerations.

There has been, in the past, some disagreement among members of the Senate Judiciary Committee, and of the Senate as a whole, as to the extent to which an individual Senator ought to evaluate and take into account a nominee's judicial philosophy in deciding whether to vote in favor of confirmation or against it. One thing certainly is clear—each of the 100 Senators cannot insist that the nominee be a carbon copy of his own views on the various matters that come before the Supreme Court, since there are only nine Justices of that Court. I am sure that 100 will not go into nine, if I still remember my early math.

If the President's power to appoint is to mean anything, it must mean that the President is empowered to consider a nominee's judicial philosophy in naming him to the Court in the first instance. The role of the Senate must be, I believe, at most to insist that the nominee's public record be within a range of reasonableness on controversial judicial issues. Each individual Senator cannot insist that the nominee bear his own philosophical stamp, but must limit his consideration, as I must, to whether the nominee's record is within broad limits of reasonableness.

Testimony before the Senate Judiciary Committee has satisfied me that Judge Carswell is indeed a "middle of the roader" in this field of the law.

I repeat, this is not to say that I would necessarily approve of each of Judge Carswell's decisions in the field of civil rights. In fact, in several cases it seems to me that he was stricter than I would like to have seen a judge be, in holding against civil rights plaintiffs.

I am convinced, however, that his rulings—even in these cases—were motivated by his own understanding of the precedents, and his own judicial philosophy. Even though I might not have decided these cases the same way as he did, his overall approach in the area of civil rights is based on his construction of the Constitution, and certainly not in defiance of it.

When I turn to Judge Carswell's work in the field of criminal law, I find myself in accord with virtually everything he has done. He has established a good reputation for fairness as a trial judge in those criminal cases which he tried himself, as can be seen from the statistics regarding affirmance on appeal of these cases by the Fifth Circuit.

However, in several decisions on legal points in habeas corpus cases, he has indicated that where under the law he is free to do so, he would take a more restrictive view of the constitutional rights of criminal defendants than would some other sitting judges.

In a nation confronted with a rising tide of crime which has made the average citizen fearful of going about on the streets of his neighborhood, I do not believe it is wise to further expand concepts under which criminal defendants may be freed on technical points unrelated to their guilt or innocence of the crime of which they are charged.

As a matter of fact, within the last 48 hours, the wife of a former Representative has been an unwitting and unwilling witness to the aftermath of a robbery in a grocery store, and a Member of the U.S. Senate has had his clothing stolen from his car in a parking lot. Therefore, we are well aware that crime is with us in the United States.

I think the President, in short, indeed has nominated a "strict constructionist" to the Supreme Court. Judge Carswell's record is that of a judicial conservative; and, quite consistently with this record, his decisions tend to a less expansive reading of the constitutional rights of both civil rights' plaintiffs and of criminal defendants.

As I have said, my own personal preference, were I sitting on the bench, would probably be for a more liberal reading of the rights of civil rights plaintiffs, but for the same sort of more restrictive reading of the rights of criminal defendants as that found in Judge Carswell's decisions.

Only if I were to insist that a judge nominated to the Supreme Court mirror precisely my own views as to how Supreme Court Justices should decide particular cases, could I have serious doubts about voting to confirm Judge Carswell. Obviously, neither I nor any other Senator has the right to impose such a requirement.

Judge Carswell is within the realm of reason in the area of civil rights, and will bring to the area of constitutional rights of criminal defendants a somewhat more skeptical approach than has been followed by the Supreme Court in some of its decisions of the immediate past. I welcome this latter development.

Judge Carswell is an experienced, sitting judge. There are those who argue that he has not had sufficient time on the bench, and to them I point out that of the last four appointees to the Supreme Court, three never wore judicial robes before being confirmed here.

It strikes me as strange, moreover, that some of those now opposed, were prepared some years ago, to rush through a Supreme Court appointee simply because "this was the man the President wanted."

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

Mr. SCOTT. I yield.

Mr. HOLLAND. Mr. President, the Senator knows that this nominee served 5 years as assistant district attorney in the Eisenhower administration. He was appointed in the closing part of the Eisenhower administration as a district judge and was appointed last year in the Nixon administration as a judge of the Circuit Court of Appeals for the Fifth Circuit.

I simply want the record to show on this point, first, that the Senator from Florida, not being of the same party as the Executive on any of these three occasions, did not make the nomination,

but that there was every chance for anyone who wished to complain to him of Judge Carswell personally, or later as an official, to do so.

The area over which he presided is predominantly Democratic. The bar over which he presided is predominantly Democratic. Not only did I have no complaint, but I had much encouragement to approve the appointment when he was named as district attorney. And he was unanimously approved by the Senate.

When the time came for his appointment as a district judge—and the situation was the same, as the nomination came from a Republican administration and was not upon my recommendation—there was ample opportunity for me to hear objections, if there were such, to the way he had treated defendants or lawyers in cases which he had handled as a prosecutor.

I had no such complaints, and to the contrary, even when the circuit court of appeals nomination was made last year, with the situation exactly the same—the nomination coming from a Republican President—with every opportunity for me to hear the complaint of any lawyers or others who might complain of his judicial conduct, I had none.

I want the record to show that I had many dozens of pleasant, approving, and recommending letters and other contacts last year. I did in 1958 when he was named as district judge. And I did in 1953 when he was named as an assistant district attorney. And through the course of the years, I have had many opportunities to hear from members of the bar, in particular in that part of the State, and I have yet to have the first complaint of mistreatment or poor judgment on the part of Judge Carswell, which I thought was quite a commendation for a man who has served in these three positions since 1953. And the Senate having acted unanimously to confirm him on each of these three occasions, we must have felt unanimously that he was well chosen and well regarded and that it was well understood that he was a man of integrity, a man with a knowledge of the law, and a man of judicial temperament.

Mr. SCOTT. Mr. President, I thank the Senator from Florida for his contribution to the information on the background of this appointee. He was, indeed, confirmed unanimously by the Senate and reported unanimously by the Senate Judiciary Committee on each occasion. And if there were any objections to him, they must have been at that time quite minimal.

One is, therefore, entitled to wonder why some of the things have been said which have been said later on this, the fourth time the name of Judge Carswell has been submitted to the Senate.

If we were right three times, one wonders how we could be so wrong the fourth time. This is another one of the reasons why I am supporting the nomination.

This nomination is not rushed through. Judge Carswell has been subjected to the closest scrutiny by the Senate and the public. And the fact remains that this is the man the President wants. This is the man the Judiciary Committee, by a heavy majority, favorably reported. This is the man on whose qualifications we in the Senate have passed on three times already.

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

Mr. SCOTT. I yield.

Mr. KENNEDY. Of course, in making the evaluation three previous times, neither the Judiciary Committee nor the Senate carried out any searching inquiry. I think that in all fairness it should be pointed out that on this occasion, with a nomination to the Highest Court in the land at stake, there were materials presented to the Committee on the Judiciary which had not been submitted to the Committee on the Judiciary before; and that this time there was an opportunity to review his work in greater detail. We had somewhat of a chance to look at his performance with a higher degree of care, particularly in terms of his interpretation of certain controlling cases and statutory and constitutional provisions, and his willingness to follow precedents. There was a much more complete—although not even yet a totally thorough—inspection of his general performance during his tenure on the court. I think that any examination of the record would indicate incontrovertibly that this was a much more thorough and far-reaching study than had been made before.

Would the Senator agree?

Mr. SCOTT. I agree there has been a great deal more discussion on the nomination of Judge Carswell this fourth time than there has been before. There have been witnesses and controversy; there have been different points of view. The distinguished Senator from Massachusetts knows I share his views generally on civil rights; and I believe I can say conversely that he shares mine. But I am pointing out that had this appointee's record been as unfortunately subject to criticism as it now is, that it did not occur in the previous three situations. But I do think the Senator has made an important contribution to the record and I could not dispute that these matters have since been brought out.

Mr. KENNEDY. I thank the Senator. I regret having interrupted the Senator in his formal presentation because I think it is only fair that he make his presentation. I think in fairness, when we are considering this matter we should realize that this has been perhaps the only extensive and intensive examination of this nominee's background, competence, and judicial temperament for this important position. There have been those who say it has been too expansive and exhaustive an examination, but I think there can be no doubt that we have a much more complete record on this nominee than at any time in the past.

When we consider the nominee on this occasion compared to the other times he was considered, we must realize that we are considering him for the highest kind of national responsibility, a position on the Supreme Court of the United States; as compared to the other occasions when he was being considered for the position as U.S. attorney and district or circuit court judge. Perhaps we should have considered his previous nominations more carefully. But that is certainly no reason not to consider his present nomination as carefully as we can.

I thank the Senator.

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

Mr. SCOTT. I yield.

Mr. HOLLAND. It was the Circuit Court of Appeals, the second highest court in our Nation, and a court that is the court of final appeal in the normal case. There was certainly an ample opportunity to investigate at that time.

I repeat that he was not my nominee. I nominated someone else, just as I have this time. But I must in fairness state that although I am a member of the bar in Florida of long standing and have served as Governor of my State, and lived in Tallahassee, the city where he lives, and know him and have been acquainted with practically all the lawyers who practice in practically the entire western and northern part of my State, I have yet to have any complaint of mistreatment or lack of judicial knowledge and handling by members of the Florida bar.

The Senator will remember, of course, that the president of the Florida Bar Association came to testify heartily in support of this nomination.

Mr. KENNEDY. Mr. President, would the Senator yield further?

Mr. SCOTT. If I may, I would like to finish two short paragraphs, and then I will be glad to yield.

In nominating Judge Carswell, President Nixon has taken into consideration notions of geographical and philosophical balance in the Supreme Court.

This is his prerogative and in the absence of ethical considerations, I support the nomination of Judge Carswell and I intend to vote for his confirmation.

Mr. President, I ask unanimous consent to have printed in the RECORD a biographical sketch of George Harrold Carswell.

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

BIOGRAPHICAL SKETCH OF GEORGE HARROLD CARSWELL

Judge Carswell was born on December 22, 1919, in Irwinton, Georgia. He graduated from Duke University in Durham, North Carolina, with a B.A. degree in 1941. He attended the University of Georgia Law School for one year prior to his entry into the armed forces in 1942. He was discharged as a Lieutenant in the Navy in 1945, after which he resumed his law studies at Mercer University Law School, at Macon, Georgia. He graduated from the Walter F. George Law School at Mercer in 1948, and engaged in the private practice of law in Tallahassee, Florida, until 1953.

He was appointed United States Attorney for the Northern District of Florida by President Eisenhower in July, 1953, and served in that position for five years. In 1958, he resigned as United States Attorney to accept appointment as United States district judge for the Northern District of Florida, a post which he held until President Nixon appointed him to be a judge of the United States Court of Appeals for the Fifth Circuit in June, 1969. He is presently serving as a circuit judge.

Shortly after he was appointed a district judge, Chief Justice Warren appointed Judge Carswell to be a member of the Committee

on Statistics of the Judicial Conference of the United States. This Committee performs the essential function of evaluating the need for additional federal judges throughout the nation, on the basis of studies of current workload and backlog. The present Omnibus Judge bill already passed by the Senate and pending in the House of Representatives is based largely on the recommendation of the Committee on Statistics. In April, 1969, Judge Carswell was chosen by the other circuit and district judges to be the Fifth Circuit's district judge representative to the Judicial Conference of the United States. As such, he attended and participated in the meeting of the Conference held in June, 1969, dealing with the problems of judicial ethics arising from outside employment of federal judges. He voted with the majority of the Conference at that time to require disclosure of outside employment, and to regulate it in other ways.

Mr. SCOTT. Mr. President, I am glad to yield to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I want to comment on the statement of the distinguished Senator from Florida in regard to the question of whether any members of the bar in Florida did complain.

Mr. HOLLAND. To me.

Mr. KENNEDY. We are talking about the whole record in this matter. If the Senator is limiting complaints of the Florida bar to him, I would reserve any comment. If the Senator is talking about reservations expressed by lawyers who practiced in Florida in terms of their practice before Judge Carswell in numerous cases, I would suggest that the Senator review the record. There were a number of members of the bar that did complain and complain vociferously about the kind of treatment they received in the nominee's court. They used the words "intimidated," "hollering," and "scolding." One lawyer who supervised a large number of other lawyers throughout Florida during a 4-year period of the 1960's, said that he felt it necessary to train them for appearances before Judge Carswell by harassing them and interrupting them as Judge Carswell repeatedly did. And other lawyers who appeared in his court corroborated that complaint.

I would certainly hope the Senator, for whatever value he might place on it, would get a chance to review those comments, as well.

However, those are really the secondary questions when taken in isolation. I think the Senator from Pennsylvania has touched on the really important questions which will be discussed and debated. I had really not intended to have the opportunity to speak this afternoon on this question and I hope to do some time next week. But I do feel that the individual views expressed by four members of the Committee on the Judiciary, and those expressed in the more complete memorandum, which touch upon the question of the professional competency of Judge Carswell, that talk about his judicial temperament, about the question of whether his interpretations really follow the controlling cases or not, questions of his sensitivity to and understanding of human rights, really present a very responsive and complete expression of why many Members of this body will find there are sound grounds to believe that this nomination should not receive the Senate's endorsement.

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

Mr. SCOTT. I yield.

Mr. GRIFFIN. Mr. President, I expect to have some further remarks at a later point in the debate on this nomination but I should like at this time to commend the distinguished minority leader for a very excellent statement and, in general, to associate myself with what he has said.

He has focused on what are supposed to be the issues, and I believe he has demolished the arguments of those who seek to build a case against the nominee.

Certainly any Senator who wishes to oppose a nominee for the Supreme Court simply because of disagreement with philosophy is within his rights as a Senator to do so; but I suggest that it breaks with the tradition and practice of the Senate over the years, as I understand the history of the Senate, Senators have been very tolerant with respect to differences of philosophy when nominations to the Supreme Court have been considered.

I would not try to characterize or categorize the philosophy of Judge Carswell. However, like the minority leader, I am quite sure that the philosophy of the nominee would not be completely in tune with mine. I know that there are decisions which have been handed down by the nominee which would not have been my decisions if I had been sitting in his place. But I am also conscious of the fact that any Senator would expect too much if he should expect or demands 100 percent agreement with any nominee so far as philosphy or ideology are concerned. I am not impressed with the arguments of those who try to portray this nominee as a "racist" or an extremist.

As a member of the Judiciary Committee, I have listened to the testimony and I have reviewed the record. On the whole, I believe the record indicates that the nominee has sought to apply the decisions of the Supreme Court as he, in good faith, has interpreted them.

Once again, I want to commend the distinguished minority leader.

Mr. KENNEDY. Mr. President, will the Senator permit me to respond on this point to the Senator from Michigan?

Mr. SCOTT. I yield. I understand the Senator wishes to respond to the Senator from Michigan. I can yield the floor at this time. Is the Senator seeking recognition?

Mr. KENNEDY. Yes.

Mr. SCOTT. Mr. President, I yield the floor.

Mr. KENNEDY. Mr. President, I would like to say, in terms of response to my good friend from Michigan, that I am sure that during the course of this debate it will be stated on the floor that there were members of the Judiciary Committee who expressed their reservations to this nominee solely on the basis of philosophy. I certainly did not, and I do not believe my colleagues who signed the minority views did so, either.

Realistically, I believe we would expect that during this administration, there might very well be nominees whose philosophy might be different from that of some of us who sit on the Judiciary Committee; we have had such nominees for every kind of position from U.S. marshal to Chief Justice of the United States, and we have not opposed their confirmation. But the point raised in the individual views, which is extremely basic with respect to this nominee, is whether the nominee's personal prejudice and predilections interferred with the decision-making process, in his court, and affected his judicial temperament, his objectivity, and his fairness. I think it is a legitimate area of pursuit for those of us on the Judiciary Committee, and for all Members of the Senate, because it is a basic question and must be resolved. There were suggestions, comments, and statements by witnesses that indicated strongly that this happened. We will have an opportunity to review that evidence and examine it in some detail during the course of the debate. Obviously it is a question that reaches the essence of the question of the suitability of the nominee, even apart from the overall and threshold question of whether his general qualifications are such as to merit a Supreme Court appointment.

This is a better portrayal of at least one of the areas of the reservations expressed by the Senators who signed the individual views. It is surely a truer express of their reservations than merely a bland expression that goes merely to the question of philosophy.

Mr. BAYH. Mr. President, I intend to deal with the whole matter of the nomination of Judge Carswell on Monday, following the presentation of the views of the distinguished chairman of the committee (Mr. EASTLAND); but inasmuch as the issue has been joined at this hour, I feel obliged to make at least one or two comments.

I listened with a considerable amount of interest to the views of the distinguished minority leader and his good right arm, the distinguished Senator from Michigan (Mr. GRIFFIN). This is another example of how Members of this body can have the greatest respect for their colleagues and still take issue with their interpretation of the problem before us.

I admired the courage—and I think it was tremendous courage—of both the Senator from Pennsylvania (Mr. SCOTT) and the Senator from Michigan (Mr. GRIFFIN) in the previous conflict over the nomination to the Supreme Court. None of us likes to go through that. Difficult as it was for the Senator from Indiana, I am sure it was more difficult for them.

I would not want one to intimate for a moment that it is a sign less than that of courage if one feels contrary to the way the Senator from Indiana feels on this issue; but I am hard pressed, looking at the record of the qualifications of the previous nominee and then look-

ing at the record of qualifications of the present nominee, to see how the issue is not more clearly drawn. It would be easier to vote in opposition to the President's nomination on the Carswell qualifications, demeanor, philosophy, or any of the points raised in the individual views coming from the Judiciary Committee.

The Senator from Michigan pointed out that the history of the Senate shows it has been tolerant of the philosophical views of judicial nominees, and I think perhaps history will show he is accurate in that statement. The Senator from Indiana was inclined to be most tolerant about the views of this nominee. Having just gone through the terrible struggle over the Haynsworth nomination. I must say, at the risk of sounding like a public confession, I was hoping that this whole thing would go away and that we could easily advise and consent to the nomination of just about any person whose name the President had sent to the Senate. But, as the record began to build up, it became more and more clear that I could not see my way clear to vote the easy way, I could be tolerant of the judge's philosophy to the place where it became greatly contrary to what appears to me to be in the best interests of the country. At that point I felt compelled to say, "Mr. President, it is your initial responsibility to send the name of your own nominee, but, indeed, if the advise and consent procedure means anything, this is a time when we have, in all respect, to say, 'Send us a man of bigger stature, who is more in tune with what the country needs at this time.' "

I agree that what the Senator from Michigan said is accurate. I think Judge Carswell did indeed apply the views of the Supreme Court to the various cases before him, as he saw fit, as he judged. But it seems to me it is a question that this body should consider when the issues involve the broad area of human rights, whether it be school segregation, utilization of public facilities by the public as a whole rather than a few, or the use of habeas corpus as an instrument for the protection of individuals who are incarcerated in a certain manner. Indeed, it is difficult to find any similarity between what the Supreme Court has said on these issues and the way they have been interpreted by Judge Carswell.

I do not want to prolong the debate at this particular moment, but I would like to put in the RECORD at this point a statement on the confirmation of Judge G. Harrold Carswell as an Associate Justice of the Supreme Court of the United States, issued by a former judge of the Court of Appeals of the State of New York, Judge Bruce Bromley; president of the Association of the Bar of the City of New York, Francis T. P. Plimpton; former president of the Association of the Bar of the City of New York, Samuel I. Rosenman; former president of the Association of the Bar of the City of New York, Bethuel M. Webster.

I ask unanimous consent that the statement be printed in the RECORD at this point.

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

STATEMENT ON THE CONFIRMATION OF JUDGE G. HARROLD CARSWELL AS AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The undersigned members of the Bar, in various sections of the United States, and of differing political affiliations, are deeply concerned about the evidence in the hearings of the United States Senate Judiciary Committee on the confirmation of Judge G. Harrold Carswell as an Associate Justice of the Supreme Court of the United States.

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

The testimony has shown no express or implied repudiation of his 1948 campaign declarations in favor of "white supremacy" and of his expressed belief that "segregation of the races is proper and the only correct way of life in our State"—until his confirmation for the United States Supreme Court was put in jeopardy by their disclosure. On the contrary, it shows a continuing pattern of reassertion of his early prejudices.

That pattern is most clearly indicated by his activities in 1956 in connection with the leasing of a public golf course in his city to a private club, for the purpose of evading the Constitution of the United States and excluding blacks from its golf course.

We are most deeply concerned about this part of the testimony. He was then no longer the youthful, enthusiastic campaign orator of 1948 running on a platform of "white supremacy" and "segregation as a way of life." He was then a mature man, holding high Federal office.

Unfortunately, insufficient public attention has been paid by the media of public information and by the public in general to this episode.

The testimony as to the golf club is particularly devastating, not only because of the nominee's lack of candor and frankness before the Senate Committee in attempting to explain it, but because his explanation, if true, shows him to be lacking the intelligence of a reasonable man and to be utterly callous to the implications of the scheme to which he was lending himself.

The circumstances surrounding this golf club incident are extremely important, and should be made clear. By 1955, the Supreme Court of the United States had declared that it was unconstitutional for a city or state to segregate any of its public recreational facilities, such as golf courses. As a result of this decision, a common and well-publicized practice had grown up in the South, in order to keep blacks off municipal golf courses, by which the cities would transfer or lease the public facilities to a private corporation, which would then establish rules for exclusive use by whites. This was, of course, a palpable evasion—and universally understood so to be.

By 1956, many cases had already been filed in various cities of the South to invalidate these obvious subterfuges. Several lower United States Courts had already struck them down as unconstitutional. These cases were well publicized at the time when United States Attorney Carswell, who had been, of course, sworn as a United States Attorney to uphold the Constitution and laws of the United States, became involved in the matter of the municipal golf club in Tallahassee, Florida, where he lived.

By the date the Tallahassee incident occurred, five lawsuits had already been started in different cities in the State of Florida to desegregate municipal recreation facilities, including, among others, golf clubs; and it was clearly evident that Tallahassee and its municipal golf club would soon be the target of such a suit.

Therefore, to circumvent the results of such a suit, some white citizens of Tallahassee incorporated a private club, to which the municipal golf course was thereupon leased for a nominal consideration. Affidavits, dated in February 1970, were submitted and read to the Senate Committee, signed by both blacks and whites who were residents of Tallahassee at the time, showing that it was generally understood that this transfer was being made solely for the purpose of keeping black citizens off the course.

One of these affidavits (TR 610)[1] was by a Negro lady, a public high school teacher for ten years, the business manager of Tallahassee's A & M Hospital for one-half year, and presently an Educational Specialist at the Federal Correctional Institution in Tallahassee. It said in part:

". . . Tallahassee was in a racial uproar over the bus boycott and other protests—bringing a reaction of fear to the white community. The word 'private' had increasingly become a code name for segregation.

"The Capital City Country Club incorporation proceedings were well-publicized and the racial overtones were necessarily clear to every knowledgeable citizen in the area, and it would have been surprising to me if an intelligent man, particularly an incorporator was not aware of the repeatedly emphasized racial aspects of this case.

"We did discuss this corporation widely at the time; had we not been so preoccupied with other protests, we would have undoubtedly moved against the Corporation in civil suit."

Another affidavit (TR 611) was signed by a white lady, "a life-long resident of Tallahassee whose family has been domiciled in city for several generations," "the wife of the chairman of Florida's oldest bank, the Lewis State Bank of Tallahassee." It stated that: (1) the golf course had been developed and improved by a grant of $35,000 of WPA funds; (2) she refused to join in the new club "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"; (3) that she had discussions at the time of the lease "with a variety of parties during that period on the subject of a golf course, the issue being of wide civic concern." She stated:

"I would have been surprised if there was any knowledgeable member of the community who was unaware of the racial aspect of the golf course transaction. The controversy appeared in the local newspaper of the time and a city commissioner was known to have raised questions about the racial implications involved."

There was then received in evidence (TR 613) a clipping from page 1 of the local newspaper, referred to, the Tallahassee Democrat, for February 15, 1956. This contemporaneous clipping corroborated the affidavits in showing the community discussion of the racial purpose of the lease. Reporting the fact that the lease had been entered into by the City Commission with the private club, it stated:

"The action came after a two-month cooling off period following the proposal's first

[1] References are to the transcript of the hearings on the nomination before the Senate Committee on the Judiciary.

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 his move.

"Under the arrangement, the country club group would take over the operation of the course September 1. The lease is for 99 years, running through 2055, and calls for a $1.00 a year payment.

The then United States Attorney, now seeking to become an Associate Justice of the Supreme Court of the United States, became an incorporator and director of that private club to which the golf club was to be leased. Here was a high Federal public official, thoroughly cognizant of the decisions of the Federal courts, participating in a scheme to evade the Constitution.

The answer of Judge Carswell to the disclosure of this was that: (1) he thought that the papers he signed (with a subscription of $100) were for the purpose of fixing up the old golf club house; (2) that he at no time discussed the matter with anyone; and (3) that he never believed that the purpose of this transaction had anything to do with racial discrimination or keeping blacks off the course.

Some of the Senators at the hearings were as incredulous as we are. We think that a few short extracts of the Judge's testimony on this matter will give a clearer picture of the man who now seeks a seat on the Supreme Court of the United States—the final guardian of the individual rights of all of us:

Judge Carswell (in answer to a question by Senator Kennedy as to whether the Judge was testifying that the transaction was principally an effort to build a club house): "That is my sole connection with that. I have never had any discussion or never heard anyone discuss anything that this might be an effort to take public lands and turn them into private lands for a discriminatory purpose. I have not been privy to it in any manner whatsoever." (TR 65)

Senator Kennedy (TR 149): Mr. Nominee, I think the document speaks for itself in terms of the incorporation of a club, a private club . . . I think, given the set of circumstances, the fact that they were closing down all recreational facilities in that community at that time because of various integration orders, I suppose the point that Senator Bayh is getting to and some of us asked you about yesterday is whether the formation of this club had it in its own purpose to be a private club which would, in fact, exclude blacks. The point that I think he was mentioning and driving at, and Senator Hart talked to, and I did in terms of questions, is whether, in fact, you were just contributing some $100 to repair of a wooden house, club house, or whether, in fact, this was an incorporation of a private club, the purpose of which was to avoid the various court orders which had required integration of municipal facilities. . . .

"Now, I think this is really what, I suppose is one of the basic questions which is of some interest to some of the members and that we are looking for some response on."

Judge Carswell: "Yes sir, and I hope I have responded, Senator Kennedy. I state again unequivocally and as flatly as I can, that I have never had any discussions with anyone, I never heard any discussions about this."

Senator Bayh: "You had no personal knowledge that some of the incorporators might have had an intention to use this for that purpose?" (TR 150)

Judge Carswell: "I certainly could not speak for what anybody might have thought, Senator. I know that I positively didn't have any discussions about it at all. It was never mentioned to me. I didn't have it in my mind, that is for sure. I can speak for that." (TR 150)

Senator Bayh then asked whether there were then any problems in Florida relating to the use of public facilities and having them moved into private corporations. Judge Carswell answered:

"As far as I know, there were none there and then in this particular property."

Senator Bayh then asked whether Judge Carswell was not aware of other cases in Florida?

Judge Carswell: "Oh, certainly, certainly. There were cases all over the country at that time, everywhere. Certainly I was aware of the problems, yes. But I am telling you that I had no discussions about it, it was never mentioned to me in this context and the $100 I put in for that was not for any purpose of taking property for racial purposes or discriminatory purposes." (TR 151)

Senator Kennedy: "Did you have any idea that that private club was going to be opened or closed?"

Judge Carswell: "The matter was never discussed."

Senator Kennedy: "What did you assume?"

Judge Carswell: "I didn't assume anything. I assumed that they wanted the $100 to build a club house and related facilities if we could do it. . . ." (TR 153)

Senator Kennedy: "When you sent this and you put up the money, and you became a subscriber, did you think it was possible for blacks to use that club or become a member?"

Judge Carswell: "Sir, the matter was never discussed at all."

Senator Kennedy: "What did you assume, not what was discussed?"

Judge Carswell: "I didn't assume anything. I didn't assume anything at all. It was never mentioned."

Senator Kennedy: "Did you in fact sign the letter of incorporation?"

Judge Carswell: "Yes, sir. I recall that. . . ."

Senator Kennedy: "Did you generally read the nature of your business or incorporation before you signed the notes of incorporation?"

Judge Carswell: "Certainly I read it, Senator. I'm sure I must have. I would read anything before I put my signature on it, I think [sic]."

We cannot escape the conclusion that a man, in the context of what was publicly happening in Florida and in many parts of the South—which the nominee says he knew—and what was being discussed locally about this very golf club, would have to be rather dull not to recognize this evasion at once; and also fundamentally callous not to appreciate and reject the implications of becoming a moving factor in it. Certainly it shows more clearly than anything else the pattern of the Judge's thinking from his early avowal of "white supremacy" down to the present.

Particularly telling—as showing the continuing pattern of his mind which by the time of the golf club incident, if not before, had become clearly frozen—are the testimony and discussion of fifteen specific decisions in civil and individual rights cases by the nominee as a United States District Judge (TR 629, et seq.). These fifteen were, of course, only a few of the decisions by the nominee. A study of a much fuller record of his opinions led two eminent legal scholars and law professors to testify before the Senate Committee that they could find therein no indication that the nominee was qualified—by standards of pure legal capacity and scholarship, as distinguished from any consideration of racial prejudices—to be a Supreme Court Justice.

These specific fifteen cases are all of similar pattern: they involved eight strictly civil rights cases on behalf of blacks which were *all* decided by him against the blacks and all *unanimously* reversed by the appellate courts; and seven proceedings based on alleged violations of other legal rights of defendants which were all decided by him against the defendants and all *unanimously* reversed by the appellate court. Five of these fifteen occurred in one year—1968.

These fifteen cases indicate to us a closed mind on the subject—a mind impervious to repeated appellate rebuke. In some of the fifteen he was reversed more than once. In many of them he was reversed because he decided the cases without even granting a hearing, although judicial precedents clearly required a hearing.

We do not dispute the Constitutional power or right of any President to nominate, if he chooses, a racist or segregationist to the Supreme Court—or anyone else who fills the bare legal requirements. All that we urge is that the nominee reveal himself, or be revealed by others, for what he actually is. Only in this way can the Senate fulfill its own Constitutional power to confirm or reject; only in this way can the people of the United States—the ultimate authority—exercise an informed judgment. That is the basic reason for our signing this statement, as lawyers, who have a somewhat special duty to inform the community of the facts.

We agree with Judge Carswell that a nominee for the Court should not ordinarily be compelled to impair his judicial independence by explaining his decisions to a Senate Committee. But this was no ordinary situation. It involved a consistent and persistent course of judicial conduct in the face of continual reversals, showing a well-defined and deeply ingrained pattern of thought.

We believe that—at the very least—the hearings should be reopened so that an official investigation can be made by independent counsel for the Committee, empowered as it is to subpoena all pertinent records, including the files of the Department of Justice and the records of Judge Carswell's court. So far, the evidence in opposition—compelling as it is—has been dug up solely by the energy and efforts of private citizens or groups, without power of subpoena. For example, the episodes of the 1948 pledge to "white supremacy" and the country club lease were both dug up by independent reporters.

Are there any other incidents like the golf club, or other public or private statements about "white supremacy"? Are there additional, but unreported, decisions in the files of Judge Carswell's court, not readily available to lawyers who can search only through the law books for cases which have been formally reported and printed? What information can be found in the files of the Department of Justice, unavailable, of course, to the opposition but readily subject to a Committee subpoena?

One vote out of nine on the Supreme Court is too important to rely on a volunteer investigation, on the efforts of private, public-spirited lawyers and reporters, although they have already uncovered evidence clearly indicating, in the absence of a more credible explanation, rejection of the nomination.

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

We urge that the present record clearly calls for a refusal to confirm by the Senate of the United States.

Signed: [2]

Bruce Bromley, former Judge, Court of Appeals, State of New York.

Francis T. P. Plimpton, President, The Association of the Bar of the City of New York.

Samuel I. Rosenman, former President, The Association of the Bar of the City of New York.

Bethuel M. Webster, former President, The Association of the Bar of the City of New York.

Charles S. Desmond, Former Chief Judge, New York State Court of Appeals, Buffalo, New York.

John G. Buchanan, First Chairman, American Bar Association Committee on the Judiciary; Former President, Allegheny County Bar Association and Pennsylvania Bar Association, Pittsburgh, Pennsylvania.

Dean Robert F. Drinan, S.J., Boston College Law School, Boston Massachusetts.

Cyrus Vance, Partner, Simpson Thacher & Bartlett, New York, New York.

Simon H. Rifkind, Former Judge, U.S. District Court, New York, New York.

Chauncey Belknap, Former President, New York State Bar Association, New York, New York.

Haskell Cohn, President, Boston Bar Association, Boston, Massachusetts.

Warren Christopher, Partner, O'Melveny & Myers, Los Angeles, California.

Dean and Faculty, Yale University Law School, New Haven, Connecticut: Louis H. Pollak, Dean; Boris I. Bittker; Ralph S. Brown, Jr., Associate Dean; Arthur A. Charpentier; Thomas I. Emerson; William L. F. Felstiner, Associate Dean; Daniel J. Freed; Abraham S. Goldstein, Dean Designate; Joseph Goldstein; Friedrich Kessler; Ellen A. Peters; Charles A. Reich; Eugene V. Rostow; Robert B. Stevens; Clyde W. Summers; Harry H. Wellington.

John W. Douglas, Former U.S. Assistant Attorney General, Washington, D.C.

Robert M. Morgenthau, Former U.S. Attorney for the Southern District of New York, New York, New York.

Sumner T. Bernstein, Past President, Maine State Bar Association, Portland, Maine.

Dean and Faculty, Notre Dame Law School, Notre Dame, Indiana; William B. Lawless, Dean; Frank E. Booker; Leslie A. Foschio, Assistant Dean; Godfrey C. Henry; Charles W. Murdock; Thomas L. Shaffer, Associate Dean.

Robert H. Farbian, San Francisco, California.

Burrell Ives Humphreys, Former Deputy Attorney General, State of New Jersey, Wayne, New Jersey.

Richard A. Bancroft, San Francisco, California.

Gardner Cromwell and Lester R. Rusoff; Professors, University of Montana School of Law, Missoula, Montana.

Samuel H. Hofstadter, Former Justice, Supreme Court, State of New York, New York, New York.

Walter S. Hoffmann, Wayne, New Jersey.

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Lloyd K. Garrison, Former Member, Executive Committee of the Association of the Bar of the City of New York and Former President, Board of Education of the City of New York, New York, New York.

Sadie T. M. Alexander, Secretary, Philadelphia Bar Association Foundation, Philadelphia, Pennsylvania.

Dean Jefferson B. Fordham, University of Pennsylvania Law School, Philadelphia, Pennsylvania [embracing basic objection to confirmation, but uncommitted as to factual details].

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Ted Foster, Associate Dean, Oklahoma City University Law School, Oklahoma City, Oklahoma.

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[2] Mention of an organization is purely for descriptive purposes, and not to indicate an expression of the views of the organization.

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Vincent R. FitzPatrick, Partner, Willkie Farr & Gallagher, New York, New York.

Joseph L. Rauh, Jr., Partner, Rauh and Silard, Washington, D.C.

Michael V. Forrestal, New York, New York: Boris Kostelanetz, Former Special Assistant to the Attorney General of the United States, New York, New York; Charles Denby, Partner, Reed, Smith, Shaw & McClay, Pittsburgh, Pennsylvania; Hugh A. Burns, Partner, Dawson, Nagel, Sherman & Howard, Denver, Colorado.

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Wayne B. Wright, Former President, Bar Association of Metropolitan St. Louis, St. Louis, Missouri.

Ross, Stevens, Pick & Spohn (all eleven partners), Madison, Wisconsin.

Melvin G. Shimm, Professor, Duke University, School of Law, Durham, North Carolina.

Leonard M. Nelson, Chairman, Judiciary Committee, Maine State Bar Associataion, Portland, Maine.

Lloyd N. Cutler, Washington, D.C.

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Dean and Faculty, Harvard University Law School, Cambridge, Massachusetts (Subscribe to the conclusions expressed herein concerning the qualifications of Judge Carswell for appointment to the Supreme Court.): Derek C. Bok, Dean; Paul M. Bator; Stephen G. Breyer; Abram Chayes; Jerome A. Cohen; Charles Fried; Livingston Hall; Louis L. Jaffe; Benjamin Kaplan; Robert E. Keeton; Louis Loss; Frank I. Michelman; Albert M. Sacks; Frank E. Sander; David L. Shapiro; Henry J. Steiner; Donald T. Trautman; Adam Yarmolinsky.

Carroll J. Donohue, Former President, Bar Association of St. Louis, Former Member, Board of Governors of Missouri Bar Association, St. Louis, Missouri.

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R. Walston Chubb, Partner, Lewis, Rice, Tucker, Allen and Chubb, St. Louis, Missouri.

Shedd, Gladstone & Kronenberg (all three partners), Hackensack, New Jersey.

Mr. BAYH. Mr. President, I notice two names that are not unfamiliar to those of us who have had the responsibility of sitting on the Judiciary Committee during the whole ordeal of trying to fill the vacancy which presently exists. One of those names is familiar to all of us, Judge John Frank, who testified before our committee in support of the Haynsworth nomination. Judge Frank has spoken rather eloquently in opposition to the qualifications of this nominee, and feels that the Senate should not advise and consent to this nomination.

I notice also that Prof. William Van Alystyne, who testified before the Judiciary Committee when we were consider-

ing the qualification of Judge Haynsworth, and who thought Judge Haynsworth was qualified, takes issue rather eloquently in this report, as he did before the committee itself. He feels the qualifications of the present nominee, Judge Carswell, are far less than were those of Judge Haynsworth.

So, Mr. President, I think it is important that, as the Senate debates this issue, we look at the issue involved.

We are not only filling a vacancy on the highest judiciary tribunal in the land, but the most compelling thing to me is that we are filling this vacancy, exercising this responsibility, at a time of great tension and turmoil in this country, at a time when disadvantaged people have been told, again and again and again, that there is a place for them in the system. I know I have told large numbers of my constituents that it is our responsibility, in this system, to work through it, to strengthen it, to make it respond in every way possible, to see that every citizen can be heard, that their grievances can be reconciled, that they may indeed have a full opportunity for themselves and their families by working through the system.

I have come to the conclusion that it would be completely inconsistent, feeling as I do that the system is the best way, and that this is not a time when we can be indifferent to discussing revolution and tearing down the system—it would be totally inconsistent, feeling as strongly as I do that in spite of its imperfections there has not been a better system devised by mankind—to now stand mute and let a man be appointed at the very top of our judicial system who has exhibited such a degree of insensitivity relative to the problems of large numbers of our people.

For that reason, I respectfully take issue with the distinguished assistant Republican leader, the Senator from Michigan (Mr. GRIFFIN) and his colleague from Pennsylvania, after having said earlier, as I think I did when indulging in a colloquy with his colleague, that I had the greatest respect for his integrity.

That is true. I have seen him in action when the going was rough, and my disagreement with him on this issue in no way lessens my respect for his qualities and ability.

Mr. GRIFFIN. Mr. President, will the distinguished Senator from Indiana yield?

Mr. BAYH. I am glad to yield.

Mr. GRIFFIN. I appreciate the Senator's remarks. Since this early stage of the discussion and debate seems to be a time for framing and identifying issues, I might make a comment at this point.

The Senator referred earlier to a list of distinguished lawyers who signed a statement which has been inserted in the RECORD. The Senator from Indiana referred to several lawyers who had supported the Haynsworth nomination. I daresay that if the Senator looked again at that list, he would find a number of others, in addition, who supported, to the bitter end, the Fortas nomination as well.

The point that I wish to make, at this stage of the discussion—and I think that the Senator from Indiana would agree with me—even though we did not agree completely on the two previous nominations—is that in those instances the Senate was primarily concerned with questions relating to ethics. Justice Fortas was a liberal Democrat, as I viewed his philosophy, and Judge Haynsworth was a conservative Republican, as I viewed his philosophy. But the junior Senator from Michigan did not oppose either of those nominations on the basis of the philosophy of the nominees.

In each of those situations, I could have found differences of philosophy with either of the nominees. But my position had nothing to do with the views or philosophy of either of those nominees.

Like the Senator from Indiana, with whom I agreed concerning the Haynsworth nomination, I was troubled and disturbed by what I considered were substantial questions relating to ethics.

Now then, so far as the nomination of Judge Carswell is concerned, I find no significant challenge or substantial question raised in the record involving ethical considerations. I find only arguments which focus primarily on the nominee's philosophy; arguments based on the way he decided particular cases. I wonder if the Senator from Indiana would agree with me that we are confronted with a different question and a different issue with respect to this nomination.

Mr. BAYH. The Senator from Indiana would concur that, to his knowledge, there has not been the ethical question raised which concerned the Senator from Michigan and the Senator from Indiana in connection with the other nominations.

I remember very well sitting here in the Chamber and listening to the eloquent remarks in opposition to Judge Haynsworth of the Senator from Michigan. If he recalls, at that time I rose to compliment him on the very difficult decision—which it indeed was—for him to decide to oppose the nominee of his President, which he based on the ethical ground, suggesting then as he does now that the philosophical question was not one that he felt it was appropriate to consider.

I must say at the time I expressed, I do not remember the exact terms, but I said I thought there was great leeway in the area of philosophy, that I thought, the way our system worked, that if you get a President with President Nixon's philosophy you are going to have a little different philosophy expressed by the Court than if you get a President like Hubert Humphrey, for example, or someone else.

I do not wish, in responding to the Senator's question, to make a speech; but the thing that concerns me is that if you look at the difference in philosophy—at least speaking for myself, and I think it is fair to say that the petition that has been made by a large number of judges and legal scholars, deans of law schools, and eminent lawyers reflects a similar concern—you can begin to see a difference in degree as far as the philosophy is concerned. In other words, I think the President is within his rights to appoint a strict constructionist, however that term might be defined. I think we might define the strict constructionist on a case such as U.S. against Miranda or U.S. against Escobedo a little differently than on a matter such as Brown versus Board of Education, where the situation is a little different, and all of us have our own individual standards.

The fact that the Senator from Michigan might disagree with the Senator from Indiana on such matters is not so important, it seems to me, as the fact that we have gone clear over to the other side of the spectrum, where I think we are getting into dangerous ground relative to a situation in this country which I have heretofore described. I think it is not only wrong, but dangerous, thus to give the back of our hand, so to speak, to people who are seeking for redress of their grievances within the system.

I am about to do what I said I would not do—make a speech in response to the Senator's question.

As the Senator from Michigan knows, there were also Members of this body who were deeply concerned about the philosophy of Judge Haynsworth. The Senator from Massachusetts (Mr. BROOKE), was concerned about philosophy, and as I recall the senior Senator from Massachusetts was also concerned about philosophy.

Mr. KENNEDY. Mr. President, will the Senator yield at that point?

Mr. BAYH. I am yielding on the Senator from Michigan's time.

Mr. GRIFFIN. Mr. President, if I have the floor, I will add the name of another Senator, the Senator from New York (Mr. JAVITS).

Mr. BAYH. That is right and the Senator from Michigan also. Perhaps I do have the floor. If so, I yield to the Senator from Massachusetts.

Mr. KENNEDY. As I remember, at least from our discussions—and I think it is explicitly clear in the minority views—those who expressed their opinions in the minority views did not do so on the basis of philosophy, but did so, as I mentioned very briefly earlier, on a much more serious and troublesome question. Since there had been significant evidence introduced during the course of the hearings about the judge's personal views on racial questions, we felt that was certainly appropriate for the members of the committee to make some determination and some finding as to whether those personal views had carried over into his decisions as a judge affecting vital constitutional and statutory questions in the field of equal rights, and had infected his courtroom temperament, his respect for precedent, his adherence to the purpose and spirit of even his own orders.

I think that the Members of this body should take the opportunity to read the complete record, and especially to read the discussion and hear about the various evidence regarding the nominee's statements on race relations, his association and involvement while U.S. attorney in the development of the golf

course, the land transaction, and other matters regarding human rights. I think we have a responsibility to review that evidence and to make a determination as to whether we feel that his personal views did in fact dictate the outcome of his cases and interfere with the fair and impartial running of his court. This, for me, was one of the principal reasons for expressing reservations about the nominee, rather than just a broad kind of philosophical disagreement with him.

Second—and as the Senator from Michigan pointed out, we are just getting into the initial stages of this discussion and debate and trying to frame what these questions are—is the question of competency in all its implications, both in terms of the same issues of temperament and his handling of the lawyers who appeared before his court and the general decorum there, and perhaps, more importantly, the separate question of his own personal competency as measured by the quality of his work, the level of respect for him among the bar in the Nation, whether he shows an insight and learning and skill in the law, whether he has demonstrated leadership of any sort or any other qualities which should place him above, or even among, the outstanding members of the legal profession. When a man is being considered for the Supreme Court it is not enough to say that we cannot find anything seriously wrong with him—although in this case we easily can. We must be able to find something professionally right with him which leads us to believe that he should be selected for elevation to our Highest Court. If we cannot find some such evidence of eminence or merit, then we are doing a disservice to the Court, the bar, and the Nation.

This, as I understand it, was one of the foremost reasons why leading law professors and bar leaders of outstanding reputation from all over the country have opposed this nomination. I know that we can all balance law professors versus law professors and lawyers versus lawyers, but I think the particular distinction of the group which has questioned Judge Carswell's qualifications should be given very special weight.

These two levels, I feel, would be the basis for my reservations and should be the basis of inquiry by the Members of this body.

I thank the Senator from Indiana.

Mr. BAYH. I am always glad to yield to my friend the Senator from Massachusetts.

As I said earlier in responding to the question of the Senator from Michigan, I think the whole question of where a philosophy enters into our judgment and how this can be interpreted in other ways is a matter of individual interpretation.

I think that perhaps it would be helpful to put in the RECORD at this time, inasmuch as we are trying to begin to show the matters of concern, the individual views in the report of the Committee on the Judiciary, with the memorandum on the qualifications of the nominee. I ask unanimous consent to have this material printed at this point in the RECORD.

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

INDIVIDUAL VIEWS OF MR. BURDICK

The Constitution invests with the President the responsibility to nominate Justices of the Supreme Court. I do not believe the Senate should withhold its advice and consent in the absence of clear evidence that the nominee is not qualified.

I cannot agree with all the observations and conclusions of the majority report and respectfully decline to join therein. However, after careful consideration of the hearing record, I have concluded that Judge Carswell's qualifications are sufficient to report the nomination to the Senate.

INDIVIDUAL VIEWS OF MR. MATHIAS

The Carswell nomination has engendered some strong opposition and the objections advanced demand thoughtful evaluation. They are indeed troubling, and cannot be dismissed as trivial.

But the argument made against the confirmation of Judge Carswell is based on a significantly different character of evidence than that adduced in opposition to the prior nomination of Judge Clement F. Haynsworth. The case against confirmation of Judge Haynsworth was made on objective evidence: the judge's ownership of certain stock, the judge's participation in certain cases and the existence of statutory guidelines and clearly defined codes of judicial ethics. These are factual matters that are easily sustained on the record. The code and the statute had been violated and, in my judgment, the Senate properly rejected the nomination.

In the case of the Carswell nomination the evidence is largely subjective. The issue arises from the fact that witnesses before the committee have disagreed with his judicial views, that a considerable body of citizens disagree with some of his expressed views and that I myself am in disagreement with some of Judge Carswell's past and present views. Whatever objective evidence may have existed was largely verbal and is now obscured by the passage of time and the rhetoric of renunciation.

This distinction raises two separate considerations. The first is the difference between the act of nomination and the act of confirmation. The appointive power is positive, plenary and broad as the human race. The power to accept or reject is essentially negative, restricted and limited to judgment of a single man. It may well be that a President's choice does not generate grounds for condemnation so as to justify rejection without debate even though it is not a nomination of the character and quality that any single member of the Senate would wish to make if he were President. So it is with the Carswell nomination, and I would not have chosen him.

Second, and more significantly, is the proper role of the Senate in review of a judicial career. Every aspect of a nominee's record should, of course, be considered by the Senate. But, in the case of sitting judges nominated for other office there must be some regard for the principle of judicial independence. In the Haynsworth case I expressed concern that we came close to placing the principle in jeopardy. In this instance, I find it an even more serious concern.

I disagree, and the superior courts have disagreed, with a number of Judge Carswell's judicial decisions. Other Carswell decisions were unexceptional. In the absence of objective or material evidence of personal or judicial bias, the decision of a judge in a specific case should be accorded great respect. The record made in the Judiciary Committee did not go so far as to be conclusive in establishing such bias. The concept of judicial independence is not a natural or inherent human quality. It is a political principle that was hard won by courageous men in England and preserved by brave men in America. The freedom of a judge to determine a case on its merits, subject only to other judges' opinions on appeal, and not to suffer any retribution from any external authority such as the Crown or the Parliament, has become a fundamental principle. In the United States, we have traditionally protected judges—even unpopular judges—from non-judicial retribution.

Yet, the Senate could become a kind of jurists' tribunal or appellate bench if we scrutinize individual decisions of judges nominated to posts of judicial preferment. Without this kind of case by case scrutiny, Judge Carswell's record, albeit undistinguished, is not fatally flawed.

Under the circumstances, I find the situation such that the President and his nominee, Judge Carswell, ought not to be denied their day in court. There is no absolute bar to confirmation such as existed in the Haynsworth nomination and the issue of personal competency or qualification becomes, therefore, one for the judgment of the Senate. In this instance that means submission of the nomination to the full Senate for debate and decision. On this basis and for this purpose I have voted in the Judiciary Committee to report the nomination to the Senate.

INDIVIDUAL VIEWS OF MESSRS. BAYH, HART, KENNEDY, AND TYDINGS

The President's nomination of George Harrold Carswell as Associate Justice of the Supreme Court presents to the Senate a candidate whose credentials are too meager to justify confirmation. The distinguished Dean of the Yale Law School, for example, could rightly describe the nominee as having "more slender credentials than any other nominee for the Supreme Court put forth in this century."

Judge Carswell has been a practicing attorney, a federal prosecutor, and a lower federal court judge. For Supreme Court nominees, however, length and variety of service is no substitute for professional distinction. Having carefully reviewed the hearing record, we can reach no other conclusion but that Judge Carswell has failed to distinguish himself in each of these capacities.

Our opposition to Judge Carswell is not based on geography or philosophy.

In his campaign speeches, President Nixon pledged appointees to the Court who were both "strict constructionists" and men of distinction. There are many such men throughout the country—including eminent jurists, lawyers, and legal scholars in the South. Judge Carswell, unfortunately, is not among them. Professor William Van Alstyne one of the most eminent legal scholars in the South and a supporter of Judge Haynsworth's nomination, testified that Judge Carswell shows no promise of ability or judicial capacity "to warrant any expectation whatever that he could serve with distinction on the Supreme Court of the United States." We believe it is reasonable to require that expectation of a nominee.

Our concern is not with academic degrees or scholarly publications. It is simply that we believe appointments to the Court should evidence some degree of achievement and eminence in the law. To demand less is a disservice to the cherished place of the Supreme Court in our national life. Nominations to the Supreme Court should serve to enhance respect for the Court. The Carswell nomination, in contrast, demeans it.

Beyond Judge Carswell's competence, there is a further disturbing aspect of his candidacy. Judge Carswell's record indicates that he is insensitive to human rights and

has allowed his personal views and biases to invade the judicial process. His decisions and his courtroom demeanor have been openly hostile to the black, the poor, and the unpopular. This record raises serious questions about his judicial temperament and his ability to provide a fair hearing on many of the great issues that will come before the Supreme Court.

Confirmation of this nomination would discredit the Senate and the Court. Most important, it would be a disservice to the finest ideals of the American people.

While each of us places different emphasis on the various points raised in the hearings, we feel it would be helpful to bring together, in one place, the mass of information calling into question Judge Carswell's qualifications. The following memorandum summarizes all of the information offered in opposition to the nomination.

MEMORANDUM ON THE QUALIFICATIONS OF G. HARROLD CARSWELL FOR THE SUPREME COURT OF THE UNITED STATES

I. INTRODUCTION

The role of the Supreme Court in our national life is too vital to be endangered by the appointment of men whose qualifications are subject to serious doubt.

Judge G. Harrold Carswell has not demonstrated that he meets the high standard of excellence that must be demanded of those chosen to serve on the nation's highest court.

He has exhibited no legal distinction, no judicial leadership, no outstanding qualities that would place him among the first rank of American judges and lawyers. Our concern is not with academic degrees or scholarly publications. It is simply that we believe appointments to the Court should contain some degree of achievement and eminence in the law.

Moreover, we are concerned that Judge Carswell's record indicates that he is insensitive to human rights and has allowed this insensitivity to invade the judicial process. This record raises serious questions about Judge Carswell's judicial temperament and his ability to provide a fair hearing on many of the great issues that come before the Supreme Court.

It has been suggested that since the Senate rejected the first candidate for this vacancy, the Senate must now acquiesce in the President's choice, no matter how inferior the selection.

Obviously, reason presses in precisely the opposite direction. If this nominee, as is universally conceded, is inferior to the prior nominee, whom the Senate rejected 55–45, then he certainly ought to be rejected by at least as great a margin.

The Senate's duty to render "Advice and Consent" to the President's Supreme Court appointments is a Constitutional responsibility of the first magnitude. That duty persists in full measure even when it has been met by rejecting a prior nominee. The Senate's duty is to assure the nation that the nominee who is accepted will be *better* qualified, not less qualified, than the previously rejected nominee or nominees.

Moreover the question of the nominees qualifications is too serious to be brushed aside by the suggestions that opposition to him is based on the fact that he is a southerner or a "judicial conservative".

All of those who voted against reporting the Carswell nomination favored the confirmation of the present Chief Justice, notwithstanding his reputation as a "judicial conservative." His eminence, his leadership and his integrity in every sense of the word, led to the conclusion that he well met the criteria for Supreme Court service.

There are, in fact, an array of candidates of all parties and philosophies including many from the South whom Carswell's opponents would be not only obligated, but pleased to confirm. Unfortunately, Judge Carswell is not among them.

II. JUDGE CARSWELL'S LACK OF PROFESSIONAL COMPETENCY

Despite the many questions about Judge Carswell's suitability, which will be discussed below, there might still be some basis for supporting his confirmation to the Supreme Court if he were a man of great intellectual and professional distinction. At least then there would be hope that once on the Supreme Court, he would display a capacity for growth that would enable him to deal capably and objectively with the matters of vast importance that come before the Court.

He is, however—at best—an undistinguished lawyer, a mediocre judge, and an unimpressive thinker. He has demonstrated neither the depth of intellect nor of understanding that would indicate that he might fill with honor and insight the seat once held by Felix Frankfurter and Benjamin Cardozo. He is, instead, in the opinion of the Deans of two or our most respected law schools, a man who is personally unqualified to sit on the Supreme Court. Dean Louis Pollak of Yale testified that Judge Carswell—

"Has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our highest court . . . With all deference, I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth this century."

Dean Derek Bok of Harvard has written that Judge Carswell has—

"A level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the Court."

Twenty members of the University of Pennsylvania Law School examined his opinions in various areas of the law and concluded "that he is an undistinguished member of his profession, lacking claim to intellectual stature." Charles L. Black, Jr., Luce Professor of Jurisprudence at the Yale Law School and one of the most respected members of the academic legal community stated in a letter to the Chairman "(T)here can hardly be any pretense that he (Carswell) possesses any outstanding talent at all. On the contrary, all the evidence I have seen would lead to the conclusion that mediocrity is an independent valid objection to his appointment."

Professor Guido Calabresi of Yale reviewed Judge Carswell's opinions in Tort cases, an area that Professor Calabresi has taught for eleven years and concluded "there is nothing in them to suggest any special distinction or qualification for the United States Supreme Court." Interestingly, Professor Calabresi also noted that Judge Carswell's opinions in the field of Torts "do not show that universal a dedication to precedent and strict construction which it is said the President desires."

In a letter to Senator Eastland, John Griffiths, a teacher and scholar in criminal law at the Yale Law School, well expressed the thoughts of many lawyers who have written to members of the Senate:

"Surely there can be no doubt but that only the most distinguished and technically qualified members of the legal profession ought even to be considered for the highest court in the nation. Surely, also, it is part of the Senate's duty to exercise its responsibility in confirmation so as to maintain the highest standard, in proficiency as well as in integrity, as a *minimum* qualification for elevation to the Supreme Court. But while the subject has not been intensively discussed, there is certainly widespread belief in the profession, and beyond, that Judge Carswell falls far short of any reasonable minimum standard and ought therefore not to be confirmed."

After examining the nominee's criminal law decisions, Professor Griffiths concluded:

"We found no sign whatever of special ability. Judge Carswell's opinions are characterized, at best, by unimaginative, mechanical mediocrity. This is not a matter of judicial ideology: one did not expect to find a future Justice Black or Brennan, but no potentially solid (let alone great) judicial conservative—no Justice Harlan, no Judge Friendly—is revealed in these opinions either. We found nothing that, by anyone's lights, could conceivably justify confirming Judge Carswell to the Supreme Court. In addition, we found some troublesome indications of a lack of proper judicial temperament in the Judge."

Professor Griffiths also cited "lack of technical ability" and "serious questions of craftsmanship" at least, if not "judicial integrity" in habeas corpus cases; see infra.

These views have been mirrored in the statement of Samuel I. Rosenman, Bruce Bromley, Francis T. P. Plimpton, and Bethuel M. Webster, all recognized leaders of the bar. Judge Carswell, they believe, "has none of the legal or mental qualifications essential for service on the Supreme Court or on any high court in the land, including the one where he now sits."

The Chicago Council of Lawyers reached a similar conclusion:

"Looking solely at Judge Harrold Carswell's judicial record and judicial accomplishments, one finds no evidences of that special merit that should be a sine qua non for appointment to the Supreme Court. His record is totally devoid of any special attributes of learning, experience, or statesmanship, which should be the hallmarks of a Supreme Court Justice."

Perhaps most telling was the testimony of Professor William Van Alstyne of the Duke University Law School, one of the most distinguished legal scholars in the South. Professor Van Alstyne had testified before the Senate Judiciary Committee in support of Judge Haynsworth, but testifying in opposition to Judge Carswell, Professor Van Alstyne concluded that Judge Carswell's decisions reflected "a lack of reasoning, care, or judicial sensitivity overall."

The outpouring of professional dismay over this nomination has reached a level unequaled in recent history. Lawyers and law professors from all over the country, despite their preference for maintaining cordial relationships with members of the Court, have forcefully expressed the view that the Carswell nomination will demean the Court and dilute its stature. Other lawyers, professors, bar officials and judges, have been constrained from expressing themselves because of their positions or affiliations, or because they have cases pending in the Supreme Court. But they, like most lawyers, would, in the words of a law professor and former U.S. Assistant Attorney General, "put a high premium on the capacity for perceptive legal thinking, for judicial decision-making that commands respect whether one agrees with the results or not . . . It is right for the Senate to insist that a nominee, if not among the 'best', at least have qualities sufficiently distinguished that he promises to make a material contribution to the intellectual work of the Court." And they would agree that "Nothing that has appeared would lead me to believe that Judge Carswell is so qualified."

III. JUDGE CARSWELL'S LACK OF JUDICIAL TEMPERAMENT

Our judicial system must accord litigants a fair hearing. Justice is not dispensed when a judge's personal views and biases invade the judicial process. In Judge Carswell's court, the poor, the unpopular and the black were all too frequently denied the basic right to be treated fairly and equitably.

Judge Carswell was simply unable or unwilling to divorce his judicial functions from his personal prejudices. His hostility towards particular causes, lawyers, and litigants was manifest not only in his decisions but in his demeanor in the courtroom.

Professor Leroy Clark of New York University, who supervised the NAACP Legal Defense Fund litigation in Florida between 1962 and 1968, called Judge Carswell—

"(T)he most hostile federal district court judge I have ever appeared before with respect to civil rights matters . . . Judge Carswell was insulting and hostile. I have been in Judge Carswell's court on at least one occasion in which he turned his chair away from me when I was arguing. I have said for publication, and I repeat it here, that it is not, it was not an infrequent experience for Judge Carswell to deliberately disrupt your argument and cut across you, while according, by the way, to opposing counsel every courtesy possible.

"It was not unusual for Judge Carswell to shout at a black lawyer who appeared before him while using a civil tone to opposing counsel."

And Mr. Clark provided a piece of evidence not at all dependent on his present recollection of the nominee's behavior but reflecting a contemporaneous assessment and reasoned response that is at once startling and devastating:

"(W)henever I took a young lawyer into the state, and he or she was to appear before Carswell, I usually spent the evening before making them go through their argument while I harassed them, as preparation for what they would meet the following day."

Professor John Lowenthal of Rutgers University Law School recalled attending a session in Judge Carswell's chambers in 1964 in which he "can only describe his (Judge Carswell's) attitude as being extremely hostile."

"He expressed dislike at Northern lawyers . . . appearing in Florida, because . . . (they) were not members of the Florida bar."

The choice, as the court well knew, was between "Northern lawyers or no lawyers", for Professor Lowenthal's clients had been arrested for trespass while attempting to assist sharecroppers to register to vote.

Norman Knopf, a Justice Department Attorney, testifying under subpoena, who had worked with Professor Lowenthal as a volunteer in 1964, corroborated Professor Lowenthal's recollections:

"Judge Carswell made clear, when he found out that he was a northern volunteer and that there were some northern volunteers down, that he did not approve of any of this voter registration going on . . . It was a long strict lecture about northern lawyers coming down and not members of the Florida Bar and meddling down here and arousing the local people, and he in effect didn't want any part of this, and he made quite clear that he was going to deny all relief that we requested."

Judge Carswell's manifest intention to deny all relief did not represent an idle threat. Professor Lowenthal's clients had been tried in a state court and imprisoned in a county jail when a local judge had refused to recognize the removal jurisdiction of Judge Carswell's court. As Professor Lowenthal pointed out, "it was evident to all those with experience in Northern Florida that it was not safe for voter registration people to be in local jails." Nevertheless, Judge Carswell's attitude and actions were ones of delay and harassment.

Indeed, when Professor Lowenthal's predecessor in the case, Ernst H. Rosenberger, had initially sought to remove it from the state court, he had been required to pay a filing fee in Judge Carswell's court, despite the clearly controlling decision of the Fifth Circuit in *Lefton* v. *Hattiesburg*, 333 F. 2d 280, that no such fee could be demanded.[1] Subsequently, when Professor Lowenthal and Mr. Knopf attempted to file a habeas corpus petition for their clients, Judge Carswell did not permit them to do so until they had wasted valuable time attempting to obtain the signatures of the imprisoned civil rights workers, despite the fact that Rule 11 of the Federal Rules of Civil Procedure indicates that the attorney's signatures are sufficient.

Moreover, Judge Carswell would not accept the habeas corpus petition that Mr. Knopf had painstakingly drawn up until it was redone on special forms provided by the court, although the forms had no applicability to habeas corpus petitions arising out of the refusal of a state court to honor the jurisdiction of the federal courts in a removal proceeding.

Despite the barriers that Judge Carswell placed before them, Professor Lowenthal and Mr. Knopf were finally able to file habeas corpus petitions and to demonstrate to Judge Carswell that he had no choice under the law but to grant the petitions. Judge Carswell, however, still managed in a series of actions to thwart their efforts to keep the improperly detained civil rights workers out of jail. The normal process would have been to grant the petitions, take custody of the petitioners, hold a hearing on the appropriateness of removal if local authorities challenged it, and if the decision was adverse to petitioners, stay the removal pending appeal. However, as described by Professor Lowenthal, at the same time that Judge Carswell granted the habeas corpus petitions—

"(O)n his own motion, because the Gadsden County officials were not there to ask for it, and without notice to the defendants, the habeas corpus petitioners, and without a hearing or any opportunity to present testimony or argument, he remanded the cases right back to the Gadsden County courts.

"I at that point moved before Judge Carswell directly for a stay of the remand so that I could have time to file a notice of appeal to the Fifth Circuit. He denied my request for a stay, pending filing notice of appeal."

Judge Carswell also refused to have the marshall serve the habeas corpus order on the Gadsden County sheriff despite the requirement of 28 U.S.C. Sec. 1446(f) that—

"If the defendant or defendants are in actual custody on process issued by the state court, the District court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such state court."

When Professor Lowenthal served the writ of habeas corpus himself the sheriff first released but then immediately rearrested the civil rights workers pursuant to the unrequested remand. It is not clear how he learned of his authority to do so. Professor Lowenthal testified as follows:

"The sheriff produced the jailed voting registration workers, at once rearrested them because *Judge Carswell had had his marshal telephone the sheriff to advise the sheriff that Judge Carswell had on his own motion remanded the cases right back to the Gadsden County court* . . .

"I was in Judge Carswell's chambers and office, and I do not remember whether I overheard the conversation between Judge Carswell and his marshal or whether somebody reported this to me. I do not know. What I do know is that when I got to the sheriff with the habeas corpus order to release the man, the sheriff already knew of the remand, and therefore on the spot produced the defendants and rearrested them and put them back in jail."

The experience of Ernst Rosenberger who preceded Professor Lowenthal as a representative of the American Civil Liberties union in Northern Florida were indicative of Judge Carswell's willingness to go beyond the courtroom to deny litigants their basic rights.

Mr. Rosenberger represented nine clergymen freedom riders arrested in a Tallahassee airport restaurant in 1961. There had been numerous appeals in the case and as a result of a filing date having been missed the appeals were terminated. At the time Mr. Rosenberger entered the case the only recourse open to the clergymen was a writ of habeas corpus. Judge Carswell denied the writ without a hearing on the merits, and the case was immediately appealed to the Fifth Circuit which modified Judge Carswell's order so that it provided for an immediate hearing by Judge Carswell if the state court did not grant such a hearing.

On the same day that the judges of the Fifth Circuit rewrote Judge Carswell's order, Mr. Rosenberger met with Judge Carswell and Mr. Rhoads, the City Attorney of Tallahassee. On his own initiative Judge Carswell then suggested to Mr. Rhoads "that this whole case could be ended by reducing the sentences of the clergymen to the time already served," although the petitioners had requested no such reduction and in fact wished to have their claims decided on the merits so that their records could be cleared. As Mr. Rosenberger pointed out, Judge Carswell's advice "could have no other effect except to moot the entire question, to leave . . . (the clergymen) with no way for vindication, to insure them a permanent criminal record. This was a matter where the judge advised the City Attorney in a state court proceeding actually of how to circumvent an order which had been put in by the U.S. Circuit Court." The City Attorney and the state judge thereupon followed Judge Carswell's advice despite the objections of Mr. Rosenberger, and totally preempted the legitimate efforts of the clergymen to obtain a judicial ruling.

The impressions and experiences of Professor Clark, Professor Lowenthal, Mr. Knopf and Mr. Rosenberger paint a picture of blatant hostility and aggressive unfairness that casts serious doubts upon Judge Carswell's judicial temperament to sit even on the District Court much less on the Supreme Court of the United States. Judge Carswell did not take the stand to rebut these charges. His general statement that there has never been "any suggestion of any act or word of discourtesy or hostility on . . . his (part)" certainly does not dispel the doubts they raised. None of them have anything to gain by misleading the Committee or the Senate. In particular, it is worth remembering that Mr. Knopf is an employee of the Justice Department of the United States, who testified pursuant to a subpoena.

IV. JUDGE CARSWELL'S REFUSAL TO ADHERE TO CONTROLLING LAW IN EQUAL RIGHTS CASES

The Majority report of the Committee on the Judiciary concludes that Judge Carswell's judicial record in the field of civil rights cases is "one of balance and evenhandedness." In fact it was one of obstruction and delay, amounting too often to an improper refusal to follow the mandates of the Constitution and the clear guidelines of the higher courts.

Judge Carswell handled extensive litigation involved in desegregating three northern Florida school districts—Escambia County, containing Pensacola, Leon County containing Tallahassee, and Bay County.

[1] "Filing fees are not to be collected in connection with criminal removal petitions. Such fees are regulated by statute, and a comparison of the present statute with its predecessor shows that there is now no authority for the clerk to charge fees in such proceedings." 333 F. 2d at 285.

The Pensacola case, *Augustus* v. *Board of Public Education of Escambia County*, 185 F. Supp. 450 (1960), *reversed* 306 F. 2d 862 (1962) first came before Judge Carswell in 1960. It was still in court last year.

In the initial complaint students asked Judge Carswell to end faculty segregation as an essential step in making school integration work. The question of faculty segregation was unsettled at the time, but, Judge Carswell refused to even hold a hearing on the issue and struck the whole issue from the complaint, asserting that students had no standing to sue for desegregated faculties any more than they "can bring action to enjoin the assignment to the school of teachers who were too strict or too lenient."

Moreover, Judge Carswell did not even obtain a student desegregation plan from local authorities for a year and a half. Then he approved a plan that allowed another year before even token desegregation would begin. And that plan provided for only vague notification of rights to parents, allowed only 5 days a year for Negro students to request transfer to white schools, and authorized the school board to reject such transfer applications on a variety of general grounds contained in the Florida Pupil Assignment Act.

Because of the danger that such plans could be used to maintain segregation, the Fifth Circuit had previously held in 1959 that a school board's adoption of the Florida Pupil Assignment Law did not meet the requirements of a plan of desegregation or constitute a "reasonable start toward full compliance" with the Supreme Court's 1954 decision in *Brown*. *Gibson* v. *Board of Public Instruction of Dade County, Florida*, 272 F. 2d 763 (1959). The Fifth Circuit had reaffirmed this decision in 1960. *Mannings* v. *Board of Public Instruction of Hillsborough County, Florida*, 227 F. 2d 370 (1960).

In *Gibson* the Fifth Circuit also held that the Pupil Assignment Law, even if administered nonracially, was not enough to satisfy a school board's duty to desegregate; it had to be desegregating its schools simultaneously with the application of the Pupil Assignment Law.

Despite the clarity of the law on this point, and despite Judge Carswell's obligation to follow the decisions of the Fifth Circuit, the desegregation order he entered against Escambia County in 1961, provided, in effect, only that the Board should continue using the Pupil Assignment Law which, up to that time, had resulted in the continuation of a fully segregated school system. No meaningful additional steps were required.

The 5th Circuit had no trouble reversing both of Judge Carswell's action.

As to Judge Carswell's striking of the reference to faculty segregation, the 5th Circuit ordered a hearing on the allegation that students are injured by the policy of faculty segregation saying:

"Whether as a question of law or of fact, we do not think that as a matter of such importance should be decided on a motion to strike . . ."

As to the desegregation plan the court said "It has not gone far enough . . . ," and proceeded to instruct Judge Carswell as to the minimum that should be required.

In the discussion of Judge Carswell's handling of desegregation in Escambia County the 5th Circuit made clear that a school board could not constitutionally adopt a plan of desegregation under which all pupils would be given a blanket reassignment to the segregated schools they were presently attending and black students desiring to attend an integrated school would be required to go through the procedures of the Florida Pupil Assignment Law before they would be assigned to a white school. Yet, the plan subsequently presented to Judge Carswell in the Leon County case proposed to do just that. Moreover, the plan provided for the desegregation of schools at the rate of only one grade per year, despite the direction of the 5th Circuit in the Escambia County case that at least two years should be desegregated the first year if, as provided for under the Leon County plan, desegregation did not begin until 1963. Nevertheless Judge Carswell approved the plan, *Steele* v. *Board of Public Instruction of Leon County*, 8 Race Rel. L. Rep 932 (1963), disregarding the guidelines set for him by the 5th Circuit in the previous case.

The children of Bay County fared no better in Judge Carswell's court. In *Youngblood* v. *Board of Public Instruction of Bay County, Florida*, 230 F. Supp. 74 (1964), Judge Carswell again disregarded the guidelines set for him in the Escambia County case as well as the intervening Supreme Court decision in *Griffin* v. *County School Board of Prince Edward County*, 337 U.S. 218 (1964) in which the Court held that "there has been entirely too much deliberation and not enough speed in enforcing * * * constitutional rights * * *." In Bay County Judge Carswell once more approved a plan that placed the barriers inherent in the Florida Pupil Assignment Law before black students wishing to transfer to white schools. Moreover, the plan did not provide for any transfers whatsoever until the 1965–66 school year.

A review of the desegregation schedules approved by Judge Carswell in Escambia, Leon and Bay Counties indicate clearly that a decade after *Brown*, he was unwilling to accept the dictates of the Constitution even when they had been specifically defined by courts superior to his own.

After the Fifth Circuit had reversed his earlier order in *Augustus* v. *Board of Public Instruction of Escambia County*, Judge Carswell ordered the elimination of dual school attendance zones, drawn up by race, at the rate of a grade a year. 8 Race Rel. L. Rep. 58 (1962). On April 20, 1965, Judge Carswell denied plaintiffs' motion for changes in the plan ordered in 1962. 11 Race Rel. L. Rep. 148 (1965). A further order denying relief to plaintiffs was entered by Judge Carswell on October 6, 1965. *Id.* Thus, grade-a-year desegregation remained in force.

On April 22, 1963, Judge Carswell ordered grade-a-year elimination of such dual attendance zones in *Steele* v. *Board of Public Instruction of Leon County*. 8 Race Rel. L. Rep. 934 (1963). On January 20, April 17, and April 19, 1965, Judge Carswell denied plaintiffs' motions for changes in the plan ordered in 1963. 10 Race Rel. L. Rep. 607 (1965). Thus, grade-a-year desegreation remained in force.

On July 20, 1964, Judge Carswell ordered a grade-a-year elimination of such dual attendance zones in *Youngblood* v. *Board of Public Instruction of Bay County*. 9 Race Rel. L. Rep. 1206 (1964).

At the desegregation rate ordered by Judge Carswell, dual attendance zones based on race would not have been completely eliminated in the Escambia County school case until the start of the 1973–74 school year. Desegregation would have been completed in the Leon County school case at the start of the 1974–75 school year. In the Bay County school case, it would have taken until the start of the 1975–76 school year, or 21 years after *Brown*.

The Third, Fourth, Fifth and Eighth Circuits, however, had all held that such slow rates of desegregation were constitutionally unacceptable *before* Judge Carswell made the first of his 1964 and 1965 rulings upholding this rate.

Ruling on July 19, 1960, the Third Circuit in *Evans* v. *Ennis*, 281 F. 2d 385, cert. den. 364 U.S. 933 (1961) rejected a grade-a-year plan beginning in the Fall of 1959. It ruled that, as a matter of law, all grades had to be desegregated by the Fall of 1961.

The Sixth Circuit was the next to rule. In *Goss* v. *Board of Education of the City of Knoxville, Tennessee*, 301 F. 2d 164 (April 3, 1962) *reversed in other respects* (discriminatory pupil transfer plans which had been approved by the Sixth Circuit), 373 U.S. 683 (June 3, 1963), the court of appeals rejected a grade-a-year plan and ordered a faster rate of desegregation. It reaffirmed this position in *Northcross* v. *Board of Education of the City of Memphis*, 333 F. 2d 661 (June 12, 1964).

On June 29, 1963, the Fourth Circuit took the identical position in *Jackson* v. *School Board of the City of Lynchburg, Virginia*, 321 F. 2d 230.

On June 18, 1964—a month before Judge Carswell ordered a grade-a-year plan in the Bay County case—the Fifth Circuit held that a grade-a-year plan was impermissible in the case before it because, even though a large metropolitan school system was involved, there was no reason that would justify such a slow rate of desegregation. The court said:

"Plans providing for the integration of only one grade a year are now rare; and the possibility of judicial approval of such a grade-a-year plan has become increasingly remote due to the passage of time since the Brown decisions."

Armstrong v. *Board of Education of the City of Birmingham, Alabama*, 333 F. 2d 47, 51.

The Fifth Circuit's position was made unmistakably clear on February 24, 1965, months before Judge Carswell denied motions to change the grade-a-year plan in the Escambia County and Leon County school cases. On that date, the court of appeals decided *Lockett* v. *Board of Education of Muscogee County School District, Georgia*, 342 F. 2d 225, which outlawed any use of grade-a-year plans. Discussing its own decisions on grade-a-year plans and the clarity of the law on this point, the court of appeals stated:

"The grade a year plan came into rather wide use but, with the passage of years, fell into judicial disfavor mainly because of the inability to offer proof sufficient to sustain the burden, which was on the school boards, that such delay was necessary. We sent up a warning flag in *Davis* v. *Board of School Commissioners of Mobile County*, 5 Cir., 1963, 318 F. 2d 63, that the day was near at hand when grade a year plans would no longer pass muster. In *Watson* v. *City of Memphis*, 1963, 373 U.S. 526, 83 S. Ct. 1314, 10 L. Ed. 2d 529; *Goss* v. *Board of Education of the City of Knoxville, Tennessee*, 1963, 373 U.S. 683, 83 S. Ct. 1405, 10 L. Ed. 2d 632; and *Griffin* v. *County School Board of Prince Edward County*, 1963, 375 U.S. 391, 84 S. Ct. 400, 11 L. Ed. 2d 409, the Supreme Court, in rather rapid fire order, made the point, in language understandable by all, that the doctrine of "all deliberate speed" could no longer be viewed, due to the passage of years, in the same context as when announced. Following these cases, the court in *Calhoun* v. *Latimer*, 1964, 377 U.S. 263, 84 S. Ct. 1235, 12 L. Ed. 2d 288, where we had approved Atlanta's grade a year plan, see 321 F. 2d 302, remanded the case to the District Court for reappraisal of the speed of the plan in light of Watson, Goss, and Griffin. It was then beyond peradventure that shortening of the transition period was mandatory."

342 F. 2d at 227. The court of appeals then noted that, in five cases it had decided the previous summer, it had decided that all grades in those school systems had to be desegregated by Sepetmber 1969, "or earlier, as we pointed out, if the school boards are unable to justify the delay on a future complaint." 342 F. 2d at 228. The court stated that these decisions had laid out "minimal standards to be applied in other cases. *Id.* at 229. In the face of this decision, however, Judge Carswell still refused to review the grade a year plans that he had approved several years earlier.

Judge Carswell also managed to delay desegregtion of the Florida state reform schools. *Singleton* v. *Board of Commissioners of State Institutions*. 11 Race Rel. L. Rep. 903, reversed 356 F. 2d 771 (5th Cir. 1966).

The plaintiffs in this case were inmates at the time the suit was brought, but had been released on conditional probation while the suit was pending in the district court. The plaintiffs were still juveniles and, under Florida statutes, would be subject to the jurisdiction of the juvenile court until their twenty-first birthday. The plaintiffs were subject to recommitment if they violated the terms of the probation.

Judge Carswell dismissed the complaint on the ground that the plaintiffs lacked standing, even though they could be re-committed in the future and were still subject to the jurisdiction of the juvenile court.

In the opinion reversing Judge Carswell's decision, the 5th Circuit 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 file an action and obtain a court order.

Judge Carswell's record in equal rights cases other than these involving school desegregation is no less discouraging. His highly questionable actions in *Wechsler* v. *Gadsden County* have already been discussed at length in the section of this memorandum on *Judicial* Temperament. Two other cases, *Dawkins* v. *Green*, 285 F. Supp. 772 (1968) and *Due* v. *Tallahassee Theatres, Inc.*, 9 Race Rel. L. Rep. 904 (1963), are also particularly indicative of Judge Carswell's unwillingness to follow the dictates of the 5th Circuit and the Supreme Court when they conflicted with his basic predilections. The suit involved in *Due* was brought by black residents of Tallahassee against city officials, the sheriff of Leon County and local theatre corporations and their owners. The suit charged that the defendants were conspiring to deprive the black residents of Tallahassee of their civil rights. The Court of Appeals summarized the thrust of the complaint:

"We take the following statement from the brief of the appellee Joyce, which brief has been accepted in full by the other appellees:

"The substance of this conspiracy is said to be that the Appellees, under color of law, pursue and enforce a policy of requiring white persons in Tallahassee to conduct their private business establishments on a segregated basis, which object is accomplished by requiring peace officers to disperse or arrest and jail any negroes attempting to secure services on a non-segregated basis. The Appellants allege that all of the previously enumerated acts [specific allegations dealing with the refusal of the Theatres to permit Negroes to enter the theatres even after, on one occasion, purchasing tickets] were done in pursuance of the conspiracy, and that the said actions of the Appellees constitute State action prohibited by the Fourteenth Amendment."

Judge Carswell dismissed the first three of five claims in the complaint described above, for failure to allege a claim on which relief could be granted. 9 Race Rel. L. Rep. 904. Chief Judge Tuttle, speaking for a unanimous panel, treated this ruling unusually sharply:

"The orders of the trial court dismissing the complaint for failure to allege a claim on which relief could be granted can be quickly disposed of. These orders were clearly in error."

* * * * *

"It appears, in fact, to be a classical allegation of a civil rights cause of action."

* * * * *

"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."

333 F. 2d at 631.

On May 20, 1963—five months before Judge Carswell's decision—the Supreme Court had ruled that local officials in New Orleans had violated the Constitution by pressuring white businessmen to maintain segregated restaurant operations and by causing the arrest of black citizens seeking desegregated services. *Lombard* v. *Louisiana*, 373 U.S. 267. Although this decision involved the reversal of criminal convictions, the principle of law discussed was identical to that involved in the *Tallahassee Theatres* case.

Furthermore, when the sheriff of Leon County filed a motion for summary judgment in the *Due* case, Judge Carswell granted the motion on the ground that "there is no genuine issue as to any material fact." 9 Race L. Rep. 904, 905. The opinion of the Fifth Circuit states, however, that the sheriff had filed only a conclusionary affidavit denying only some of the violations of law charged against him. The Circuit Court said the affidavit showed only that "conflicting evidence exists," 333 F. 2d at 633. Nevertheless Judge Carswell chose to give complete effect to the sheriff's unsubstantiated affidavit, and no effect to the plaintiffs' depositions, and denied the plaintiffs an opportunity for any factual hearing and cross-examination. This action, too, was reversed by the Fifth Circuit:

"There clearly remained issues of fact to be determined on a full trial of the case. . . ."

333 F. 2d at 633.

Judge Carswell learned no lesson from *Due*, however. In *Dawkins* v. *Green*, plaintiffs sued several officials of the City of Gainesville and of Alachua County, Florida, charging that the defendants had initiated bad faith prosecutions against the plaintiffs in an attempt to retaliate against them for engaging in civil rights activities in the past and to intimidate them from doing so in the future. The defendants filed a motion for summary judgment in their favor, and filed affidavits in support of their motion.

Again, Judge Carswell accepted all of the allegations of the defendants' affidavits as true, coupled that with "the presumption that the State's motive was law enforcement and not interference with speech or assembly" (quoting from the dissenting opinion in *Cameron* v. *Johnson*, 390 U.S. 611, 623 (1968)), and stated his findings in broad terms:

"From the proofs here it is clear that there was no harassment, intimidation or oppression of these complainants in their efforts to exercise their Constitutional rights, but some were arrested and they are being prosecuted in good faith under Constitutionally valid criminal laws of the State of Florida."

285 F. Supp. 772, 774. He then granted the motions for summary judgment in favor of all of the defendants, and dismissed the case.

In reversing Judge Carswell, the court of appeals described the affidavits filed by the defendants:

"However, the affidavits filed by the defendants are simply a restatement of the denials contained in their answer and add no new information. Moreover, they set forth only ultimate facts or conclusions in that their contents are statements by the county and city officials involved to the effect that they did not enforce the laws against plaintiffs in bad faith. No facts were present so that the trial Court could arrive at its own conclusions."

412 F. 2d 644 (June 2, 1969).

Previously, the Fifth Circuit had ruled that the affidavits containing only "mere conclusions of fact" have no probative value. *Woods* v. *Allied Concord Financial Corporation*, 373 F. 2d 733, 734 (1967). In *Dawkins*, the court of appeals stated in a footnote: "This rule is well founded in the law." 412 F. 2d at 646 note 4. The court concluded:

"Since the affidavits that were before the trial Court were of no probative value, this is not a case in which summary judgment was 'appropriate.' "

The point of law was the same used in reversing Judge Carswell previously in *Due*.

The aforegoing examination of Judge Carswell's decisions touching upon civil rights issues reveals that he is not, in fact, a "strict constructionist" in any sense of that vague term. Indeed, he has displayed little, if any, regard for the principle of "stare decisis" when its application has directly required him to follow the holdings of the 5th Circuit and the Supreme Court in civil rights cases. His decisions in this area merely reinforce the picture of a judge who was unable to divorce his personal prejudices from his judicial functions.

V. JUDGE CARSWELL'S DISDAIN FOR THE WRIT OF HABEAS CORPUS

Historically, the writ of habeas corpus—the Great Writ—might well represent the most precious safeguard possessed by a free people against abusive and improper governmental confinement. Indeed, in Art. I, Section 9, the writ of habeas corpus has been constitutionally enshrined. Because the writ often stands as the final judicial guarantee against the tragedy of erroneous imprisonment, each application demands scrupulous attention.

An examination of Judge Carswell's habeas corpus decisions evidences a judge who does not take seriously the importance of this vital Constitutional provision. It reveals a judge who has developed with regard to the writ a pattern of inattentiveness—inattentiveness which could deprive our Constitution of any real meaning. It reveals a judge who is inclined to look the other way.

The record reveals that in at least nine cases, Judge Carswell has been unanimously reversed *for refusing even to grant a hearing* in habeas corpus proceedings or similar proceedings under 28 U.S.C. § 2255. Whether this unseemly record is the product of simple callousness, obliviousness to constitutional standards, or pure ignorance of the law, one might only surmise.

In *Meadows* v. *United States of America*, 282 F. 2d 942 (1960) the petitioner moved under 28 U.S.C. § 2255 to set aside his sentence on the ground of a prior determination of mental illness which made it impossible for him to make intelligent waivers and pleas. Judge Carswell denied the motion without hearing. The court of appeals reversed most preemptorily, saying this was an adequate petition and obviously should have a hearing.

In *Dickey* v. *United States*, 345 F. 2d 508 (1965), the petitioner moved to vacate judgment on the ground that he was mentally incompetent at the time he waived counsel. Judge Carswell denied the motion without an evidentiary hearing. Again he was reversed unanimously and instructed to give the man a hearing.

In *Baker* v. *Wainwright*, 391 F. 2d 248 (1968), petitioner alleged that he was denied the right to counsel on appeal from his conviction. After conviction, petitioner had filed an affidavit of insolvency and per se notice of appeal. The State court did not apprise him of his right to have counsel appointed.

Judge Carswell denied habeas corpus without evidentiary hearing and again he was reversed.

In *Dawkins* v. *Crevasse*, 391 F. 2d 921 (1968), the Fifth Circuit unanimously reversed Judge Carswell when he denied bail to a habeas corpus petitioner without a hearing. The Circuit Court directed him to enter an order granting bail.

In *Brown* v. *Wainwright*, 394 F. 2d 153, (1968), petitioner alleged that his incriminating statements used against him were involuntary and requested habeas corpus.

Judge Carswell denied the petition without holding an evidentiary hearing and again was reversed unanimously and directed to give the hearing.

In *Harris* v. *Wainwright*, 399 F. 2d 142 (1968), at the hearing of the petitioner's post-conviction attack in a State court, petitioner was not represented by counsel. The State court held that petitioner was represented by "able counsel" and the conviction was not illegal.

Judge Carswell denied a request for a hearing summarily. He was reversed unanimously.

In *Barnes* v. *Florida*, 402 F. 2d 63 (1968), petitioner alleged coercion of guilty plea and ineffective assistance of counsel. He alleged that he saw court-appointed counsel for only a few minutes four days before trial and a few minutes prior to trial. He claimed that the attorney coerced him into pleading guilty and submitted portions of a certified letter from the lawyer as proof.

Judge Carswell denied this habeas corpus petition without a hearing. The case was unanimously reversed and remanded for evidentiary hearing.

Similarly Judge Carswell refused hearings and was reversed in *Rowe* v. *U.S.*, 345 F. 2d 795 (1965) and *Cole* v. *Wainwright*, 397 F. 2d 810 (1968).

Judge Carswell's insensitivity to the need for careful study of charges that basic constitutional rights have been denied indicates once again his lack of concern for human rights.

A study of Judge Carswell's record in the area of habeas corpus by Professor John Griffiths of Yale Law School and others concluded by stating that in the area that they investigated, "Judge Carswell's judicial performance does not qualify him for elevation to the Supreme Court." It is a difficult conclusion to dispute.

VI. JUDGE CARSWELL'S INSENSITIVITY TO HUMAN RIGHTS

Shortly after Judge Carswell's nomination was sent to the Senate, a reporter discovered and brought to the nation's attention a speech given by the nominee when he was a candidate for the Georgia State Senate in 1948, and then reprinted by him in the weekly newspaper which he edited.

The full text of the speech is set forth in the Hearing Record at pages 21–23, but the passages which have attracted most attention are these:

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

The nominee was a 28 year old attorney at the time, and the time was 21½ years ago. Surely, no reasonable person would contend that *merely* because he uttered those words in 1948, he necessarily believes them in 1970. And we are concerned about what he is in 1970, what kind of man, what kind of judge.

The nominee himself stated the point of inquiry:

"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."

Judge Carswell's official and unofficial conduct must be scrutinized with this standard in mind, as well as for its implications regarding his professional qualifications. Some of the evidence has already been discussed such as his attitudes toward civil rights lawyers, his resistance to granting civil rights relief in the face of a clear responsibility to do so, the record of repeated reversals on civil rights cases and his aiding local officials to deprive civil rights workers due process of law.

Other pieces of evidence may be less dispositive, and even minor, taken separately, but taken together they confirm a clear pattern. On July 11, 1953, George Harrold Carswell became United States Attorney for the Northern District of Florida. On December 16, 1953, the Florida Circuit Court for Leon County approved the Charter of the Seminole Boosters, Inc., a non-profit corporation. The charter was typed on legal paper bearing the name "Carswell, Cotton and Shivers—Attorneys at Law—Tallahassee, Florida." The 11 incorporating subscribers and charter members included Harrold Carswell, Tallahassee, Florida, and his signature is the first to appear. He was also the affiant on the notarized affidavit in which the facts of the charter were sworn to. Taken together these facts indicate that he was the one who drafted and filed the charter. Indeed an article in the February 27th *New York Times* has confirmed that conclusion. Article III of the Charter reads: "The qualificaion and members shall be any white person interested in the purposes and objects for which this corporation is created."

In November of 1955, the Supreme Court held in Holmes v. Atlanta that the constitution required municipal golf courses to desegregate, and later that year a suit was filed in the United States District Court for the Northern District of Florida to enforce that holding with respect to the municipal golf course in Pensacola. George Harrold Carswell, having taken an oath to "support and defend the Constitution of the United States . . . without any mental reservation . . . ," was then United States Attorney for the Northern District of Florida. In his home town of Tallahassee, there was a white municipal golf club, which, it became clear in 1955, would have to be desegregated and opened to black citizens if it remained under city control. Since the club had once, many years before, been privately owned, and had been deeded to the city with a right of first refusal in the prior owners upon any future disposition, the prior owners sought to exercise that right to obtaining a long-term lease from the city so that control of the golf course could be placed in private hands. Under the state of the law at that time, it could reasonably be expected that the obligation to desegregate would thereby be avoided.

According to a front-page article in Tallahassee's only daily paper,[2] when the question was raised at the City Commission meeting in December of 1955, one of the commissioners objected on the grounds that the proposed transfer was racially motivated, and the proposal was temporarily shelved. Two months later, in February, 1956, after the objecting commissioner had left the commission, another attempt was made to transfer the white golf course to private hands. The commission was clearly conscious of the fact that there were racial implications to the transfer, for it felt obligated "to make the same deal on a Negro golf course" then being constructed by the city. And asked if the white course would be open to the public after the transfer, the private group's representative said it would be available to "any acceptable person," a euphemism which could only mean one thing in Tallahassee in 1956. These facts are related in detail because the newspaper record shows they were well known to the citizens of Tallahassee, as is confirmed by numerous personal recollections and affidavits of black and white citizens. The transfer was in fact completed, and the club did in fact become a facility open at daily, monthly, or yearly rates to any white person. Until very recently, Negroes were not permitted to attend even public functions there.

Despite the universal knowledge that the transfer of the golf course to private control would allow that municipal facility to remain segregated, U.S. Attorney Carswell, when asked to subscribe $100 and lend his name as one of 21 incorporators and directors of the new corporation which would actually hold the lease and run the club, could think of no reason not to do so, even though he was not a golfer and had no special interest in using the club, according to his testimony. Since the incorporation was central to a large fund-raising effort, it was clear that the incorporators' names would be used to solicit others, and the list of incorporators included high state officials and legislators, in addition to the U.S. Attorney.

In 1963, the nominee's brother-in-law and next-door neighbor, Jack Simmons, Jr., exchanged some swamp land he had purchased for shore property owned by the federal government. In its first private transfer, a parcel of that property was conveyed to and accepted by Mrs. Carswell with newly imposed covenants including one preventing transfer to any Negro, but permitting Negro servants to live with white owners. The transfer was handled by the Judge's former law associate and close friend who of course knew that Mr. Carswell was a federal judge. The expectation was that a white-only vacation community would be developed as the Carswells, other Simmons' friends, and other purchasers built second homes there. The Carswells, however, sold their plot in 1966. The Judge personally signed the deed, which included a specific provision enforcing all of the restrictive convenants. Since we know from his testimony that the Judge, like any lawyer, reads what he signs, we can conclude that he saw that provision, and declined to do anything about it, despite the fact that racially restrictive covenants had been unenforceable since 1948 and that this one had been attached only three years previously by his own brother-in-law.

Late in 1969 Circuit Judge Carswell appeared before a meeting of members of the bar in Atlanta, Georgia. There is some dispute about the exact words of his opening joke, but it is agreed that it included a story about a Negro in Southeast Asia, and played upon his pronunciation of the word "door." Nor is there any doubt that it was considered racially insulting by some in the audience and by many who read about it thereafter.

Again these items are not necessarily earth-shaking taken separately, but together they betray a continuing insensitivity to human rights and to his status as a federal official and judge. And thus they, with Judge Carswell's bench activities, bring 1948 up to 1953, 1956, 1966, and 1969.

Clearly, there are many Americans who have overcome previous records of resistance and reticence and have developed affirmative records on civil rights. President Nixon mentioned Ralph McGill, who some thirty years ago favored school segregation, and then became one of the leading crusaders in the South for equality and freedom. The Committee had as a witness former Governor LeRoy Collins of Florida, who, as Governor, overcame his earlier record with a clearly expressed commitment to equal access to public accommodations and who then served with distinction as director of the U.S. Community Relations Service.

In contrast, the nominee's supporters can find no such statements or activities to show his change of heart and his commitment to equal rights.

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[2] Tallahassee *Democrat*, Feb. 15, 1956, p Reprinted at p. 261 of hearing.

His supporters do say that he once ruled that his own barber would have to cut the hair of Negroes, and that this proves he is pro-equal rights. As the testimony before the Committee clearly demonstrated there were only two issues in that case—was the barber shop in a place covered by the 1964 civil rights act and did it hold itself out as serving patrons of that place? Facts providing affirmative answers to both questions *were* stipulated by the parties, and thus there was really nothing for the judge to decide.

The only other activity cited is the institution by Judge Carswell of a random jury selection system *in one division* of his court "shortly before the passage" of legislation requiring such a system to be instituted. As Judge Carswell himself pointed out to the Committee, at the time he instituted the plan it had already "become perfectly clear that this was going to have to be done . . . " under the pending legislation. The legislation was signed into law on March 27, 1968. All districts were required to institute it by December 22, 1968. Judge Carswell did not institute a *district-wide jury* selection plan until September 12, 1968.

Nor can that plan stand as a tribute to his fairmindedness. The plan utilized only the voter registration lists as a source of names. As the Judiciary Committee's report, Rept. No. 891, 90th Congress, 1st Session, on the Federal Jury Selection and Service Act pointed out, such voter lists are to be "supplemented by other sources whenever they do not adequately reflect a cross section of the community." No supplementary sources were provided for in Judge Carswell's plan despite the fact that a much smaller percentage of black citizens than white were registered to vote in his district. Even when the responses to a questionnaire required to be sent out by the court clerk indicated that the system was working in a discriminatory manner, Judge Carleswell took no remedial action.

In short there is nothing in Judge Carswell's record to challenge the conclusion that his insensitivity to human rights has persisted to the present.

CONCLUSION

Judge Carswell has not displayed the qualifications requisite for service on the Supreme Court of the United States.

INDIVIDUAL VIEWS OF MR. TYDINGS

I have concluded that Judge G. Harrold Carswell has demonstrated neither the judicial temperament and fairness nor the professional competence commensurate with the high standard of excellence that must be demanded of a Justice of the Supreme Court. Therefore, I must oppose confirmation of the appointment.

As Chairman of the Senate Subcommittee on Improvements in Judicial Machinery, I have been very much concerned with improving the operation of our Federal judicial system. I have chaired innumerable hearings and moved a substantial legislative program dealing with the administration, practices and procedures of that system, including creation of the Federal Judicial Center and the Federal Magistrate system, revision of the Federal jury selection system and development of an effective approach to multidistrict litigation.

Because of this legislative background, as well as by personal inclination, I feel a deep responsibility to my colleagues and to the nation to delve deeply into issues touching upon the effectiveness of the federal judiciary. Nothing, of course, is more relevant to that effectiveness than the process of assuring that the federal bench, and in particular, the Supreme Court are manned by appointees of the highest quality.

Men appointed to the Supreme Court have for practical purposes life tenure with no effective means for discipline or removal. Their influence on our national life may well transcend that of the President who appointed them. The role of the Supreme Court in our society is too vital to be endangered by the appointment of men whose judicial temperament or professional qualifications are subject to serious doubt.

In considering those named by the President for the vacancies on the Federal district and circuit courts over the past 5 years, and in considering previous nominees for the Supreme Court, I have consistently adhered to the position that, barring some unusual situation, a man selected by the President for the Federal bench should be confirmed by the Senate if he has demonstrated a character beyond reproach, professional competency equal to the task set for him, and a proper judicial temperament.

By proper judicial temperament, I mean at least the ability to put aside one's own prejudices and biases so as to be able to approach every case with a fair and open mind.

These criteria are not always easy to apply. But I have made every effort to apply them in a consistent manner to those nominees whose names have been placed before the Senate.

I opposed the appointment to the District Court of Massachusetts of Francis X. Morrissey, a man sponsored by two of my closest personal friends in the Senate, because I believed that his record did not demonstrate the legal ability requisite for a federal judge. When the Governor of Mississippi, James P. Coleman, was appointed to the Fifth Circuit, I spoke in his favor on the floor of the Senate and voted to confirm, despite the firm opposition of many civil rights groups. My examination of his record convinced me that he would make a fair and objective judge. Although I had supported the initial appointment of Mr. Justice Fortas, I took the lead in calling for his resignation when the unanswered questions surrounding his nonjudicial activities cast a cloud over the reputation of the Supreme Court. I also supported President Nixon's choice of Judge Warren Burger for Chief Justice, although I have not always agreed with him on substantial issues.

Now the Senate is asked to advise and consent to the appointment of Judge G. Harrold Carswell to be an Associate Justice of the Supreme Court.

I approached the hearings on Judge Carswell's appointment seeking to learn not what he was when he delivered his infamous racial supremacy speech in 1948, but what he is in 1970, what kind of judge—what kind of man.

Unfortunately, some of the most revealing testimony was presented to the Judiciary Committee after Judge Carswell testified and the members of the Committee were not able to review it with him. A request that he be recalled was rejected. Moreover, the short, general rebuttal letter that he submitted for the record was unresponsive and unenlightening. On the whole, however, the hearings were enlightening, indeed shocking, but hardly reassuring.

I will not dwell on Judge Carswell's willingness in 1956 to lend his name and the prestige of his office as United States Attorney to an effort to circumvent the mandate of the Constitution by converting a public golf course into a private one. Nor will I attempt to analyze similar events that have come to light, such as his attempt, in 1969, to amuse the members of the Georgia Bar Association with a racial joke. These are serious matters, but not, I believe, the keys to the case against Judge Carswell.

JUDGE CARSWELL'S LACK OF JUDICIAL TEMPERAMENT

Our judicial system must accord litigants fair hearing. Justice is not dispensed when a judge's personal views and biases invade the judicial process. In Judge Carswell's court, the poor, the unpopular and the black were all too frequently denied their basic right to be treated fairly and equitably.

Judge Carswell was simply unable or unwilling to divorce his judicial functions from his personal prejudices. His hostility toward particular causes, lawyers and litigants was manifest not only in his decisions but in his demeanor in the courtroom.

Professor Leroy Clark of New York University, who supervised the NAACP legal defense fund litigation in Florida between 1962 and 1968, called Judge Carswell—

"[T]he most hostile federal district court judge I have ever appeared before with respect to civil rights matters. . . ."

* * * * *

"Judge Carswell was insulting and hostile. I have been in Judge Carswell's court on at least one occasion in which he turned his chair away from me when I was arguing. I have said for publication, and I repeat it here, that it is not, it was not an infrequent experience for Judge Carswell to deliberately disrupt your argument and cut across you, while according, by the way, to opposing counsel every courtesy possible.

"It was not unusual for Judge Carswell to shout at a black lawyer who appeared before him while using a civil tone to opposing counsel. . . ."

* * * * *

"[W]henever I took a young lawyer into the State, and he or she was to appear before Carswell, I usually spent the evening before making them go through their argument while I harassed them, as preparation for what they would meet the following day."

Professor John Lowenthal of Rutgers Law School recalled attending a session in Judge Carswell's chambers in 1964 in which he "can only describe his [Judge Carswell's] attitude as being extremely hostile":

"He expressed dislike at Northern lawyers . . . appearing in Florida because . . . [they] were not members of the Florida bar."

The choice, however, was between "Northern lawyers or no lawyers" for Professor Lowenthal's clients who had been arrested for trespass while attempting to assist sharecroppers to register to vote.

Norman Knopf, a Justice Department attorney, testifying under subpoena, who had worked with Professor Lowenthal as a volunteer in 1964, corroborated Professor Lowenthal's recollections:

"Judge Carswell made clear, when he found out that he was a northern volunteer and that there were some northern volunteers down, that he did not approve of any of this voter registration going on . . . It was a very long strict lecture about northern lawyers coming down and not members of the Florida Bar and meddling down here and arousing the local people, and he in effect didn't want any part of this, and *he made it clear that he was going to to deny all relief that we requested."*

Judge Carswell's manifest intention to deny all relief did not represent an idle threat. Professor Lowenthal's clients had been tried in a state court and imprisoned in a county jail when a local judge had refused to recognize the removal jurisdiction of Judge Carswell's court. As Professor Lowenthal pointed out:

"[I]t was evident to all those with experience in Northern Florida that it was not safe for voter registration people to be in local jails."

Nevertheless, Judge Carswell's attitude and actions were ones of delay and harassment.

Indeed, when Professor Lowenthal's predecessor in the case, Ernst H. Rosenberger, had initially sought to remove it from the state court, he had been required to pay a filing fee in Judge Carswell's court despite the governing decision of the Fifth Circuit in *Lefton* v. *Hattiesburg*, 333 F. 2d 280, that no such fee could be demanded. Subse-

quently when Professor Lowenthal and Mr. Knopf attempted to file a habeas corpus petition for their clients, Judge Carswell did not permit them to do so until they had wasted precious time attempting to obtain the signatures of the imprisoned civil rights workers, despite the fact that Rule 11 of the Federal Rules of Civil Procedure indicates that the attorney's signatures are sufficient.

Moreover, Judge Carswell would not accept the habeas corpus petition that Mr. Knopf had painstakingly drawn up until it was redone on special forms provided by the court, although the forms were not designed to cover habeas corpus petitions arising out of the refusal of a state court to honor the jurisdiction of the federal courts.

Despite the barriers that Judge Carswell placed before them, Professor Lowenthal and Mr. Knopf were finally able to file habeas corpus petitions and to demonstrate to Judge Carswell that he had no choice under the law but to grant the petitions. Judge Carswell, however, still managed to thwart their efforts to keep the civil rights workers out of jail. As stated by Professor Lowenthal, at the same time that Judge Carswell granted the habeas corpus petitions—

"[O]n his own motion, because the Gadsden County officials were not there to ask for it, and without notice to the defendants, the habeas corpus petitioners, and without a hearing or any opportunity to present testimony or argument, he remanded the cases right back to the Gadsden County courts.

"I at that point moved before Judge Carswell directly for a stay of his remand so that I could have time to file a notice of appeal to the fifth circuit. He denied my request for a stay, pending filing notice of appeal."

Judge Carswell also refused to have the marshal serve the habeas corpus order on the Gadsden County sheriff despite the following provisions of 28 U.S.C. § 1446(f) that—

"If the defendant or defendants are in actual custody on process issued by the state court, the District court shall issue its writ of habeas corpus, and the marshal shall thereupon, take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such state court."

When Professor Lowenthal served the writ of habeas corpus himself the sheriff first released but then immediately rearrested the civil rights workers pursuant to the remand. It is not clear how he learned of his authority to do so. Professor Lowenthal testified as follows:

"The sheriff produced the jailed voting registration workers, and at once rearrested them because *Judge Carswell had had his marshal telephone the sheriff to advise the sheriff that Judge Carswell had on his own motion remanded the cases right back to the Gadsden County court.*"

* * * * *

" I was in Judge Carswell's chambers and office, and I do not remember whether I overheard the conversation between Judge Carswell and his marshal or whether somebody reported this to me. I do not know. What I do know is that when I got out to the sheriff with the habeas corpus order to release the men, the sheriff already knew of the remand, and therefore on the spot produced the defendants and rearrested them and put them back in jail."

The experiences of Ernst Rosenberger who preceded Professor Lowenthal as a representative of the American Civil Liberties Union in Northern Florida were indicative of Judge Carswell's willingness to go beyond the courtroom to deny litigants their basic rights.

Mr. Rosenberger represented nine clergymen freedom riders arrested in a Tallahassee airport restaurant in 1961. There had been numerous appeals in the case and as a result of a filing date having been missed the appeals were terminated. At the time Mr. Rosenberger entered the case the only recourse open to the clergymen was a writ of habeas corpus. Judge Carswell denied the writ and the case was immediately appealed to the Fifth Circuit which modified Judge Carswell's order so that it provided for an immediate hearing by Judge Carswell if the state court did not grant such a hearing. On the same day that the judges of the Fifth Circuit rewrote Judge Carswell's order, Mr. Rosenberger met with Judge Carswell and Mr. Rhoads, the City Attorney of Tallahassee. Judge Carswell told Mr. Rhoads "that this whole case could be ended by reducing the sentences of the clergymen to the time already served." As Mr. Rosenberger pointed out, Judge Carswell's advice—

"Could have no other effect except to moot the entire question, to leave . . . [the clergymen] with no way for vindication, to insure them a permanent criminal record. This was a matter where the judge advised the City Attorney in a state court proceeding actually of how to circumvent an order which had been put in by the U.S. Circuit Court."

The City Attorney and the state judge followed Judge Carswell's advice despite the objections of Mr. Rosenberger.

The impressions and experiences of Professor Clark, Professor Lowenthal, Mr. Knopf and Mr. Rosenberger paint a picture of blatant hostility and aggressive unfairness that casts serious doubt upon Judge Carswell's judicial temperament to sit even on a federal District Court much less on the Supreme Court of the United States. Judge Carswell did not take the stand to rebut these charges. His general statement that there has never been "any suggestion of any act or word of discourtesy or hostility on . . . [his] part," does not dispel the doubts created by their testimony. None of them have anything to gain by misleading the Committee or the Senate. In particular, it is worth remembering that Mr. Knopf is an employee of the Justice Department of the United States, who testified pursuant to a subpoena. As was forcefully pointed out during the hearings Mr. Knopf has other things to occupy his days now—"earning a paycheck."

JUDGE CARSWELL'S LACK OF PROFESSIONAL COMPETENCY

Despite the problems of temperament that Judge Carswell displayed on the lower courts, there might still be some basis for supporting his confirmation to the Supreme Court if he were a man of great intellectual and professional distinction. At least then there would be hope that once on the Supreme Court he would display a capacity for growth that would enable him to deal capably and objectively with the matters of vast importance that come before the Court.

He is, however, a mediocre man. He has demonstrated neither the depth of intellect nor of understanding that would indicate that he might fill with distinction the seat once held by Felix Frankfurter and Benjamin Cardozo. He is, instead, in the opinion of the Deans of two of our most respected law schools, a man who is professionally unqualified to sit on the Supreme Court. Dean Pollak of Yale testified that Judge Carswell—

"Has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our highest court.

"I am impelled to conclude, with all deference, I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century."

Dean Bok of Harvard has written that Judge Carswell has "a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the court."

Twenty members of the University of Pennsylvania Law School examined his opinions in various areas of the law and concluded "that he is an undistinguished member of his profession, lacking claim to intellectual stature." Charles L. Black, Jr., Luce Professor of Jurisprudence at the Yale Law School and one of the most respected members of the academic legal community stated in a letter to the Chairman:

"[T]here can hardly be any pretense that he [Carswell] possesses any outstanding talent at all. On the contrary, all the evidence I have seen would lead to the conclusion that mediocrity is an independent valid objection to his appointment."

Perhaps most telling was the testimony of Professor William Van Alstyne of the Duke University Law School, one of the most distinguished legal scholars of the South. Professor Van Alstyne had testified before the Senate Judiciary Committee in support of Judge Haynsworth, but testifying in opposition to Judge Carswell, Professor Van Alstyne concluded that Judge Carswell's decisions reflected "a lack of reasoning, care, or judicial sensitivity overall."

Despite his failure to follow the opinions of the higher courts in a number of areas of the law, Judge Carswell has been referred to by his supporters as a strict constructionist or a judicial conservative. Such terms, properly applicable to men with highly developed judicial philosophies such as Mr. Justice Felix Frankfurter and Mr. Justice John Harlan have no relevance to a man such as Judge Carswell who at best is mediocre and, at worst, has allowed his biases to permeate his courtroom.

There are many great southern judges and lawyers to whom the adjective "strict constructionist" is properly applicable and whom I would willingly support if they were nominated for the Supreme Court—men such as Sam Ervin of North Carolina, Judge Walter E. Hoffman of Virginia, Judge William F. Miller of Tennessee and Stephen O'Connell of Florida, President of the University of Florida. These are men with whose philosophies I might differ, but whom I would support because they are fair men and men of legal distinction. As Dean Bok pointed out, "The problem [with Judge Carswell] is one that has much less to do with judicial philosophy than with judicial competence; for extremely competent judges can be found with widely varying attitudes concerning the judicial function, let alone political or social questions."

CONCLUSION

I must conclude that Judge Carswell has displayed neither a proper judicial temperament nor a professional competency equal to the task set for him. I oppose the confirmation.

Mr. BAYH. I find that these have been broken down into five different areas about which we are concerned—lack of professional competency, lack of judicial temperament, refusal to adhere to controlling precedent, disdain for the writ of habeas corpus, and insensitivity to human rights.

I was about to make one last comment to the Senator from Michigan relative to the degree of concern which the Senator from Indiana has over interpretation of the judge's beliefs in the area of human rights, with the same concern that had been expressed in the previous debate relative to Judge Haynsworth. Many of the Haynsworth decisions were split decisions, 3 to 2 decisions. Those who opposed Judge Haynsworth's position felt he was wrong. But next week the Senator from Indiana intends to discuss in some detail 17 cases in which the present

nominee was reversed 3 to 0 by a unanimous panel of the Fifth Circuit Court of Appeals, which is a panel of illustrious judges. The Fifth Circuit Court of Appeals is hardly what one would call a bastion of liberalism. If that court unanimously says this nominee is out of step with the issues of habeas corpus and the various other cases that the Senator from Indiana will discuss in some detail, then I think he is out of step with what we need on the Supreme Court right now.

I am looking forward to the opportunity to pursue these thoughts in greater detail.

Mr. STENNIS. Mr. President, since I may have to be away from the floor of the Senate on Monday, I wish to say a few words now, although I would not seek the floor if a member of the Judiciary Committee wanted to speak at this time.

Mr. President, this debate will cover many points, but I think the Senator from Pennsylvania in his opening remarks pointed out a few basic facts and a few basic principles that will be and should be controlling, to which the Senator from Michigan added, in his very fine way, the question of judging one on his philosophy and judging him on his principles of character, and qualifications of that kind.

Mr. President, I expect to be heard later, and I shall be quite brief at this time.

I wish to emphasize that the office of Supreme Court Justice is one of the highest offices in the land, and is of particular importance because, subject to good behavior, a Justice of the Supreme Court may serve for life. For this and other reasons, the question of the confirmation of Judge G. Harrold Carswell which is now before us is of particular importance. A Supreme Court Justice can have a lasting impact since he usually participates in the shaping of the law over a period of many years without being accountable to any authority except his expertise, learning, judicial integrity, and judgment.

Having made extensive inquiry into this matter with persons known to me who have personally known him for many years, I am satisfied that Judge Carswell measures up to the requirements of the office in every respect and that he has the legal experience, learning, integrity, judicial philosophy, and other attributes which will enable him to serve on the Supreme Court with great distinction. This experience includes years of active practice in the courts, service as a U.S. district attorney, service as a U.S. district judge, and membership on the Fifth Circuit of the U.S. Court of Appeals. I believe we should give our consent to his confirmation, and I will vote to do so.

There are some in the country, including some Members of the Senate, who regret and oppose the nomination of Judge Carswell from an ideological point of view and they, I assume, would prefer someone they would consider less conservative. While I do not impugn the motive of any Senator who opposes Judge Carswell, I am compelled to believe that many are influenced by widely disparate views and personal, judicial, political, and philosophical ideology. With many of these, perhaps without conscious realization of the fact, the charges against Judge Carswell become an excuse and not a valid reason for opposition.

The logic of the situation, however, suggests that we should agree that all Supreme Court Justices should not be cast from the same mold or the same geographical location. Judge Carswell should not be opposed simply because of the thought that he may exercise judicial restraint rather than being a judicial activist in the tradition of some of the Justices who have sat on the Supreme Court in the last decade or so.

The basic proposition is that we should recognize the fact that much of the opposition to Judge Carswell is motivated by disagreement with some of his decisions and with his personal and political philosophy rather than by any question of his ability, ethics, or integrity.

When we speak of these thngs, I think it is highly important to remember that this gentleman is already an experienced judge. He is experienced, first, as a practicing lawyer, and for 5 years he had the responsibility of representing the Federal Government as a U.S. district attorney. But, more than that, he spent 8 or 10 years as a trial judge, a U.S. district judge, who carried all the responsibility of a court of unlimited jurisdiction, in both civil and criminal cases. In the area he was then serving, that is a test, in these modern times, that is very severe and very exacting. It is the training in the courtroom and in the trial courtroom from which real lawyers and jurists are made. Then, on top of that, he served almost a year as a member of the U.S. court of appeals where he is well along on his way to becoming a highly valuable member of that court.

Mr. President, Judge Carswell is not a personal friend of mine. I do know others, however, who strongly vouch for his ability, honesty, and integrity. These include some of my high school associates who now live in Florida and have known this man for a great number of years.

My close inquiry into this matter has convinced me that he is fully qualified for the office for which he has been nominated and will discharge his duty with distinction if he is confirmed, as I hope and expect that he will be.

I say again, that this is one of the most crucial and important matters that has come before the Senate at any time. To give or withhold consent to the nomination of a Supreme Court Justice is one of the most solemn, delicate, sensitive, and important functions of the Senate. While I believe very strongly that we should not act from an ideological or geographic standpoint, I think it is important to realize that the confirmation of Judge Carswell and his ascendancy to the bench will bring needed judicial and geographical balance to the Court—a balance which has been sorely lacking in recent years.

In closing, Mr. President, let me say that the record indicates Judge Carswell has been an outstanding lawyer and a judge with exceptional ability. I think that he would be a great credit to the Supreme Court, where he will gain rapid seasoning there. There is no support in the public or private records for any of the charges that have been hurled at him, of charges that are in any way controlling that would detract from his very fine record and his solid character.

Thus, I feel sure that all Members of the Senate will consider this man on the merits. When that has been fully appreciated, I am strongly of the opinion that Judge Carswell will be confirmed by a substantial majority of the Members of this body, and that he will go on to render valuable and serviceable years to the court and the country with a most creditable record as a member of the Highest Court in the land.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL MONDAY, MARCH 16, 1970

Mr. KENNEDY. Mr. President, if there is no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in adjournment until 12 noon on Monday next.

The motion was agreed to; and (at 5 o'clock and 3 minutes p.m.), the Senate in executive session adjourned until Monday, March 16, 1970, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate March 13, 1970:

IN THE ARMY

The following-named person for appointment in the Regular Army, by transfer in the grade specified, under the provisions of title 10, United States Code, sections 3283 through 3294:

To be second lieutenant

Kreb, Charles A., Jr., [redacted].

The following-named persons for appointment in the Regular Army of the United States, in the grades specified, under the provisions of title 10, United States Code, sections 3283 through 3294 and 3311:

To be lieutenant colonel

Hanson, Chester A., Jr., [redacted].

To be major

Bertrand, Robert J., [redacted].
Bridges, James T., [redacted].
Butler, Douthard R., [redacted].
Crandall, Bruce P., [redacted].
Herman, David E., [redacted].
Holtom, Stanley E., [redacted].
Hyland, Eugene P., [redacted].
Larson, Gerald W., [redacted].
Lennon, James J., [redacted].
Nixon, John L., Jr., [redacted].
Rushkowski, Edward C., [redacted].
Soriano, Franklin M., [redacted].
Young, Ray A., [redacted].

To be captain

Alexander, Lawrence N., [redacted].
Alsop, Jack R., [redacted].
Beckley, Leander K., [redacted].
Bell, John O., [redacted].
Blair, Willis A., [redacted].
Bowen, Harold L., [redacted].
Boyd, Barclay A., [redacted].
Brynildsen, Gordon A., [redacted].
Burt, Joe M., [redacted].
Cade, Ernest W., [redacted].
Collins, James L., Sr., [redacted].
Cox, Troy D., [redacted].
Deck, Howard R., [redacted].

Floyd, Hugh A., [redacted]
Freeman, Guy G., [redacted]
Garrity, Joseph L., Jr., [redacted]
Goldsboro, Jerome A., Jr., [redacted]
Griffin, Gerald K., [redacted]
Inberg, Darlow L., [redacted]
Johnson, Anthony J., [redacted]
Leone, Louis J., Jr., [redacted]
Linscott, Paul K., [redacted]
Mauk, Roby M., [redacted]
McVay, Mary R., [redacted]
Mills, Robert D., [redacted]
Murgo, Joseph P., [redacted]
Norton, William J., II, [redacted]
Peters, Lowell F., [redacted]
Piper, William S., III, [redacted]
Pollock, Harlan, [redacted]
Quijano, Ramon, Jr., [redacted]
Ramey, Thomas P., [redacted]
Rice, Myron K., Jr., [redacted]
Rice, Robert C., [redacted]
Rice, Wilfred E., Jr., [redacted]
Robertson, William L., [redacted]
Schenck, Roger L., [redacted]
Shlenker, Lenard L., Jr., [redacted]
Smith, Joseph A., [redacted]
Stitt, Wilbert, Jr., [redacted]
Thorp, Douglas L., [redacted]
Wiker, Edmund P., [redacted]
Williams, Bertha C., [redacted]
Williams, Jack G., [redacted]
Winslow, Robert A., [redacted]

To be first lieutenant

Anderson, Louie H., [redacted]
Arrington, Jimmy S., [redacted]
Aschenbrenner, Richard L. [redacted]
Augustat, Edwin C., [redacted]
Barnes, Herbert E., [redacted]
Bell, Ronald D., [redacted]
Boyle, David J., [redacted]
Brown, John E., [redacted]
Carlson, Ronald W., [redacted]
Carson, Charles R., Jr., [redacted]
Chapple, Frank E., III, [redacted]
Clyde, Gerald A., [redacted]
Colbert, Richard C., [redacted]
Cole, Janet E., [redacted]
Coleman, Richard L., [redacted]
Cotsonas, Peter M., [redacted]
Counts, Harold K., Jr., [redacted]
Crook, Robert T., [redacted]
Crosse, James E. W., [redacted]
Culbert, Harry J., [redacted]
Difiore, Ralph J., [redacted]
Dionne, Wayne C., [redacted]
Duggleby, Robert W., [redacted]
Easton, Jack E., [redacted]
Ebbitt, Harold K., [redacted]
Eby, Daniel L., [redacted]
Eckman, Mary K., [redacted]
Ellis, Giles L., Jr., [redacted]
Emington, John P., II, [redacted]
Engen, Gary O., [redacted]
Farris, Stephen R., [redacted]
Graham, Jimmie R., [redacted]
Haley, Richard L., [redacted]
Halper, Stephen R., [redacted]
Hill, Daniel J., [redacted]
Hirning, Ervin N., [redacted]
Howard, David, [redacted]
Hrubetz, John E., [redacted]
Johnson, Wesley L., [redacted]
Kaczkowski, Dennis E., [redacted]
Keane, Patrick J., [redacted]
Knox, Everett, [redacted]
Lafontaine, Daniel E., [redacted]
Lahr, Wayne J., [redacted]
Lalli, Charles G., [redacted]
Lawless, James J., [redacted]
Leblanc, Robby J., [redacted]
Lee, Lorin L., [redacted]
Leonard, Bruce M., [redacted]
Lippard, Robert L., [redacted]
Logan, Robert B., [redacted]
Long, Jerry D., [redacted]
Lundeen, Randall R., [redacted]
Lyssy, Walter J., [redacted]
Mann, Morris M., III, [redacted]
Marrero, Gualberto, [redacted]
Marshok, John A., Jr., [redacted]
May, Ronald L., [redacted]
Maykowskyj, Viktor, [redacted]
McAdams, Spurgeon A., [redacted]
McKnight, David A., [redacted]
Miller, Howard E., [redacted]
Montgomery, Thomas M., [redacted]
Morita, Lloyd T., [redacted]
Moss, David R., [redacted]
Muzzy, John K., [redacted]
Neary, Jack M., [redacted]
O'Brien, Andrew J., [redacted]
O'Brien, Frederick J., [redacted]
Parris, Richard, [redacted]
Petrilli, Frank J., Jr., [redacted]
Phillips, David E., [redacted]
Phipps, Olen C., Jr., [redacted]
Poor, James L., Jr., [redacted]
Ratts, Michael D., [redacted]
Raznick, Alan E., [redacted]
Reneau, Marvin B., [redacted]
Reynolds, John W., [redacted]
Ritzschke, Charles R., [redacted]
Rogers, Sherman C. C., [redacted]
Rooney, Christopher J., [redacted]
Sakamoto, Frederick A., [redacted]
Scaer, Herbert A., [redacted]
Schmierer, Alan F., [redacted]
Schulenberg, Robert H., [redacted]
Squitieri, Alfonse P., [redacted]
Stefko, John G., [redacted]
Stemberger, Victor J., [redacted]
Stuck, William W., [redacted]
Tassinari, Anthony D., [redacted]
Thomas, John P., III, [redacted]
Touron, Francis L., [redacted]
Triplett, Robert L., [redacted]
Tucker, Larry W., [redacted]
Tuttle, Jay R., [redacted]
Unlaub, Carl G., [redacted]
Unzelmann, Werner O., [redacted]
Wahl, Robert W., [redacted]
Weitzel, William D., [redacted]
Wilkinson, Donald R., Jr., [redacted]
Wiltrout, Robert E., III, [redacted]
Wise, James C., [redacted]
Wolff, Monte L., [redacted]
Woodruff, Harvey C., III, [redacted]
Yeargan, Robert G., [redacted]
Yurcaba, John Jr., [redacted]
Zadrozny, Paul J., [redacted]

To be second lieutenant

Bradley, John J., [redacted]
Callahan, Edward C., Jr., [redacted]
Clifford, Gayne A., [redacted]
Comeau, Ronald J., [redacted]
Dasher, Steven A., [redacted]
Donahue, Richard I., [redacted]
Eatherly, Jerry W., [redacted]
Fairchild, Kerry L., [redacted]
Grassi, Augustine M., [redacted]
Harris, Donald J., [redacted]
Hickerson, Patricia P., [redacted]
Hill, Mack C., [redacted]
Kjolsrud, Michael, [redacted]
Lazicki, Daniel R., [redacted]
Lockaby, Boyd N., Jr., [redacted]
Madison, Amy J., [redacted]
Martin, James A., Jr., [redacted]
McCann, Robert C., [redacted]
Miles, Bernard L., III, [redacted]
Moxley, Paul S., [redacted]
Myers, Robert G., [redacted]
Natkin, Ian L., [redacted]
Norman, John F., [redacted]
Norton, Charles V., [redacted]
Perry, Ray H., [redacted]
Quigg, Loren T., [redacted]
Rangel, Hector M., [redacted]
Ristroph, Joseph D., Jr., [redacted]
Rogers, Richard S., III, [redacted]
Schmid, Harold W., Jr., [redacted]
Smith, Roger E., [redacted]
Starling, James M., [redacted]
Taylor, John R., [redacted]
Thompson, Eugene E., [redacted]
Todd, Tony W., [redacted]
Tucker, Gary C., [redacted]
Webb, James L., [redacted]

The following-named cadets, graduating class of 1970, United States Military Academy, for appointment in the Regular Army of the United States in the grade of second lieutenant, under the provisions of title 10, United States Code, sections 3284 through 4353:

Abbott, John C., [redacted]
Adams, John W., [redacted]
Adams, Mitchell K., [redacted]
Adams, William V., [redacted]
Addy, William M., [redacted]
Albright, Earl R., Jr., [redacted]
Alcorn, George W., [redacted]
Alden, Arthur J., [redacted]
Aldrich, Joseph E., [redacted]
Alexander, Billie J., [redacted]
Allbee, David C., [redacted]
Allin, George R. III, [redacted]
Alphin, Arthur B., [redacted]
Ambrose, Walter J., Jr., [redacted]
Ancker, Clinton J. III, [redacted]
Anderson, Michael D., [redacted]
Anderson, Ray C., [redacted]
Anderton, Daniel L., [redacted]
Andrzejczak, Henry J., [redacted]
Anthony, Thomas W., Jr., [redacted]
Archer, Robert L., [redacted]
Arcuri, William Y., [redacted]
Armeli, Thomas F., [redacted]
Auman, Thomas R., [redacted]
Avery, Jimmie S., [redacted]
Babcock, Robert T., [redacted]
Backman, Rodney J., [redacted]
Bagstad, Stephen S., [redacted]
Bailey, Steven S., [redacted]
Bain Michael W., [redacted]
Balmer, Mearl E., Jr., [redacted]
Baltimore, Perry F. III, [redacted]
Barbour, Mark Q., [redacted]
Baribeau, Stephen R., [redacted]
Baron, Ronald J., [redacted]
Barre, Anthony G., [redacted]
Barth, Wayne M., [redacted]
Bartholomees, James B., Jr., [redacted]
Basta, Rudolph F., Jr., [redacted]
Bauman, Robert A., [redacted]
Beahm, Richard S., [redacted]
Beasley, John H., [redacted]
Beasley, William E. II, [redacted]
Becker, John B., [redacted]
Beddow, Edward G., [redacted]
Bellotty, James J., [redacted]
Benardo, Charles J., [redacted]
Benham, Eric V., [redacted]
Bennett, Edwin T., [redacted]
Bennett, Thomas C., [redacted]
Bennett, William C., [redacted]
Bentley, Henry B. III, [redacted]
Beziat, Robert L., Jr., [redacted]
Bickel, John W. II, [redacted]
Biddle, John M., [redacted]
Billia, Peter E., [redacted]
Bishop, William G., [redacted]
Bisulca, Paul J., [redacted]
Blakeslee, Don B., [redacted]
Boehm, John M., [redacted]
Boggs, Ronald H., [redacted]
Boies, Michael A., [redacted]
Bonarrigo, Nicholas A., [redacted]
Boslego, John W., [redacted]
Boswell, Joseph R., [redacted]
Bowden, William M., [redacted]
Boyce, Tommy J., [redacted]
Boyer, Lewis L., [redacted]
Boytim, Thomas E., [redacted]
Brace, Alan L., [redacted]
Bradford, Richard N., [redacted]
Bradley, Thomas G., [redacted]
Brand, Robert C., [redacted]
Brandtner, Thomas A., [redacted]
Brennecke, Lucas H., [redacted]
Brenner, John C., Jr., [redacted]
Brigadier, John D., [redacted]
Brink, James E., Jr., [redacted]
Britton, Barry J., [redacted]
Brock, Tony H., [redacted]
Broussard, Glenn J., [redacted]
Brown, David L., [redacted]
Brown, John R., Jr., [redacted]
Brown, Larry T., [redacted]
Brown, Robert N., [redacted]
Brown, Willard D. III, [redacted]
Bruce, William A., [redacted]
Bryant, John M., Jr., [redacted]

Bryson, Brian D., [redacted]
Bunch, Philip S., [redacted]
Burns, Julian H., Jr., [redacted]
Burns, Martin R., [redacted]
Busack, James A., [redacted]
Byrd, James D., [redacted]
Campbell, Brian C., [redacted]
Campbell, Clark D., [redacted]
Campbell, Paul V., [redacted]
Campbell, William L., [redacted]
Cannavo, Francis A., Jr., [redacted]
Carlson, Edwin T., [redacted]
Carlson, John W., Jr., [redacted]
Carlson, Lee C., [redacted]
Carlson, Randall A., [redacted]
Carman, Timothy R., [redacted]
Carr, David M., [redacted]
Carroll, Danford F., [redacted]
Carter, John L., [redacted]
Carter, Roland W., [redacted]
Cass, John P., Jr., [redacted]
Castleman, Richard A., [redacted]
Casto, Perry C., Jr., [redacted]
Cater, William P., [redacted]
Chandler, James A., [redacted]
Charest, Geoffrey B., [redacted]
Chavez, Guillermo D., [redacted]
Churchill, Ralph B., [redacted]
Clapp, Edwin G., III, [redacted]
Clark, Lawrence R., [redacted]
Clarkson, Francis A., [redacted]
Clow, Kenneth H., [redacted]
Cogbill, John V., III, [redacted]
Colacicco, John H., [redacted]
Coleman, Richard W., [redacted]
Colson, William B., Jr., [redacted]
Conard, Frederick W., II, [redacted]
Conkin, Walter C., [redacted]
Connatser, Charles T., Jr., [redacted]
Connolly, Kevin C., [redacted]
Connors, John T., [redacted]
Conte, Robert D., [redacted]
Cook, Stephen K., [redacted]
Cooper, James C., [redacted]
Corfman, James E., [redacted]
Cornelison, Gary A., [redacted]
Cortese, David W., [redacted]
Cossette, Raymond P., [redacted]
Constantino, Nicholas S., [redacted]
Costello, Thomas M., [redacted]
Coulman, Michael A., [redacted]
Cousar, Robert J., Jr., [redacted]
Cox, Randall L., [redacted]
Coy, William A., [redacted]
Craig, James R., [redacted]
Cramblet, Peter B., [redacted]
Crawford, Hunt D., Jr., [redacted]
Crawford, James W., Jr., [redacted]
Crawford, Sherman W., [redacted]
Crea, Dominick A., [redacted]
Cross, Roger W., III, [redacted]
Crumling, Harry W., Jr., [redacted]
Cumiskey, William T., Jr., [redacted]
Cunningham, Paul E., [redacted]
Curtis, Phillip L., [redacted]
Davidson, Charles P., IV, [redacted]
Davis, Brian C., [redacted]
Davis, Charles E., [redacted]
Dawson, David D., [redacted]
Day, William S., [redacted]
De Castro, Edward M., [redacted]
De Cort, Donald P., [redacted]
De La Garza, Agapito, Jr., [redacted]
De Leo, John P., [redacted]
De Scioli, Louis A., [redacted]
De Vito, Thomas P., [redacted]
Deas, Quincy A., [redacted]
Deason, Jonathan P., [redacted]
Decker, John H., Jr., [redacted]
Desannoy, David A., Jr., [redacted]
Diekema, Larry A., [redacted]
Diesto, Winston E., [redacted]
Dinsmore, David R., [redacted]
Dixon, Paul J., [redacted]
Dobiac, John J., [redacted]
Dockery, Thomas C., [redacted]
Doleac, Philbert C., Jr., [redacted]
Drab, Guy W., [redacted]
Drake, Douglas J., [redacted]
Drinkwater, John P., [redacted]
Driscoll, Robert F., [redacted]

Dueker, Thomas G., [redacted]
Duncan, James W., Jr., [redacted]
Dunphy, Patrick M., [redacted]
Dunwoody, Harold H., Jr., [redacted]
Dvergsten, David H., [redacted]
Edmonston, Donald R., [redacted]
Edwards, Gregory N., [redacted]
Ekegren, John W., III, [redacted]
Ekman, William J., [redacted]
Elder, Michael A., [redacted]
Elliott, William T., [redacted]
Ellis, Lester N., Jr., [redacted]
Engram, Bartlett J., Jr., [redacted]
Ennis, Charles W., Jr., [redacted]
Epley, John F., [redacted]
Ernst, Chester N., [redacted]
Esmann, William J., [redacted]
Etchechury, James, [redacted]
Etzler, Norman W., [redacted]
Fadden, Dennis L., [redacted]
Faraguna, Joseph R., [redacted]
Fardink, Paul J., [redacted]
Fenili, John A., [redacted]
Fenty, Alan D., [redacted]
Ferraro, Joseph F., [redacted]
Fishback, John B., [redacted]
Fisher William K., Jr., [redacted]
Fletcher, Edward J., Jr., [redacted]
Fleumer, Matthew H., [redacted]
Fogg, William A., Jr., [redacted]
Forbes, John M., Jr., [redacted]
Forinash, David R., [redacted]
Forsythe, George B., [redacted]
Foster, Laurence H., Jr., [redacted]
Fox, Roger R., [redacted]
Frank, Robert S., [redacted]
Franke, Paul F., [redacted]
Franklin, Thomas P., [redacted]
Frazer, Donald C., [redacted]
Fredrick, Dale R., [redacted]
Fricks, Thomas E., [redacted]
Froncek, Michael C., [redacted]
Funke, Carl A., [redacted]
Gallogly, John R., [redacted]
Galloway, James F., [redacted]
Galton, Bruce R., [redacted]
Gandy, Charles L. III, [redacted]
Garman, Robert L., [redacted]
Garner, Cary E., [redacted]
Garrett, Leonard E., Jr., [redacted]
Garrett, Stephen F., [redacted]
Gasperini, Richard H., [redacted]
Gass, David R., [redacted]
Gates, Larry L., [redacted]
Gault, Jeffrey W., [redacted]
Gehrki, Frank J. III, [redacted]
Geiger, Warren F., [redacted]
Geist, William C., Jr., [redacted]
Gerard Thomas A., [redacted]
Gibbons, Raymond W., [redacted]
Gibson, Gerry S., [redacted]
Gibson, Kim R., [redacted]
Gidlund, Clifford J., [redacted]
Gilbert, Mark C., [redacted]
Gillihan, Kennard E., [redacted]
Ginn, Robert D., Jr., [redacted]
Glawe, Michael H., [redacted]
Goeth, Frederick C., III, [redacted]
Goff, Donald G., [redacted]
Golden, Kim B., [redacted]
Goodell, Mark G., [redacted]
Goodier, Kerry M., [redacted]
Goodman, Glenn W., Jr., [redacted]
Goodman, Jon R., [redacted]
Goodyear, Richard L., [redacted]
Gracyas, Gary A., [redacted]
Green, Richard A., [redacted]
Green, William H., III, [redacted]
Greene, Donald J., [redacted]
Greenwalt, John M., [redacted]
Grove, Michael L., [redacted]
Guy, Howard L., [redacted]
Gyovai, Frank M., [redacted]
Haas, James R., [redacted]
Hagan, William L., Jr., [redacted]
Hahney, William J., [redacted]
Haislip, William A., Jr., [redacted]
Hales, Robert E., [redacted]
Hall, Thomas R., [redacted]
Haller, Thomas L., [redacted]
Hanna, John H., [redacted]

Hannigan, Thomas U., [redacted]
Harper, Gilbert S., III, [redacted]
Harris, Phillip G., [redacted]
Hartman, Larry K., [redacted]
Hausmann, Fritz J., [redacted]
Hawley, Michael A., [redacted]
Haworth, Michael D., [redacted]
Hayes, James P., [redacted]
Heaton, Robert L., [redacted]
Hedberg, William A., [redacted]
Heffelfinger, Harlan M., [redacted]
Heineman, David E., [redacted]
Heinen, Robert R., [redacted]
Helgerson, Earle H., [redacted]
Helmich, Eugene H., [redacted]
Henderson, James W., [redacted]
Henderson, Larry K., [redacted]
Henly, Larry L., [redacted]
Henn, Joseph E., [redacted]
Hennessey, John J., Jr. [redacted]
Herring, David M., [redacted]
Hicks, Charles B., [redacted]
Hilderbrand, Terry N., [redacted]
Hilliard, Robert E., [redacted]
Hirsch, Edwin C., Jr., [redacted]
Hobson, Michael W., [redacted]
Hodges, Genous S., III, [redacted]
Hoen, Michael M., [redacted]
Holm, John A., [redacted]
Holton, Gregory A., [redacted]
Homoleski, Stephen W., [redacted]
Horacek, Larry B., [redacted]
Hostettler, John R., [redacted]
Howell, John S., [redacted]
Hudson, Arthur L., III, [redacted]
Hume, William S., [redacted]
Huncharek, John D., [redacted]
Hunn, James C., [redacted]
Hurff, Walter F., Jr., [redacted]
Hutchison, Louis V., Jr., [redacted]
Ingwersen, Lowell B., [redacted]
Isaacson, Scott P., [redacted]
Ishida, Claude T., [redacted]
Jaccard, John K., [redacted]
Jackson, William D., [redacted]
Jagger, Donovan F., [redacted]
James, Anthony V., [redacted]
Jarchow, Robert C., [redacted]
Jarrett, Keith B., [redacted]
Jatko, Thomas L., [redacted]
Jenkins, Brooke W., [redacted]
Jenkins, David S., Jr., [redacted]
Jeray, Thomas L., [redacted]
Jenkins, Brooke W., [redacted]
Jenkins, David S., Jr., [redacted]
Jeray, James F., [redacted]
Johnson, Michael W., [redacted]
Johnson, Nelson P., Jr., [redacted]
Johnson, Terry L., [redacted]
Johnson, William S., Jr., [redacted]
Jones, Michael L., [redacted]
Jones, Peter H., [redacted]
Jones, Russell B., III, [redacted]
Joyce, John F., [redacted]
Kaine, Jay W., [redacted]
Kahalekai, Leslie H. A., [redacted]
Kauza, Thomas F., [redacted]
Kee, James A., [redacted]
Keegan, Christopher J., [redacted]
Keene, Terence E., [redacted]
Keiser, Daniel D., [redacted]
Keller, Thomas R., [redacted]
Kelley, Richard H., [redacted]
Kelly, Edward V., [redacted]
Kelly, Ross S., [redacted]
Kendrick, John L., [redacted]
Kenevan, Robert J., [redacted]
Kennedy, Nelson E., [redacted]
Kensinger, Philip R., Jr., [redacted]
Kent, David B., [redacted]
Kerr, Charles J., [redacted]
Kibler, Daniel R., [redacted]
Kimmel, Lawrence J., [redacted]
King, John B., [redacted]
Knight Gregory H., [redacted]
Knight, Scott P., [redacted]
Knoll, Rolf W., [redacted]
Knorr, Mathias, III, [redacted]
Knowlton, William A., Jr., [redacted]
Kowalczyk, Paul A., [redacted]
Krebs, Timothy E., [redacted]

Krieger, Philip S., [redacted]
Krueger, Larry W., [redacted]
Kuehne, Christopher, [redacted]
Kulungowski, Michael A., [redacted]
Kupec, Stephen R., [redacted]
Laird, Robert S., [redacted]
Lampley, Thomas S., [redacted]
Lane, William D., [redacted]
Larsen, Bradley W., [redacted]
Larsen, Marshall O., [redacted]
Lauckhardt, Charles J., [redacted]
Lavelle, Timothy C., [redacted]
Lawlor, Thomas K., [redacted]
Lawrence, Kelly C., [redacted]
Lazzeri, Jon. J., [redacted]
LeDoux, Roger C., [redacted]
LeFevre, Douglas A., [redacted]
Leckerling, Jon P., [redacted]
Lenox, Thomas A., [redacted]
Leonard, Henry A., [redacted]
Lewis, John R., [redacted]
Lilly, Peter B., [redacted]
Linke, Carl E., [redacted]
Linn, Phillip J., [redacted]
Lisi, Alfred M., Jr., [redacted]
Locke, Brian P., [redacted]
Lough, Frederick C., Jr., [redacted]
Love, Robert M., [redacted]
Lovelace, James J., Jr., [redacted]
Lucas, John F., [redacted]
Lucente, Charles A., [redacted]
Lucia, Arthur C., [redacted]
Lynch, Daniel M., [redacted]
Lyons, Dennis W., [redacted]
MacIver, Thomas D., [redacted]
MacLane, Howard, Jr., [redacted]
Madeja, Victor J., [redacted]
Madley, Stephen D., [redacted]
Maertens, Thomas B., Jr., [redacted]
Mahan, Michael W., [redacted]
Maki, Bruce A., [redacted]
Malkemes, William C., [redacted]
Marcello, John J., [redacted]
Mark, Kenneth M., [redacted]
Markus, Kurt M., [redacted]
Marple, Allan D., [redacted]
Marshall, Arthur R., Jr., [redacted]
Martin, Richard E., [redacted]
Martinez, Thomas E., [redacted]
Marvin, Dale K., [redacted]
Mason, Robert E., [redacted]
Mathews, Thomas G., [redacted]
Maxwell, Sean E., [redacted]
McAteer, Charles, [redacted]
McBeth, William W., [redacted]
McCabe, Michael V., [redacted]
McCall, Peter B., [redacted]
McChesney, Thomas S., [redacted]
McClanahan, Ashey A., Jr., [redacted]
McClellan, Johnny M., [redacted]
McCormick, Roger L., [redacted]
McDowell, John D., Jr., [redacted]
McDowell, Paul R., [redacted]
McDugald, John C., [redacted]
McGee, Charles B., [redacted]
McGill, John L., [redacted]
McGoldrick, Patrick J., [redacted]
McHone, James S., [redacted]
McKinney, Joseph W., [redacted]
McNamara, Thomas J., Jr., [redacted]
Mearsheimer, John J., [redacted]
Measner, Richard D., [redacted]
Meier, Robert A., Jr., [redacted]
Meinhold, Don H., [redacted]
Mellinger, Alan J., [redacted]
Meranda, Mark E., [redacted]
Meuleners, Michael S., [redacted]
Meyer, Kurtis A., [redacted]
Michalowski, Bruce C., [redacted]
Miles, Charles R., [redacted]
Millar, Thomas H., [redacted]
Millard, Robert H., Jr., [redacted]
Miller, Richard B., [redacted]
Miller, Thomas E., [redacted]
Minor, Gerald C., [redacted]
Minor, John M., [redacted]
Mitchell, E., [redacted]
Mitchell, Michael T., [redacted]
Monaco, Francis J., [redacted]
Montieth, Frank S., Jr., [redacted]
Moore, Lynn D., [redacted]
Moran, John P., [redacted]

Morford, Terry A., [redacted]
Morgan, Roderick H., [redacted]
Morris, Charles A., [redacted]
Morris, Russell O., [redacted]
Morrison, Reginald A., [redacted]
Moser, Richard P., Jr., [redacted]
Mowery, James L., [redacted]
Mozoski, Paul A., Jr., [redacted]
Muir, David N., [redacted]
Mullady, Michael P., [redacted]
Mulligan, James G., [redacted]
Murdoch, Richard E., [redacted]
Murphy, Edward J., III, [redacted]
Murphy, Michael P., [redacted]
Murphy, Michael T., [redacted]
Murray, James K., [redacted]
Muse, Stephen H., [redacted]
Mylan, Thomas H., [redacted]
Naymick, William M., [redacted]
Nell, Peter A., [redacted]
Neuman, Joseph C., [redacted]
Newby, Bruce L., [redacted]
Newcomb, Curtis L., [redacted]
Newcomb, Dana L., [redacted]
Newman, Robert A., [redacted]
Nicholson, Tom M., Jr., [redacted]
Nickles, Dean J., [redacted]
Noll, Jon G., [redacted]
Nolte, Bruce B., [redacted]
Norris, John A., [redacted]
Norton, John, Jr., [redacted]
Norwood, James B., [redacted]
Nyhous, Terrence L., [redacted]
O'Connell, Joseph P., [redacted]
O'Hara, Patrick M., [redacted]
O'Malley, George E., [redacted]
O'Meara, Thomas F., [redacted]
Odermann, James O., [redacted]
Oettinger, Thomas E., [redacted]
Olson, Mark R., [redacted]
Olson, Wallace B., III, [redacted]
Opatovsky, Robert E., [redacted]
Osman, James A., Jr., [redacted]
Oxley, James E., [redacted]
Page, Thomas F., [redacted]
Pantier, Robert E., [redacted]
Paris, Victor E., [redacted]
Parker, Howard M., [redacted]
Passaro, Paul V., [redacted]
Patten, Scott A., [redacted]
Patterson, Joseph W., [redacted]
Patterson, William N., [redacted]
Paulson, Myhre E., Jr., [redacted]
Pavlick, John J., Jr., [redacted]
Pearce, Michael J., [redacted]
Pease, Willard D., [redacted]
Peckham, Gary L., [redacted]
Pedersen, Walton E., [redacted]
Pella, Peter J., [redacted]
Peltier, Bruce N., [redacted]
Pembrook, Wayne R., [redacted]
Peters, David M., [redacted]
Phelan, David W., Jr., [redacted]
Pittman, Barry V., [redacted]
Plummer, McDonald, Jr., [redacted]
Pohl, Gregory R., [redacted]
Porreca, David M., [redacted]
Pratt, Donald I., Jr., [redacted]
Pratt, William F., [redacted]
Pressler, Steven J., [redacted]
Price, Bill B., Jr., [redacted]
Price, James D., [redacted]
Price, Willie J., [redacted]
Prince, William F., [redacted]
Pritchard, Gilbert, Jr., [redacted]
Purdin, Calvin O., Jr., [redacted]
Quimby, Donovan M., [redacted]
Quirk, Earl S., [redacted]
Rabaut, Thomas W., [redacted]
Rains, Roger A., [redacted]
Raisor, Bruce C., [redacted]
Rank, Steven A., [redacted]
Ray, Russell T., [redacted]
Reagor, Dale E., [redacted]
Reeder, Joe R., [redacted]
Reese, John N., [redacted]
Reid, Trevor A., [redacted]
Reifenberg, Philip D., [redacted]
Reilly, Vincent E., [redacted]
Reineke, Kurt B., Jr., [redacted]
Reitz, John W., [redacted]

Reyen, Daniel W., [redacted]
Rhoads, Daniel L., [redacted]
Richard, Philip W., [redacted]
Richardson, Chester A., Jr., [redacted]
Richardson, Robert T., [redacted]
Riggs, Ronald M., [redacted]
Riley, John S., [redacted]
Roberts, Clayton J., [redacted]
Roberts, Herbert R., [redacted]
Roberts, Steven, [redacted]
Robinson, Bruce E., [redacted]
Roedy, William H., Jr., [redacted]
Rogers, Ralph G., [redacted]
Roland, James N., [redacted]
Rold, Ronald L., [redacted]
Rolf, Lynn W., Jr., [redacted]
Romano, Frank, III, [redacted]
Rorick, Kurt W., [redacted]
Rosati, Cesare F., [redacted]
Rose, William F., Jr., [redacted]
Rosenblum, David C., [redacted]
Ross, Victor L., [redacted]
Rozman, Thomas R., [redacted]
Rundle, Michael R., [redacted]
Rushfeldt, James L., [redacted]
Russ, Michael B., [redacted]
Rutledge, Richard L., [redacted]
Rutler, Randall C., [redacted]
Ryan, Harry M., III, [redacted]
Ryan, Jerryl N., [redacted]
Ryan, John B., [redacted]
Ryan, Robert F., III, [redacted]
Ryder, Charles W., III, [redacted]
Saari, Gerald O., [redacted]
Sabia, Giacomo R., [redacted]
Santangelo, Francis A., Jr., [redacted]
Saunders, William A., Jr., [redacted]
Sauter, Louis F., III, [redacted]
Schaf, Robert L., [redacted]
Schafer, Charles P., [redacted]
Schall, Bruce L., [redacted]
Schilling, Dan E., Jr., [redacted]
Schmidt, Jeffrey A., [redacted]
Schmidt, Thomas C., [redacted]
Schmidt, William P., [redacted]
Schneider, Michael E., [redacted]
Schroeder, David E., [redacted]
Schwaderer, Stephen F., [redacted]
Schweninger, Elmer W., [redacted]
Sculley, Patrick E., [redacted]
Seaman, Frank E., [redacted]
Sebastian, Nicholas H., Jr., [redacted]
Secrest, Thomas L., [redacted]
Seifert, Harold J., [redacted]
Selby, Edwin D., [redacted]
Self, Marvin S., [redacted]
Selge, Paul E., [redacted]
Senor, John G., III, [redacted]
Severson, Jonathan E., [redacted]
Shadid, Theodore M., Jr., [redacted]
Shadis, Thomas A., [redacted]
Shary, John H., III, [redacted]
Shaw, Dan D., [redacted]
Shiely, Albert R., III, [redacted]
Short, Michael N., [redacted]
Shull, John F., [redacted]
Sidio, Jerome B., [redacted]
Siegesmund, Rudolf O., [redacted]
Sigmund, Robert L., [redacted]
Sikes, Randall A., [redacted]
Smith, Brian M., [redacted]
Smith, David C., [redacted]
Smith, Edwin K., III, [redacted]
Smith, Gregory E., [redacted]
Smith, Jack M., [redacted]
Smith, Joel D., [redacted]
Snider, James R., [redacted]
Snider, Richard O., [redacted]
Snow, Michael D., [redacted]
Sobul, Anthony W., Jr., [redacted]
Soucek, Paul D., [redacted]
Spear, Bruce L., [redacted]
Spears, Ronald E., [redacted]
Spinney, George M., [redacted]
Spivy, Peter B., [redacted]
Spracher, William C., [redacted]
Squires, William H., Jr., [redacted]
St. Denis, Richard H., [redacted]
Stadelnikas, Joseph R., [redacted]
Stahlak, Roger F., [redacted]
Stainback, David A., [redacted]
Stall, Christopher M., [redacted]

Starner, Steven G., [redacted].
Steele, Gary R., [redacted].
Steidel, Thomas C., [redacted].
Steinfeld, Howard M., [redacted].
Stetor, John M., [redacted].
Stevens, Shelby T., [redacted].
Stewart, Robert M., [redacted].
Stidd, John A., [redacted].
Stockton, Douglas E., Jr., [redacted].
Stockwell, Vernon R., Jr., [redacted].
Strom, Stephen H., [redacted].
Studer, Eugene A., [redacted].
Sullivan, James P., Jr., [redacted].
Sumner, Lester F., [redacted].
Swain, Stephen J., [redacted].
Swanda, Donald F., Jr., [redacted].
Sweet, Erick W., [redacted].
Swingle, Gary R., [redacted].
Tam, Gilbert K. T., [redacted].
Taylor, Michael R., [redacted].
Taylor, William C., [redacted].
Terranova, Frank A., Jr., [redacted].
Terrill, William L., Jr., [redacted].
Terry, Paul D., Jr., [redacted].
Terry, Philip E., [redacted].
Thibodeau, Richard E., [redacted].
Thomas, Gary, [redacted].
Thomas, Kenneth L., [redacted].
Thomas, Robert G., [redacted].
Thompsen, Charles R., [redacted].
Thompson, Carey G., [redacted].
Thompson, Kenneth P., [redacted].
Thompson, Russell S., [redacted].
Thomson, Robert P., [redacted].
Thornton, Patrick T., [redacted].
Tierney, Terence J., [redacted].
Todd, Loren L., [redacted].
Townsend, Ira K., [redacted].
Trammel, David W., [redacted].
Treat, Terry J., [redacted].
Trivette, William S., [redacted].
Troxell, Jeffrey R., [redacted].
Tully, Lewis A., [redacted].
Valbracht, David C., [redacted].
Valliere, James B., [redacted].
Van Vliet, John H., III, [redacted].
Vann, William N., Jr., [redacted].
Varnell, Davd F., [redacted].
Veenstra, John A., [redacted].
Velez, Carlos R., Jr., [redacted].
Vermillion, John M., [redacted].
Vernon, James C., [redacted].
Verrochi, Lawrence R., Jr., [redacted].
Viehl, Philip C., [redacted].
Vogt, William J., II, [redacted].
Vuksich, Gregory D., [redacted].
Wagener, Charles K., [redacted].
Wagner, David W., [redacted].
Wagner, Robert W., [redacted].
Walker, Robert O., [redacted].
Walker, Thomas G., [redacted].
Wallis, Robert A., [redacted].
Wallis, William L., [redacted].
Walrod, Larry D., [redacted].
Walton, Robert A., [redacted].
Ward, Edward P., [redacted].
Ward, James R., [redacted].
Waters, William S., [redacted].
Watkinson, William P., [redacted].
Wattendorf, William J., [redacted].
Weaver, Thomas W., [redacted].
Webb, Gregory R., [redacted].
Wehrle, Dennis F., [redacted].
Wehrle, Joseph H., Jr., [redacted].
Weisman, Leonard E., [redacted].
Wells, John C., [redacted].
Wennerberg, Richard A., [redacted].
Werner, Robert, Jr., [redacted].
Wesbrook, Stephen D., [redacted].
Wessels, William R., [redacted].
Wetherill, Robert S., [redacted].
White, David D., Jr., [redacted].
White, Frederick E., [redacted].
White, Joseph L., [redacted].
White, Lawrence K., Jr., [redacted].
Whitlock, Frank P., Jr., [redacted].
Wilkins, Gary G., [redacted].
Wilkins, Lawrence B., [redacted].
Williams, Bristol W., Jr., [redacted].
Williams, Dennis E., [redacted].
Williams, Richard L., [redacted].
Williams, Ross C., [redacted].
Williamson, Ray T., [redacted].
Wilson, Steven D., [redacted].
Wimberly, Gary V., [redacted].
Wise, Richard W., [redacted].
Wittmayer, Chris G., [redacted].
Woloski, John C., [redacted].
Wood, Gerald L., [redacted].
Wood, Stephen J., [redacted].
Woythal, Jeffrey P., [redacted].
Young, David J., [redacted].
Young, John R., [redacted].
Young, Mason J., III, [redacted].
Young, Robert N., [redacted].
Young, Robert S., [redacted].
Young, Terry J., [redacted].
Zeper, Bernard A., [redacted].
Zilian, Frederick, Jr., [redacted].
Zimon, Henry A., [redacted].
Zoeller, Jack C., [redacted].
Zolidis, Michael J., [redacted].
Zollo, Robert A., [redacted].
Zychowicz, Ralph C., Jr., [redacted].

CONFIRMATIONS

Executive nominations confirmed by the Senate March 13 (legislative day March 12), 1970:

U.S. Marshals

Arthur F. Van Court, of California, to be U.S. marshal for the eastern district of California for the term of 4 years.

Carl H. Slayback, of Illinois, to be U.S. marshal for the Southern District of Illinois for the term of 4 years.

Department of Defense

Theodore C. Marrs, of Alabama, to be Deputy Assistant Secretary of Defense for Reserve Affairs.

Federal Deposit Insurance Corporation

Frank Wille, of New York, to be a member of the Board of Directors of the Federal Deposit Insurance Corporation for a term of 6 years.

Department of Transportation

Robert H. Cannon, Jr., of California, to be an Assistant Secretary of Transportation.

U.S. Coast Guard

The following-named officers of the Coast Guard for promotion to the grade of rear admiral:

James A. Palmer
Ellis L. Perry
John F. Thompson, Jr.
Edward D. Scheiderer
Albert A. Heckman

The following-named officer to be a member of the permanent commissioned teaching staff to the Coast Guard Academy as a professor in the grade of captain:

Otto E. Graham, Jr.

Public Printer

Adolphus Nichols Spence II, of Virginia, to be Public Printer.

U.S. Air Force

Lt. Gen. John W. Carpenter III, [redacted] FR (major general, Regular Air Force), U.S. Air Force, to be placed on the retired list in the grade of lieutenant general, under the provisions of section 8962, title 10, of the United States Code.

U.S. Army

The U.S. Army Reserve officers named herein for promotion as Reserve commissioned officers of the Army, under provisions of title 10, United States Code, sections 593 (a) and 3384:

To be brigadier general

Col. Charles P. Deane, SSAN [redacted], Infantry.

Col. Herbert M. Martin, Jr., SSAN [redacted] Artillery.

Col. John A. Spencer, Jr., SSAN [redacted] Quartermaster Corps.

Col. Donald W. Stout, SSAN [redacted], Quartermaster Corps.

The Army National Guard of the United States officer named herein for promotion as a Reserve commissioned officer of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3385:

To be brigadier general

Col. Keith E. McWilliams, SSAN [redacted] Infantry.

The Army National Guard of the United States officers named herein for appointment as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3392:

To be major general

Brig. Gen. James J. Lison, Jr., SSAN [redacted] Adjutant General's Corps.

Brig. Gen. Harold R. Patton, SSAN [redacted] Adjutant General's Corps.

To be brigadier general

Col. Howard V. Elliott, SSAN [redacted] Corps of Engineers.

U.S. Navy

Rear Adm. Frederick H. Schneider, Jr., U.S. Navy, having been designated for commands and other duties determined by the President to be within the contemplation of title 10, United States Code, section 5231, for appointment to the grade of vice admiral while so serving.

In the Environmental Science Services Administration

The nominations beginning Archibald J. Patrick, to be commander, and ending Lester B. Smith, Jr., to be ensign, which nominations were received by the Senate and appeared in the Congressional Record on February 27, 1970.

In the Army

The nominations beginning Arlo E. Abbott, to be colonel, and ending Marsha M. Jones, to be captain, which nominations were received by the Senate and appeared in the Congressional Record on Feb. 16, 1970; and

The nominations beginning Donald Aguilar, to be 2d lieutenant, and ending Ronald M. Zychowski, to be 2d lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on February 19, 1970.

In the Navy

The nominations beginning William K. Adkins, to be ensign, and ending John A. Balikowski, to be a permanent lieutenant and a temporary lieutenant commander, which nominations were received by the Senate and appeared in the Congressional Record on February 16, 1970;

The nominations beginning Charles D. Allen, Jr., to be captain, and ending Lucy A. Job, to be commander, which nominations were received by the Senate and appeared in the Congressional Record on February 20, 1970; and

The nominations beginning Edward Stephen Amis, Jr., to be lieutenant commander, and ending John R. Stein, to be ensign, which nominations were received by the Senate and appeared in the Congressional Record on March 3, 1970.

In the Marine Corps

The nominations beginning Robert V. Anderson, to be colonel, and ending Jack R. Zellich, to be major, which nominations were received by the Senate and appeared in the Congressional Record on February 24, 1970;

The nominations beginning Elmer R. Jackson, to be 2d lieutenant, and ending Douglas G. Wilson, to be 2d lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on February 24, 1970; and

The nominations beginning Peter A. Acly, to be 1st lieutenant, and ending William H. Ganz, to be captain, which nominations were received by the Senate and appeared in the Congressional Record on March 3, 1970.