To arrest this trend, it is vital that Congress do its part to insure a budget that at the very least will not stimulate inflation through deficit spending. The net result of congressional budget cuts in 1969 is a decrease in fiscal 1970 expenditures of only $400 million. But increases in fixed-cost items will claim at least $4 billion more than the official estimates made last April. Together, these items are enough to put the budget surplus originally forecast—and urgently needed for stabilizing the economy—in serious jeopardy.

Now that the President has analyzed the situation and made his stand clear, I would like to see the Senate recommit the HEW appropriation to the conference with instructions to make reasonable cuts in lower-priority programs, thus bringing the appropriation closer into line with the HEW budget request and putting the Congress on record in support of the administration's anti-inflationary drive. The parliamentary situation requires me to vote against the conference report in order to have the bill recommitted.

At the same time that programs of lesser priority are reduced, I would like to see the conferees restore the modest $25 million requested by the President to develop innovations in elementary and secondary schools and $9.3 million for the Teacher Corps. Health, Education, and Welfare Secretary Robert Finch informs me that such innovative programs are a key to reversing the dangerous decline of our public school systems.

In supporting recommital of the HEW appropriation, I am mindful of the fact that the President has pledged to veto the bill as it now stands on anti-inflationary grounds. Should such a veto be overridden by the Congress, the President has indicated that he would be obliged for anti-inflationary reasons to delete funds from those sectors of the HEW budget where he retains the discretion to do so.

I am informed that such an offset would prevent the Department from making any further discretionary loans or grants for the remainder of the fiscal year, no matter how urgent they might be. And even having taken that extreme action, only a half of the inflationary increase now under challenge would actually be offset. The consequences to high-priority programs, such as medical research, health services, air pollution, rehabilitation services and other vital HEW-supported activities are simply unacceptable to our Nation.

The task that now lies ahead for the Congress and the administration presents us with a high challenge. We must find the means of achieving our unmet social goals while preserving the basic integrity of our economy.

This means that outworn programs will have to be phased out, that the most stringent economies will have to be practiced to insure full value for the Federal dollar and that the basis of earlier strategic concepts that govern military outlays will have to be closely re-examined in the light of current national defense requirements. Only through these hard choices can we finally succeed in providing a better life for our people.

SUPREME COURT NOMINATION—EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting the nomination of George Harrold Carswell, of Florida, to be an Associate Justice of the Supreme Court of the United States, which was referred to the Committee on the Judiciary.

NOMINATION OF JUDGE CARSWELL TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. GURNEY. Mr. President, I understand that the Senate has just received from the President the nomination of Judge Harrold Carswell, of the Fifth Circuit Court of Appeals, to fill the vacancy existing on the Supreme Court.

I point out that Judge Carswell is a resident of the State of Florida. As a matter of fact, it was at my suggestion that the President last year nominated Judge Carswell for his present post on the Fifth Circuit Court of Appeals.

I cannot think of anyone that the President of the United States could have nominated that would be a more distinguished jurist or would make a better Supreme Court Justice than would Judge Carswell.

Judge Carswell has spent almost his entire career in the Federal judicial system. He was a U.S. attorney, having been appointed in 1953 by President Eisenhower. He held that post for 5 years. He was the youngest U.S. attorney.

In 1958 he was appointed to be a Federal judge in Florida. At that time he was the youngest Federal judge in the United States. He served in that post with distinction for more than 11 years.

I understand, from checking with lawyers and jurists recently, that in the 7 months he has served on the Fifth Circuit Court of Appeals he has continued to add to his distinction as a Federal jurist.

The President has made an excellent nomination. I believe that when the Judiciary Committee and the Senate examine the record of Judge Carswell, they will agree that he will make an eminent jurist and will be a credit to the Supreme Court of the United States.

APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR, AND HEALTH, EDUCATION, AND WELFARE, AND RELATED AGENCIES, 1970—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13111) making appropriations for the Departments of Labor, and Health, Education, and Welfare, and related agencies for the fiscal year ending June 30, 1970, and for other purposes.

Mr. MILLER. Mr. President, earlier this afternoon I had a colloquy with the manager of the pending conference report, the distinguished Senator from Washington. I attempted to shed some light on certain aspects of the problem relating to the budget which I am sure have troubled not only me but also a good many other Members of the Senate, members of the press, and members of the public.

My friend, the distinguished Senator from Washington, provided for the RECORD a tabulation entitled, "Actions on Budget Estimates of the 91st Congress, first session, as of December 20, 1969," which shows that the budget requests considered by the Senate totaled $135.2 billion and that the amounts approved by the Senate were reduced to $130.3 billion.

The amounts agreed to in conference were reduced further to $129.6 billion, leaving a savings of $5.6 billion.

That did not ring true with what I had understood to be the budget picture. I attempted to point out that when we compare the action by the Nixon administration on the original Johnson budget, as President Johnson was leaving office early last year, a subsequent action by the Nixon administration, and a further subsequent action by the Nixon administration, all calculated to reduce the budget, it appears that the Nixon administration had cut spending considerably.

Then to come along and suggest that Congress had cut that amount by another $5.6 billion just did not make sense to me.

My friend, the Senator from Washington, assured us—and as I said earlier, I am sure he was quite sincere—that the figures which appear on the table which he provided for the RECORD represent a final figure on budget askings by the Nixon administration.

With all due deference, I must say that I do not believe the people have a complete picture. It is true, I am advised, that these do represent the final budget askings by the Nixon administration, or by the agencies of the Nixon administration. However, there are two points to be made. First, the Nixon administration, or at least some agencies of the Nixon administration, and especially the Department of Defense, without formal action on the budget requests, initiated action to cut spending by a good many billions of dollars.

So, the budget actually, as far as spending action was concerned, had already been cut by the time action was taken on the formal budget requests by the Appropriations Committee.

So, if we look only at the formal budget requests and forget about the initiatives taken by the Defense Department to cut $5 to $6 billion, we will not get a correct picture.

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

Mr. MILLER. Mr. President, I will be happy to yield to the distinguished Senator from Maryland. However, I want to complete the picture first.

The people would not obtain a correct impression as far as the true action by the Nixon administration is concerned. We have to differentiate between formal budget requests on the one hand, which are represented by the table, and the actual budget actions by the Nixon administration, which is really what counts.

Second, I have here the 1970 Budget Scorekeeping Report, Staff Report No.

that the great powers cooperate as closely as possible in finding some way to quiet down the continuing crisis of the Middle East. I do not believe that we and the other powers should seek to impose a solution entirely against the will of either of the parties, but I do believe that cooperation between the great countries with interests in the area can do much to bring about a solution.

In that connection, I was amazed and disappointed to learn of the actions of the French Government in making jet fighters available to Libya, more or less behind the back of the United States. I do not believe this action represents a good-faith attitude on the part of the French toward either the United States or the citizens on both sides of the Middle East conflict.

Recently, our Government has attempted to assume an even-handed approach toward both the Israelis and the Arabs. Actions such as that of France make our position almost untenable, for it threatens the balance of power which is the basis for what little stability there is in the area.

On Sunday, January 25, President Nixon took a stand behind Israel as one of our friends in the Middle East. In light of the French action in making additional armaments available to one side, the President could not have done otherwise. The President pointed out that our Nation does not intend to negotiate or impose the terms of peace, but that we do have interests in seeing that a durable and fair settlement is reached. We also have an interest in seeing that we are not brought directly into the conflict and I am sure this is the President's overriding concern. Certainly it should be for I am absolutely convinced that we cannot afford to be drawn into this conflict directly on the side of either party.

JUDGE CARSWELL SHOULD NOT TAKE A SEAT ON THE SUPREME COURT

Mr. PROXMIRE. Mr. President, soon this body will be faced with a momentous vote—a vote that may well have a profound influence on the direction of Supreme Court decisionmaking for years to come. Within the next few weeks we will decide whether President Nixon's latest Supreme Court nominee, Judge George Harrold Carswell, will follow in the footsteps of the last Nixon nominee, Judge Clement Haynsworth, or will take a seat on the Nation's highest judicial tribunal.

In my view it is not enough for a Supreme Court Justice to have no strikes against him. He must have a positive record of distinction. He must be among the very top in the legal profession. He must have demonstrably high intellect and understanding. Does Judge Carswell measure up?

What do we know of Judge Carswell? We know that he made a blatantly racist speech in seeking public office back in 1948—and lost the election. We know that when the Republicans took office in 1953 Judge Carswell, who was a Democrat for Eisenhower in 1952 and whose father-in-law was a major contributor to the Republican Party, became a U.S. district attorney in Tallahassee. We know that in 1958, after his change in party from Democratic to Republican, Judge Carswell was named to a district judgeship. And, finally, we know that President Nixon elevated Judge Carswell to the Fifth Circuit Court of Appeals last June—perhaps with the knowledge that by so doing he was strengthening Mr. Carswell's credentials for an appointment to the Supreme Court.

Judge Carswell's credentials, then, are distinguished by their mediocrity. They show the heights which an average intellect can reach by riding the coattails of political favoritism. For Judge Carswell owes everything he has achieved as a lawyer and judge to the Republican Party. This is not to condemn Judge Carswell. Surely party affiliation does play a part in the selection of Federal judges. However these facts should give us pause for reflection when we are considering Judge Carswell's appointment to the Supreme Court. They should alert us to the need for taking a particular careful look at Judge Carswell's performance on the Federal bench.

The most intense interest has, naturally, focused on Judge Carswell's civil rights opinions. Have his views really changed since that 1948 speech? This has been the most controversial area of legal conflict within his jurisdiction if not within the United States generally. It is an area that will receive continuing scrutiny by the Supreme Court, whose opinions over the next few years may well determine the quality of life in this country for black and white alike.

Regretfully Judge Carswell's civil rights record has been less than distinguished. It is true that he has not given expression to the racist doctrine he espoused when running for public office in 1948. But of four Carswell civil rights cases appealed to the fifth circuit when he was a district judge, three were reversed. I believe it is fair to question a judge's skill in interpreting the law when he is reversed by a higher court in more than 50 percent of his cases.

Perhaps an even more disturbing phenomenon, however, because it goes beyond interpreting the law, has been Judge Carswell's habit of delaying civil rights litigation as long as possible. For example in Steele against Leon County Board of Education, a school desegregation case, plaintiff filed a motion for further relief on May 7, 1964. On May 26, Judge Carswell sustained defendant's objections to the raising of questions looking into teacher segregation. No further hearings were ordered before school opened. On January 20, 1965, the school was found to be in compliance with certain 1963 orders. In February of 1965, plaintiffs filed a further motion for hearings. After a series of legal maneuverings the court reaffirmed a denial of plaintiff's motion for further relief. Finally, on January 18, 1967, the circuit court remanded the case for further consideration in light of its decision in U.S. against Jefferson County Board of Education—tantamount to a reversal. Finally, after almost 3 years, the Carswell court granted the relief sought. This dilatory behavior in civil rights cases, where justice delayed is certainly justice denied—in this instance for 3 school years—casts serious doubt upon Judge Carswell's judicial temperament.

In a study done as a Yale Ph. D. dissertation in 1966 by Mary Hannah Curzan, Judge Carswell was found to be one of a group of 10 southern judges whose civil rights decisions merited them the segregationist label. This label was applied, by the way, to only one-third of the southern judges whose civil rights decisions were analyzed.

Finally there is the 1948 speech which received so much attention. It is good that Judge Carswell has repudiated that speech. But his admission that the speech, at least in part, was an opportunistic effort to combat the campaign rhetoric of a more conservative opponent should make us ask ourselves whether Judge Carswell does, indeed, have the judicial temperament. I, for one, believe that a man's ways of thought and action are pretty well fixed by the age of 28.

There are other indications that Judge Carswell's career has lacked distinction. His opinions have been characterized as reading like plumbers' manuals. They are short and mechanical. When asked by the Justice Department for a list of his legal articles, he responded that he had written none. He has shown a predilection for dismissing cases without considering them on the merits. Since 1968, higher courts have reversed him five times for not having evidentiary hearings on such cases.

Mr. President, the Supreme Court is a coequal branch of the Government. The nine men that serve on the Court are considered to be as important to the well-being of our Nation as the 535 Members of Congress—as important as the executive branch with its hundreds of thousands of employees. The Court can overrule the President and the legislature. It is the final repository of knowledge when it comes to interpreting the Constitution of the United States.

For all of these reasons, and because the members of the Court do not serve at the pleasure of the voters or the party in power, we must set exacting standards for Supreme Court nominees. We must make sure they are men not only of the highest moral fiber, but of the highest intelligence. The nominee we consider this month may play a part in setting the tone of the Court's decisions for the next 25 years.

Today, more than ever before, we need men of distinction on the Supreme Court. We need men of great intelligence and vision. In a changing world we need men with flexible minds—men who can acclimate themselves to changes within society—men who look to the future as well as the past. Last week President Nixon said in his state of the Union address:

> In times past, our forefathers had the vision but not the means . . . let it not be recorded that we were the first generation that had the means but not the vision.

I have regretfully come to the conclusion that Judge Carswell does not have the means or the vision to serve effectively on the Supreme Court. Thus, I must oppose his nomination. I will vote

against Judge Carswell for the Supreme Court because Supreme Court appointees should meet a standard of excellence. And Carswell does not. I could forgive a Supreme Court nominee for past errors or indiscretions, but for a record of unbroken mediocrity I cannot.

THE PRESIDENT'S VETO OF THE LABOR-HEW APPROPRIATION BILL

Mr. HANSEN. Mr. President, during the next 24 hours we will be hearing a lot of plaintive noise about education. Those who want to override President Nixon's veto of the Labor-HEW appropriation bill will claim that it destroys our last great chance to educate America's youngsters.

This is the sheerest nonsense.

What this particular bill does is to provide an extra $200 million a month to perpetuate and increase waste in our educational system. Worse than that, it will actually force waste on our educators.

The extra billion dollars contained in this appropriation bill carries with it a mandatory feature. It has to be spent. The administration has no choice but to dole it out—immediately. It has to be spent within the next 5 months.

I plan to vote to sustain the President's veto. Had this situation arisen back in July or August of last year, my decision would have been a great deal tougher than it is now. Six or seven months ago, it is entirely possible that this extra billion dollars could have been spent usefully during this school year. School officials would have had time to develop sound and workable plans for spending it. There would have been time to review those plans and to assess them properly and to gage with some hope of accuracy their effects on the total education needs of the community.

As it is now, that billion-dollar bonanza will have to be spent hurriedly and without proper planning There will be no time for assessment. No time for review. The theme will be to spend, and spend in a hurry.

As to the allegation by some school officials that they had been planning on this money and that they will now have to cut back without it, that, too, is sheer nonsense.

The only school funds these officials could count on in their planning for the school year 1969–70 were the funds provided in the budget. This extra billion dollars was added long after the school year had begun, long after planning had been completed.

What this extra billion amounts to for the educators is a windfall that they can hurry out and spend. We will witness a spending spree that will pump an extra $200 million a month into our education economy. Not much of it will ever teach one child how to read better, how to write better, or how to prepare himself better to meet life in these United States.

I ask unanimous consent that two articles dealing with this subject be printed in the RECORD.

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

[From the New York Times, Jan. 27, 1970]

IN THE NATION: THE EDUCATION BOONDOGGLE

(By Tom Wicker)

WASHINGTON, January 26.—"I am afraid," said a Democratic head-counter recently, "that we have enough votes to override."

He was referring, naturally, to the H.E.W. appropriations bill, which President Nixon has decided to veto; and he meant that it looked to him as if the Democratic Congress could and would pass it even over the veto. The question was whether or not it would be good politics to do so.

The measure contains $1.3 billion more than Mr. Nixon had asked for; hence, he has labeled it inflationary. This is a peculiarly Nixonian way of looking at it, because the same Congress that added the $1.3 billion reduced all the fiscal 1970 appropriations bills by a net of about $5.6 billion, including a cut of more than $5 billion in the Pentagon appropriation.

It is not yet clear what will happen on the revenue side of the budget, although the Administration still is shooting for a surplus. The $1.3 billion in additional education funds conceivably could result in a small deficit over-all, but not many economists would maintain that a billion dollars either way will have a $200-billion budget and a trillion-dollar economy.

Given Mr. Nixon's dominance of the airwaves, however, and the obvious public concern over high prices, high interest rates and high taxes, the Democrats may have a hard time convincing anyone other than the so-called education lobby and the convinced liberals, that they, and not the President, are acting responsibly.

PROBLEM FOR DEMOCRATS

About all the Democrats can do is to make their usual claim that they care more about social issues than the Republicans do. But not only is there no Democratic leader as imposing as a President to make the claim; there also is some question whether that kind of thing wins as many votes as it once did. There is the likelihood, too, that to the extent Mr. Nixon is persuasive in calling the H.E.W. bill inflationary, even some supporters of education expenditures may conclude that this is a time to cut back.

One particular aspect of the measure illustrates best the political fraudulence on both sides of the argument. This is the $600 million included in the Democratic bill for the program ungrammatically called "impacted aid"—that is, Federal assistance to certain school districts to help them bear the impact of the children of Federal employes on their educational costs.

Every President since Dwight Eisenhower has recognized this as what H.E.W. Secretary Robert Finch recently called a "direct boondoggle," but nothing has been done because it benefits without any restriction 375 of the 435 Congressional districts—including some of the wealthiest areas of the country. Montgomery County, Md., a Washington suburb, got $5.8 million from this program last year, although its median household income is almost twice the national average.

Mr. Nixon asked in his budget for only $202 million for impact-aid. By holding the appropriation for it to something like that figure, the Democratic Congress could have reduced by about a third the overage that Mr. Nixon objects to as inflationary. That would have weakened the case for a veto and protected the more vital programs covered by the bill.

Mr. Nixon's agents are now busily assuring members of Congress that if they vote to sustain the veto of the whole appropriation, the President will consent to a separate bill that would continue the impact-aid pork barrel at a level above $400 million.

RIDICULOUS IS THE WORD

The whole thing is a ridiculous way to do business with anything so important—and at the moment so beset with difficulties—as the American education system. It is ridiculous that seven months into the fiscal year, when it is already time to start work on next year's appropriation, this one has not yet been made. It is ridiculous that the most heavily burdened political office in the world does not have the right of item veto. It is ridiculous that the greatest nation in history finances its highest purposes piecemeal and without any real comparison of the values involved. (Who is vetoing the SST? And who votes $600 million for the impact-aid boondoggle and only $717 million for elementary and secondary schools?)

And the most ridiculous thing of all is that the public that suffers insists so little on sensible change.

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

HILL DEBATE OVER VETO SHOULD FOCUS ON HEW BILL'S WASTEFUL DEFECTS

(By Frank Mankiewicz and Tom Braden)

It will be unfortunate if the debate over President Nixon's veto of the Health, Education and Welfare appropriation turns only on the issue of inflation. High HEW officials are anxious that the occasion be used to strike a major blow at what is wrong with our schools.

The President's veto is courageous, since it pits him against one of the nation's most powerful lobbies, and is risking the chance that he will be called "anti-education" by his own Silent Majority. But it will be even more courageous if Mr. Nixon chooses to tell the truth about this bill, which is that like much of the money we spend on education, it allocates resources to the wrong places and does little or nothing for our children, the quality of whose education seems to deteriorate in direct proportion to the money spent on it.

The HEW bill, asking for one billion more educational dollars than the President budgeted, is only part of what the government spends on education, but it reflects What is wrong with the whole.

$400 million extra goes to so-called "impacted areas." These are school districts with a high percentage of federal employees. But only those who actually live on federal land penalize the local schools (they don't pay property taxes)—and they are too few to justify the windfall.

Thus in Fairfax County, Virginia, a booming Washington bedroom community, $229,000 will go to school districts in lieu of taxes for federal employees who live on federal installations. But more than $10 million will be paid for "off base" children, whose parents own property, pay taxes and contribute to the general business expansion.

A truly scandalous increase is $200 million in funds for vocational education. A sounder move would have been to strike out the more than $200 million already in the bill.

The vocational education program is the most entrenched of the school lobbies, dating back to the early years of the century, and consists largely of the purchase of shop equipment and the training of students for long-vanished jobs.

The increase in Title I funds is at least arguable, but even here, the President has sound reasons for a veto based on educational grounds. Title I money is supposed to be spent on the direct benefit of poor children. But in the South as well as the North, educational administrators have swindled the Congress and the taxpayers by withholding from these children ordinary

years 1966 and 1967, approximately 49 percent of the Government contracts were production contracts and 51 percent were research and development contracts.

An example of the type of improvement to Government's owned facilities is the Flow Coat Building addition to an existing Government-owned building (Plant 3) at Bethpage. Construction started in February 1966, and the total cost was $856,000. The Government obtained title to the one-story building, which is 120 feet wide and 280 feet long. All aluminum and titanium parts that are to be chem-milled go through the chem-mill clean line and the flow coat room prior to chem-milling. The Flow Coat Building also provides for the honeycomb final panel and cleaning and sonic test for all programs requiring honeycomb bonding. See pages 17 and 18 for pictures of this facility. Other facility acquisitions at Bethpage and Calverton are listed in appendix II to this report.

The basis for the Navy's acquisition of industrial facilities seems to be the Secretary of the Navy Instruction 4860.41 dated May 15, 1958. Naval Air Systems Command Instruction 4862.2 dated April 25, 1968, which implements the Secretary's instruction, allows contractors to finance leasehold improvements to Government-owned realty provided that (1) the amount charged to Government contracts does not exceed those amounts equal to acceptable depreciation methods, (2) the estimated useful life is determined without regard to the period of the lease, (3) in the event of termination of the right to use the Government property, or termination of any related supply contracts, or subcontracts, the Government shall not be charged directly or indirectly for any unamortized portion of the cost of the improvements, and (4) title to all improvements will vest in the Government upon completion of the leasehold improvements.

Grumman also has under construction contractor-funded leasehold improvements to Government-owned facilities. As of November 30, 1968, the final cost for these projects was estimated at $823,000, of which $155,000 was for Bethpage and $668,000 was for Calverton. Costs incurred to November 30, 1968, were $235,000.

ACQUISITION OF ADDITIONAL FACILITIES AT NAVY INDUSTRIAL RESERVE ORDNANCE PLANT

The General Electric Company operates the Navy's Industrial Reserve Ordnance Plant which is made up of three main buildings at Pittsfield, Massaschusetts. Since 1963, the buildings have been used primarily in the development and manufacture of highly sophisticated fire control and guidance systems for the Polaris/Poseidon program under Navy contracts.

Since January 1, 1966, the Navy has acquired $1.7 million worth of facilities through rearrangement and improvement projects. Officials of the Naval Ordnance Systems Command and the Strategic Systems Project Office informed us that none of these acquisitions were included in their appropriation requests for facilities.

For example, during 1966 the Naval Ordnance Systems Command entered into two agreements which permitted General Electric to incur costs of almost $1 million for the construction of a second-level of finished office space within the buildings. These agreements allowed the contractor to amortize the cost over a 5-year period by including the costs as overhead expenses in Government contract proposals for supplies and services. The primary reason for constructing these offices was that they were required for personnel connected with the Polaris/Poseidon program.

NOMINATION OF JUDGE G. HARROLD CARSWELL TO THE SUPREME COURT

Mr. TALMADGE. Mr. President, the Georgia State Senate, now in session in Atlanta, has transmitted to me a copy of a resolution adopted by that body on January 21, urging the confirmation of the nomination of Judge G. Harrold Carswell to the Supreme Court of the United States.

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

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

A RESOLUTION

Commending President Richard M. Nixon for nominating the Honorable G. Harrold Carswell to the Supreme Court of the United States, and urging Senators Russell and Talmadge to confirm the nomination; and for other purposes.

Whereas, President Richard M. Nixon has appointed the Honorable G. Harrold Carswell to the Supreme Court of the United States; and

Whereas, in addition to possessing the finest legal and personal capabilities and qualities, the Honorable G. Harrold Carswell has many ties with the State of Georgia; he was born in Irwinton, Georgia and he attended the public schools in Irwinton, Bainbridge and Atlanta before entering the University of Georgia and graduating from Mercer University's Walter F. George School of Law in Macon in 1948; and

Whereas, his father—George Henry Carswell—was a member of the Georgia General Assembly for more than 30 years and at one time was President of the Senate; he was also Georgia's Secretary of State from 1928 to 1931, before his unsuccessful campaign for Governor against Senator Richard B. Russell; and

Whereas, it is only fitting and proper that President Nixon be commended for his excellent choice, and that Senator Richard B. Russell and Senator Herman E. Talmadge be urged to confirm the nomination of the Honorable G. Harrold Carswell to the Supreme Court of the United States.

Now, therefore, be it resolved by the Senate of Georgia that this Body hereby commends President Richard M. Nixon for his excellent choice in nominating the Honorable G. Harrold Carswell to the Supreme Court of the United States.

Be it further resolved that this Body urges Senator Richard B. Russell and Senator Herman E. Talmadge to confirm the nomination of the Honorable G. Harrold Carswell.

Be it further resolved that the Secretary of the Senate transmit a copy of this Resolution to President Richard M. Nixon, Senator Richard B. Russell, Senator Herman E. Talmadge and the Honorable G. Harrold Carswell.

ARREST OF LEADERS OF SAIGON STUDENT UNION

Mr. FULBRIGHT. Mr. President, I have received a letter from Mr. Charles F. Palmer, president of the U.S. National Student Association, concerning the arrest by the Thieu government of 15 leaders of the Saigon Student Union, an organization which had recently expressed publicly its support for the peace efforts of American students.

I have asked the Department of State for a full report on the incident. In view of the general public interest in the political situation in Vietnam, I believe that this incident will be of interest to Senators and other readers of the RECORD. I ask unanimous consent that the letter and related material from Mr. Palmer and my letter to Secretary Rogers about the matter be printed in the RECORD at this point.

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

U.S. NATIONAL STUDENT ASSOCIATION,
Washington, D.C., January 7, 1970.

Hon. J. WILLIAM FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: On November 10th I released to the press a letter I had received from Nguyen Van Quy, the President of the Saigon Student Union, expressing support for the peace efforts of American students. At that time, we contacted members of your staff and those of several other members of the Congress, in an effort to get assurances for the safety of these brave students. We were given commitments that you and the others would do everything in your power to insure their safety.

On December 27th Nguyen Van Quy and fourteen other leaders of the Saigon Student Union were arrested at a student song performance. The terms of their arrests are still unclear, as is their present whereabouts. In the opinion of the people we have contacted in Vietnam, as well as the experts in this country, they were arrested for their criticism of the Thieu government.

Yesterday I received the attached communications from Saigon. I think it is self-explanatory. These students are in tremendous danger if something is not done soon to guarantee their safety.

I am therefore requesting that you issue a strong statement protesting the actions of the Thieu government in arresting these students, and that you do everything you can to raise the issue publicly. Second, I would like to request that you hold hearings on the treatment of students and other dissenting groups in Vietnam.

Finally, I cannot stress too much how important it is that you act quickly. These students have done a courageous thing, something which I doubt either of us would do. They are now suffering the consequences. Please act.

Sincerely,

CHARLES F. PALMER,
President.

SAIGON STUDENT UNION,
October 11, 1969.

The PRESIDENT,
U.S. National Student Association,
Washington, D.C.

MR. PRESIDENT: For the purpose of furthering understanding among the students around the world we would be delighted if you would assist us in getting our sincere greetings to the students and people of the United States.

We profoundly admire and are greatly affected by your sincere love of peace and your great efforts in that struggle. The demands of American students and people are also the deepest, most sincere and demanded aspirations of ourselves. They have long been nourished in all Vietnamese students and people.

In comparison with other countries of the world our Viet Nam, our beloved country, is a small, but its suffering has been great. Our history is one of continuous struggle of

NOMINATION OF JUDGE G. HARROLD CARSWELL TO THE SUPREME COURT

Mr. GURNEY. Mr. President, President Nixon is fulfilling another promise to the American people—his promise to restore balance to the Supreme Court and to appoint a Justice who will "strictly interpret" the Constitution.

The nomination of Judge G. Harrold Carswell is being acclaimed by people throughout the United States, who recognize and appreciate the President's determination to carry through with this important obligation.

Editorials from newspapers across the Nation attest to the support Judge Carswell is receiving. I ask unanimous consent that a sampling of the editorials be printed in the RECORD.

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

[From the Akron Beacon Journal, Jan. 21, 1970]

THE SUPREME COURT APPOINTMENT

Our Knight Newspapers colleagues in Tallahassee and Macon give Judge G. Harrold Carswell the highest marks for character and they are in a position to know what kind of man he is, for he was born near Macon and has lived in Tallahassee since 1949.

Chosen by President Nixon to fill the vacancy on the Supreme Court, Carswell has a background of Navy service in World War II, four years of private law practice, five years as U.S. attorney for Northern Florida, 11 years as a federal district judge and slightly less than seven months as a judge of the Fifth Circuit Court of Appeals.

In view of this record, the nominee would appear to be amply qualified as far as experience is concerned.

As to participating in decisions involving companies in which he owned stock—the issue raised against Judge Clement F. Haynsworth Jr.—Carswell has the perfect answer to Senate inquisitors. He doesn't own any stock. Or bonds, either. He does own some real estate, and his wife owns some shares in her father's crate factory, but these holdings are unlikely ever to figure in litigation before the Supreme Court.

Carswell's friends say he fits the President's widely-advertised specifications calling for a "strict constructionist" in interpreting the Constitution. Some Senators may object to the nomination on this score, but they surely will find themselves in the minority in the vote on confirmation unless more relevant grounds for rejection turn up in the meantime.

If our Florida and Georgia conferees aren't being carried away by pride in a hometown boy, Carswell will be a credit to the Supreme Court.

[From the Columbus Dispatch, Jan. 21, 1970]

NOMINEE TO SUPREME COURT

Initial reaction to the nomination of Harrold Carswell to be an associate justice of the United States Supreme Court must be based on only one criterion—he must be fair. No more. No less.

We urged this requirement before President Nixon vainly sought Senate appproval of Clement Haynsworth to fill that still vacant ninth chair of the nation's highest tribunal.

While we expect there will be some opposition—no nominee could possibly satisfy everyone— to Mr. Carswell, there seems little probability he will run into the same buzzsaw that cut down Mr. Haynsworth.

Mr. Nixon has said he believes the Supreme Court should "strictly interpret" the Constitution in all its deliberations. And he has said he agrees with the late Mr. Justice Frankfurter that our Congress should have great leeway in writing our laws and that the Supreme Court should be very conservative in overthrowing a law passed by the elected representatives of the people.

Mr. Carswell has described his own judicial philosophy this way: "A judge is neither pro nor con. I want to approach the law fairly."

We can ask no more.

Simple fairness in interpreting our laws should bring a badly needed balance to our highest court which has been criticized for being legislative rather than judicial.

We do not want a Supreme Court labeled either too conservative or too liberal. We want judges to be fair and honest, who follow no particular social or political philosophy.

We need a high court which will protect the rights of the body politic as a whole.

[From the Orlando Sentinel, Jan. 23, 1970]

CARSWELL'S NOMINATION

Everything we know about Judge G. Harrold Carswell of Tallahassee indicates President Nixon made the right choice in nominating him for the U.S. Supreme Court.

Some nit-picking has begun already about his stand on civil rights issues, but an examination of Carswell's record shows he has followed integration rulings of higher courts. The charge that he is anti-civil rights cannot be justified.

Floridians are proud, not only because Nixon selected one of our number for the highest bench in the land, but because he picked a man with the temperament and judicial ability of Harrold Carswell.

The Fifth Circuit Court of Appeals judge is an outstanding example of an independent jurist who hews to the law and is ruled by it rather than by his own emotions or ideas.

Called a moderate-conservative, Carswell is just that in politics. But trying to pin a label on him where judicial decisions are concerned is impossible.

As one of his friends said, where civil rights cases are involved, he pleases neither black nor white. This indicates his impartiality more than anything which can be said.

Putting Harrold Carswell on the Supreme Court will help give more balance to that body. His nomination should certainly be confirmed by the U.S. Senate.

[From the Cincinnati Enquirer, Jan. 21, 1970]

JUDGE CARSWELL UP

In choosing Judge G. Harrold Carswell of Tallahassee, Fla., to fill an eight-month-old vacancy on the U.S. Supreme Court, President Nixon indicates that he has not retreated from his concept of what a Supreme Court justice should be—or of the niche the court itself should occupy in U.S. political life.

Judge Carswell, who has served since last spring on the U.S. Court of Appeals for the Fifth Circuit, prudently refrains from categorizing himself. But those who have assessed his service on the bench since President Eisenhower named him a Federal district judge a dozen years ago characterize him as one who believes that the Constitution should be applied, insofar as possible, as it is written, not as we might be tempted to wish it had been written.

Judge Carswell becomes, accordingly, the very kind of jurist Mr. Nixon pledged to appoint to the Supreme Court.

"The question," Mr. Nixon declared during the 1968 campaign, "is whether a judge in the Supreme Court should consider it his function to interpret the law or to make the law. Now it is true that every decision to some extent makes law; however, under our Constitution the true responsibility for writing the law is with the Congress. The responsibility for executing the law is with the executive, and the responsibility for interpreting the law resides in the Supreme Court.

"I believe," Mr. Nixon concluded, "in a strict interpretation of the Supreme Court's functions. In essence this means I believe we need a court which looks upon its function as being that of interpretation rather than of breaking through into new areas that are really the prerogative of the Congress of the United States."

There is a substantial body of opinion, of course, that differs with Mr. Nixon's view of the Supreme Court and its role. Many of its spokesmen, we may be certain, will challenge Judge Carswell's projected elevation to the Supreme Court just as they opposed the President's earlier effort to appoint Judge Clement F. Haynsworth Jr. to the court.

But Judge Carswell appears to be devoid of business interests of the sort that became a convenient handle for Judge Haynsworth's opponents.

The fact, moreover, that the Senate saw fit to confirm Judge Carswell last year for elevation to the Fifth Circuit Court of Appeals means that its members cannot, with any consistency, find him suddenly unfit.

We foresee for Judge Carswell a long, useful and constructive career on the nation's highest tribunal.

[From the Milwaukee Sentinel, Jan. 21, 1970]

YEARS ADDED

The most significant difference between President Nixon's new Supreme Court justice nominee and the one who was rejected is age.

Judge G. Harrold Carswell of Tallahassee, Fla., named to fill the seat vacated by Justice Abe Fortas, is 50. Judge Clement F. Haynsworth Jr., whose nomination was rejected by the Senate last year, is 56.

Thus, looking at it from an actuarial standpoint, the replacement of Haynsworth with Carswell represents a probable gain of six more prime years of judicial service and voting on the side of strict constitutional construction.

This is an advantage that the opponents of Haynsworth hardly had in mind when they trumped up their case against him. Nevertheless, the effect of their rejection of Haynsworth may be to give the Supreme Court a half dozen extra years of representation from a justice who appears to be of similar philosophy.

This was, of course, to be expected. Mr. Nixon was bound to look for a like candidate, with the exception that this one would not be vulnerable to specious charges of the appearance of a conflict of interest because of large investment holdings.

Those who are determind to keep the Supreme Court prejudiced toward socialism and the welfare state may try to thwart Mr. Nixon's appointment again. But it appears unlikely that they will be able to muster a majority against the nomination a second time, particularly if nothing in Carswell's record gives renegade Republicans the slightest excuse to vote against him.

At last, it appears, the will of the people, who did vote for change in 1968, including restoration of a better balance on the Supreme Court, stands to be more nearly realized.

[From the Chicago Today, Jan. 21, 1970]

NEW SUPREME COURT CHOICE

Since the Senate's rejection of F. Clement Haynsworth of South Carolina, a new question has to be asked about any Presidential nominee to the Supreme court: Whether he's going to make it. In the case of Judge G. Harrold Carswell of Tallahassee, that can be answered with a great deal of confidence. He'll make it.

Carswell, 50, has been a federal judge since 1958 and a judge of the 5th circuit Court of Appeals since last summer. He appears to meet all the qualifications President Nixon wanted without rubbing any of the senatorial nerves that were so jangled by Haynsworth. The administration apparently checked his background with an electron microscope to make sure of that.

Carswell is known as a "strict constructionist" in interpreting the Constitution. In its best sense, the phrase means a judge who refuses to make the Constitution a vehicle for his own views, and that's the meaning that seems to apply to Carswell. His record in civil rights indicates that he does not try to "use" the Constitution, either for or against the civil rights cause; he has followed Supreme court interpretations without trying to break new ground.

That won't make him popular with liberals, but it makes him just right for Mr. Nixon's strategy of giving the court a more conservative tinge while making the south feel wanted again.

In a refreshing contrast to Haynsworth and former Justice Abe Fortas, Carswell owns no stocks or bonds at all—his holdings seem to consist of his house and some inherited land. So he should have no worries about confirmation on the score of possible "impropriety"—and that's about the only one that counts.

In temperament and philosophy, Carswell appears to fit in admirably with Nixon's first Supreme court nominee, Chief Justice Warren E. Burger. With them on the bench, the "activist" approach of finding new ways to apply the Constitution is in for substantial changes.

THE ALCOHOLISM EPIDEMIC

Mr. HUGHES. Mr. President, it is understandable that Americans have differences of opinion about the conduct of the war in Vietnam. It is incredible that we cannot agree to face realistically the alcoholism epidemic in this country, which costs us more lives each year than Vietnam and untold billions of dollars in economic and social destruction.

If we were willing to spend a tenth of what we spend on Vietnam to save people from dying of a controllable disease and from causing wholesale slaughter on our highways, we could work miracles toward meeting this problem.

An article published in the National Enquirer of February 1, 1970, graphically describes one aspect of the problem of Alcoholism, U.S.A. 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 AUTOMOBILE AND THE ALCOHOLIC—SURVEYS REVEAL THAT ALCOHOLICS DRIVE ONE MILE OUT OF EVERY 10 DRIVEN AND CAUSE 37 PERCENT OF FATAL ACCIDENTS

One out of every 10 miles driven on the road is driven by an alcoholic. And it is the alcoholic—not the casual social drinker—who frequently gets involved in car crashes causing death, his own and other people's.

These frightening facts, little understood until now, have been brought out in recent studies.

One study was made by Dr. Melvin L. Selzer, a physician and teacher of psychiatry at the University of Michigan Medical School. Another comes from Dr. Julian Waller, also a physician, who was formerly associated with the California Department of Public Health's Division of Alcoholism. Currently he teaches at the University of Vermont College of Medicine.

Dr. Walter said in a recent interview: "Because driving after drinking is common, it has been widely assumed that most highway crashes are the result of social drinking. Laboratory experiments show that some persons begin to be adversely affected by the equivalent of only one drink, say two ounces of 100 proof alcohol.

"But evidence of high alcoholic concentrations shows that most people who have highway incidents after drinking are not mere social drinkers, but problem drinkers.

"In California, we found that almost 75 percent of severe and fatal accidents in which the principals had been drinking involved alcoholics or people with drinking problems.

"In studies we made in cooperation with the California Division of Motor Vehicles and the courts, we estimated that at least 650,000 alcoholic persons drive. This represents 6.5 percent of the state's 10,000,000 drivers. But we found that they actually drove 10.4 percent of the mileage driven in California in a year.

"This means one mile in 10 is driven by an alcoholic.

"I see no reason why our findings cannot be applied across the nation. It can be assumed that alcoholics form quite a considerable proportion of the national driver population and account for a still higher proportion of miles driven."

Dr. Selzer declared, "Contrary to popular belief, most alcoholics avoid solitary drinking and will weave their intoxicated way long distances to enjoy drinking companionship."

Slogans, billboards, and the usual cautions against driving while under the influence of alcohol are useless with these people, he asserted.

"Many alcohol-involved traffic mishaps and violations are incurred by alcoholic persons whose abnormality immunizes them against the usual educational appeals and legal devices intended to curb intoxicated driving."

Asking why such drivers were not stopped before they could harm themselves and others, Dr. Selzer and his investigators learned of almost incredible attitudes:

"The alcoholic fatality drivers in this study often drove in an intoxicated state, a fact known by their families, their friends and, not infrequently, by local police officers.

"In two cases, our interviewers were told by family members that the deceased alcoholic driver had often driven because he was 'too drunk to walk.'

"Families are often fearful of calling the police because a high-speed pursuit may result which increases the likelihood of a serious accident. Two of the alcoholic fatality drivers were killed during such pursuits.

"There is also the unpleasant possibility that no one cared very much—and that consciously or unconsciously, the alcoholic's demise was not unwelcome. Given the hostility that the alcoholic's drunken behavior often engenders, particularly in family members, this possibility cannot be discounted."

Dr. Selzer does not go along with the sometimes-heard theory that alcohol, releasing tensions, allows people to drive better than they would without it.

He noted, "Ethyl alcohol, the essential ingredient in beer, wine and whiskey, is classified pharmacologically as a volatile anesthetic. Two other drugs in this group are ether and chloroform.

"Since alcohol is essentially an anesthetic, even small amounts may impair driving ability and judgment. This is often accompanied by a feeling of well-being and an illusion of increased competence.

"Furthermore, alcohol depresses the higher brain centers, often permitting behavior that would otherwise be suppressed or deferred until better judgment prevailed."

Dr. Selzer took note of the many taverns and bars along the highways, usually reachable only by car.

Then he examined the personality of the problem drinker. He said, "The alcoholic is basically egocentric and self-centered. This egocentricity may have the quality of an absolute conviction of omnipotence and invulnerability.

"One need not elaborate on the menace posed by an intoxicated individual with these characteristics seated behind the wheel of an instrument as potentially lethal as an automobile.

"In addition, many alcoholics are chronically depressed. A sense of loneliness, sadness and futility are often present. The facade of joviality and gaiety which the alcoholic may wear bears no relationship to the depth of the underlying depression.

"A disproportionate number of suicidal gestures and attempts have long been observed in the alcoholic population.

"Psychoanalytic theory regards alcoholism itself as an unconscious form of self-destruction.

"Finally, the alcoholic is said to be chronically hostile.

"Hence we see the alcoholic described as having underlying feelings of omnipotence, invulnerability, chronic rage, depression, and self-destructiveness. To this can be added the effect alcohol has on driving ability and judgment, plus the realization that there are some 5,000,000 alcoholics in the country—and one can appreciate the need to further investigate and rehabilitate the alcohol-addicted driver."

Selzer's major study, reported in Behavioral Science of January 1969, concerned the 96 drivers who were judged by police to be responsible for 96 fatal traffic accidents resulting in 117 deaths, all in Washtenaw County, Mich., from late 1961 to the end of 1964.

Of the drivers, 71 died and 25 survived.

It was established by questioning relatives, friends and survivors that 36 of the drivers were known to be alcoholics.

The study summed up, in Dr. Selzer's words:

"In the present study, 37 percent of the fatal accidents were caused by alcoholics.

"It appears that a relatively small group of drivers accounts for an excessive number of fatal accidents," Dr. Selzer said.

"Since it is unlikely that the alcoholic driver can resolve his emotional or drinking problems unaided, he will remain a traffic menace unless his alcoholism is treated.

"The need for developing effective and enforceable means of detecting and rehabilitating alcoholic drivers is obvious."

Dr. Selzer cited other studies whose results back up his own findings about alcoholic drivers.

He said a study of convicted drunken drivers in Sweden showed that of 1,956 such drivers, 72 percent had a blood alcohol level of 0.15 percent or higher at the time of arrest—or enough to make a difference in reaction time—and 45 percent of them were known alcoholics.

Additionally, 58 percent had committed earlier traffic violations, often serious ones.

An Ontario, Canada, study showed that 98 alcoholics, compared with the general driving population, accounted for 2½ times as many accidents as normal drivers.

The Ontario alcoholics also had nine times as many convictions for drunken driving and six times as many license suspensions.

A BRILLIANT NEW PRESIDENT FOR DARTMOUTH COLLEGE

Mr. McINTYRE. Mr. President, I want to add my voice to the many voices of the educational community, the Dartmouth alumni and student body, the

Mr. BYRD of West Virginia. Mr. President, I move that the Senate resume the consideration of legislative business.

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

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

Mr. THURMOND. Mr. President, I would like to call the attention of the Senate to a recent letter to the editor of the Washington Post concerning the nomination of Judge Carswell for Associate Justice of the Supreme Court. It reads in part:

> In a decade when substantial numbers of cases before the Supreme Court will involve civil rights, school desegregation and the like, it seems to me to be sheer insanity to place on the bench a man who in a normal trial situation would be subject to disqualification from hearing a case because of his partiality.

Mr. President, unfortunately the position taken in this paragraph is typical of that currently being adopted by many opponents of the President's nominee. Judge Carswell has repudiated without qualification his campaign rhetoric of 28 years ago and most fairminded persons are convinced of his sincerity.

What bothers the professional liberals is not that they think the judge may be biased or prejudiced against the case of forced integration in the South, Mr. President; nor are they content with mere impartiality on that issue. Rather, they will apparently be satisfied with no less than a man whose record and background assures them that he will be 100 percent committed to their philosophy and their own views of what the Constitution means when the issue is brought before the Court.

In this country we have a right to insist that our judges be absolutely fair in the disposition of cases before them. They should be in a position to hear a case with an open mind and to render a decision on the basis of their interpretation of the applicable law, unswayed by effects of background or personal prejudice.

Mr. President, Judge Carswell has shown a large majority of the members of the Judiciary Committee that he possesses these qualifications. He was approved today by the Judiciary Committee by a 12 to 4 vote with one abstention. Moreover, he has convinced the President and the American Bar Association that he is a man of integrity and professional competence, and this should not be taken lightly.

The writer alleges, as do many others, that Judge Carswell "would be subject to disqualification—because of his partiality." Mr. President, I have never heard any of these same people contend that Mr. Justice Marshall should disqualify himself in cases involving Negro rights. As we know, he was for many years the chief advocate for the NAACP. Indeed, he argued the original 1954 desegregation case before the U.S. Supreme Court on their behalf.

What about Mr. Justice Douglas on cases involving antiwar protests or draft resisters? His views on this subject are well known and widely publicized. Former Justice Goldberg was a prominent and successful labor lawyer before his elevation to the Court. Were there any claims from these people that this should prevent him from being confirmed? I did not hear any.

Mr. President, just as we expect our judges to be fairminded and reasonable, so should we likewise be fair with them. Let us give Judge Carswell a resounding vote of confidence when we confirm him within several weeks. We will be rendering a great service to our Court and to the country as well.

PRIVILEGE OF THE FLOOR DURING THE CONSIDERATION OF CERTAIN RESOLUTIONS TODAY

Mr. BYRD of West Virginia. Mr. President, during the afternoon the Senate will be considering various money resolutions on the calendar.

I would ask the Chair to instruct the Sergeant at Arms to require staff members who are on the floor to stay in their seats at the rear of the Chamber.

I recognize that when the various money resolutions come before the Senate, a great number of technical personnel and staff members will be required to assist their Senators at the time their respective resolutions are being considered.

I would suggest that the Sergeant at Arms—and I would hope that the Chair would so instruct him—keep off the floor staff members who are not at the particular time needed by their Senator to discuss the specific funding item for their committee. They may stay away from the lobby and may sit in the staff gallery until the resolution is before the Senate in which their Senator is interested and concerned, and when the Senator needs their help, they can then come to the floor.

I believe it would be deleterious to the decorum of the Senate if all staff members involved in the consideration of all the resolutions which will come before the Senate were to be permitted to come to the floor or remain in the lobby at one and the same time.

The PRESIDING OFFICER. The point is well taken and the Chair so instructs the Sergeant at Arms, in accordance with the request of the distinguished Senator from West Virginia.

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLEN in the chair). Without objection, it is so ordered.

ORDER FOR CALL OF THE CALENDAR AT CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the conclusion of morning business today, the Senate proceed to the call of the calendar under rule VIII, beginning with Calendar No. 659.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT OF DIRECTOR OF THE BUREAU OF THE BUDGET

A letter from the Director, Bureau of the Budget, Executive Office of the President, reporting, pursuant to law, that a detailed discussion of the limitation on budget outlays in fiscal year 1970 is found in the 1971 Budget of the United States (pages 46–50); to the Committee on Appropriations.

REPORT ON NUMBER OF OFFICERS ON DUTY WITH HEADQUARTERS, DEPARTMENT OF THE ARMY AND DETAILED TO THE ARMY GENERAL STAFF

A letter from the Secretary of the Army, transmitting, pursuant to law, a report on the number of officers on duty with Headquarters, Department of the Army and detailed to the Army General Staff on December 31, 1969 (with an accompanying report); to the Committee on Armed Services.

REPORT ON DEPARTMENT OF ARMY RESEARCH AND DEVELOPMENT CONTRACTS

A letter from the Deputy Assistant Secretary of the Army (R. & D.) transmitting, pursuant to law, a report on Department of Army Research and Development contracts, for $50,000 or more, which were awarded during the period July 1, 1969, through December 31, 1969 (with an accompanying report); to the Committee on Armed Services.

PROPOSED APPROPRIATIONS FOR CERTAIN MARITIME PROGRAMS OF THE DEPARTMENT OF COMMERCE

A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to authorize appropriations for certain maritime programs of the Department of Commerce (with accompanying papers); to the Committee on Commerce.

REPORT OF DISTRICT OF COLUMBIA ARMORY BOARD

A letter from the Chairman, District of Columbia Armory Board, transmitting, pursuant to law, a report covering the operation of the District of Columbia National Guard Armory and the Robert F. Kennedy Memorial Stadium, for the fiscal year ended June 30, 1969 (with an accompanying report); to the Committee on the District of Columbia.

REPORT OF UNITED STATES TARIFF COMMISSION

A letter from the Chairman, United States Tariff Commission, transmitting, pursuant to law, a report of the Commission for the fiscal year ended June 30, 1969 (with an accompanying report); to the Committee on Finance.

REPORT OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on questionable aspects concerning information presented to the Congress on construction and operation of the San Luis Unit, Central Valley project, Bureau

nomic matters. Their task would be to develop the social information needed, to speak for social needs in America, to provide for human problems the same background of detailed knowledge we already have on defense and economic questions.

It should be no discouragement to the Monterey servicemen to say that their spirit and dollars, however widely duplicated, will not prevail unless soundly directed. As will be discussed in another article, the sense of urgency they feel is the other ingredient generally missing from a mix that might lead to advancement.

[From the Washington Post, Jan. 7, 1970]

FEDERAL AGENCIES LACK PROPER DATA ON WHICH TO BASE SOCIAL POLICIES

(By Richard Harwood and Laurence Stern)

Joseph A. Califano Jr., once described by someone with a fine metaphorical sense as the Assistant President for Domestic Affairs in the Latter Johnson Era, related a minor irony of his White House days to a Senate subcommittee last month.

As the story went, one day at the White House former Secretary of Health, Education and Welfare John Gardner was asked what kind of Americans were on the receiving end of the $4 billion national welfare roll. Were they blind? Were they children? Were they alcoholics?

The nonplused Gardner confessed that neither he nor anyone else at HEW seemed to have any conception of what the breakdown looked like. Strange to say, it took two years to find out—from the summer of 1965 to 1967.

Of the 7.3 million people then on welfare, Califano told the Senators, "we found out to our amazement that we were dealing only with about 150,000 fathers, so to speak, adult males in the working level age, and of them about 100,000 were so incapacitated that they were beyond the ability to work or be trained."

This left a suspect population of 50,000 able-bodied males on the welfare lists—less than a tenth of one per cent of the total welfare population.

Of the remaining number 2.1 million were women over 65 (with a median age of 72); 700,000 were either blind or so severely handicapped that they couldn't work; 3.5 million were children not supported by their parents; 900,000 were mothers.

Sen. Walter F. Mondale (D-Minn.) reacted with what passes in the Senate for incredulity. Citing President Nixon's espousal of "workfare" as a sine qua non of his welfare program, Mondale observed: ". . . based on these statistics, conservatively 90 per cent of the people on welfare are not employable. They are senior citizens, disabled or they are mothers with large families."

"I assume," he continued, "this mythical, able but unwilling adult male free-loading on welfare is just that, a myth."

As with most friendly colloquies in Senate hearings, this was all aimed at proving a point: there is a towering ignorance in our national information centers of the facts upon which intelligent social policy can be based.

By illustrating, we know how many divorces there are each year. But what kind of marriages are there? We know how much we spend on elementary schools but what is a good second-grade program—and what kind of second grades, or 12th grades, do we have?

Why is it that hunger is suddenly discovered not as an aberration but as a widespread affliction in certain regions and classes of Americans? How can something as massive as an urban riot happen without depositing advance hints of the rising level of social combustion?

As Califano put it, "the disturbing truth is that the basis of recommendations by an American Cabinet officer on whether to begin, eliminate or expand vast social programs more nearly resembles the intuitive judgment of a benevolent tribal chief in remote Africa . . ."

Mondale has been conducting a personal crusade for a Council of Social Advisers which would have the ear of the President, like the Council of Economic Advisers and like the National Security Council. His bill would set up a national system of social accounts that would calculate, among other things, the effects of such vast federal programs as the Interstate Highway Act on metropolitan areas; the impact of federal mortgage policies favoring the segregated suburbs on the inner city; the degree of achievement in the classrooms.

Califano speaks admiringly of the Pentagon and its sophisticated information systems, its rational decision-making processes. Yet even these systems have brought us such things as the F-111, which loses wings in flight; the C-5A, which does its most spectacular soaring on the cost ledgers, and the war in Vietnam, which refuses persistently to end in victory.

There certainly can be little arguing with the case made by Mondale and Califano for a federal social accounting system—a way of measuring the quality of our institutions and lives.

But there is something a bit scary about the notion, too, a trifle Orwellian. Implicit in the measurement of quality is someone's determination of what is good. Each time the government learns something about our social condition it subtracts from our personal privacy.

The preservation of the village idiot is as much a mark of our freedom as the eradication of the empty belly.

[From the St. Paul Pioneer Press, Jan. 8, 1970]

COUNCIL OF SOCIAL ADVISERS

When the President and members of his Cabinet discuss fiscal and monetary matters, they have the advice of a prestigious group of experts who make up the Council of Economic Advisers.

There is no comparable body to advise on social problems. Senator Walter Mondale of Minnesota, and others in Congress, believe there should be. A Mondale bill calls for a National Council of Social Advisers to keep up a constant study of the total impact on society of various government programs, established to serve a real or imagined need, but often having unforeseen side effects.

Such a council might delve into the social effects of federal highway programs which disrupt urban neighborhoods and shake up development patterns in whole metropolitan areas. It might study the relation of federal mortgage insurance to inner city decay. It might help separate myth from fact in planning reforms of the welfare system. It could try to get an overall view of what is wrong with school systems in the racial ghettos.

There is a towering ignorance in government information centers of the facts upon which intelligent social policy can be based, says Mondale. Joseph Califano, an adviser to President Lyndon Johnson on many domestic matters, put it this way: "The disturbing truth is that the basis of recommendations by the Cabinet officer on whether to begin, eliminate or expand vast social programs resembles the intuitive judgment of a benevolent tribal chief in remote parts of Africa."

This situation exists partly because of an exaggerated national fear of "government planning," not entirely unjustified, of course. States rights philosophy also has retarded better national approaches to social problems such as welfare and the base migration of minority groups into big city concentrations in the past quarter century.

Not many years ago the Mondale proposal would have drawn only skepticism and sarcasm from the public and Congress. But in today's conditions it is at least getting sober consideration, although still considered by some as unnecessary or unrealistic.

Establishment of a Council of Social Advisers of course would not guarantee solutions of complex social problems, any more than the Council of Economic Advisers has completely solved fiscal and monetary problems. But in the latter case, Presidents, Cabinet members and Congress have had the benefit of intelligent, competent advice based on the most authoritative and reliable fact sources. No one would propose abolishing the Economic Council. It has proved its usefulness.

This experience suggests that the Mondale proposal is worth trying. Social problems are infinitely complex and still only vaguely understood. But on their solution or amelioration depends the future stability of America's democratic system of government. The very difficulties of the challenge call for new and special efforts to guide public policies intelligently. A National Council of Social Advisers would be a worthwhile experiment.

THE CASE AGAINST JUDGE CARSWELL

Mr. TYDINGS. I think it important for the average interested American citizen to know some of the reasons why a number of Senators, including myself, are opposing Carswell.

My opposition is not based on any speech or political views he may have had 22 years ago. Most men in public life change in 22 years. My opposition is based on Mr. Carswell's record as a trial judge—and a number of critical questions raised in the hearings which he has left unanswered. This record shows clearly that Mr. Carswell cannot separate his personal views and political prejudices from his conduct and decisions in court where civil rights and minority rights issues are concerned. Time after time where minority rights were concerned, he refused to uphold the laws of Congress, the rulings of his circuit, or the Supreme Court of the United States when the governing principles collided with his own basic prejudices.

He stalled school desegregation cases for years in his court.

He did not believe that black sharecroppers should be registered to vote so he aided and abetted local officials in their harassment of voting rights workers.

He was reversed by the court of appeals on minority rights cases time and again.

He deliberately set $15 filing fees in civil rights removal cases to his court ignoring a decision on the fifth circuit forbidding these filing fees.

He advised local officials of how to avoid and circumvent a decision of the fifth circuit, thus preventing nine ministers from having a hearing and guaranteeing them permanent criminal records.

He stalled and delayed hearings to release students improperly jailed in voting rights drive. And when he finally signed a writ of habeas corpus he cleverly signed a second order remanding the case so the local sheriff could rearrest them the moment they stepped out of jail.

There are many great southern judges and lawyers who are just as "strict a constructionist" as Mr. Carswell but whose records are clear and who are eminent constitutional lawyers and who have demonstrated that they are judi-

cious men able to give any man a fair and impartial hearing. Men like Judge Bryan Simpson of Florida, Judge Braxton Craven of North Carolina, Judge John D. Butzner and Judge Walter E. Hoffman of Virginia, Judge Frank Johnson of Alabama, Judge William E. Miller of Tennessee, Judge Robert A. Ainsworth and Judge John Minor Wisdom of Louisiana—lawyers like Lewis Powell of Richmond, Sam Ervin of North Carolina, L. Richardson Preyer of North Carolina, Ed Wright of Arkansas, and Stephen O'Connell, of Florida, former State Supreme Court judge and now president of the University of Florida.

These are men whose political philosophy you can differ with but whose nomination a fairminded Senator would support because you know above all else they possess judicial temperament—they are fair.

My feeling about Judge Carswell is supported by the testimony of great southern legal scholars like Prof. Von Alstyne of Duke who supported Judge Haynsworth but who said that in Judge Carswell's work "there is simply a lack of reasoning, care or judicial sensitivity overall," or Dean Pollak of Yale who said that in his judgment Carswell is the most undistinguished nominee for the Supreme Court in this century. The Supreme Court has enough problems today.

It is imperative that the man we confirm for life on our highest court is a man whose background and record is of the highest quality—not the most mediocre the President can get away with and still force his confirmation.

Mr. President, I ask unanimous consent that a memorandum of the Leadership Conference on Civil Rights relating to the Carswell nomination be printed in the RECORD.

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

THE CASE AGAINST JUDGE CARSWELL

After fifteen years on the Court, Mr. Justice Frankfurter summarized his view of the qualifications for a Supreme Court Justice:

"Human society keeps changing. Needs emerge, first vaguely felt and unexpressed, imperceptibly gathering strength, steadily becoming more and more exigent generating a force which, if left unheeded and denied response so as to satisfy the impulse behind it at least in part, may burst forth with an intensity that exacts more than reasonable satisfaction . . . A judge whose preoccupation is with such matters should be compounded of the faculties that are demanded of the historian and the philosopher and the prophet. The last demand upon him—to make some forecast of the consequences of his action—is perhaps the heaviest. To pierce the curtain of the future, to give shape and visage to mysteries still in the womb of time is the gift of imagination . . . [Judges] must have antennae registering feeling and judgment beyond logic let alone quantitative proof."

The record made before the Senate Judiciary Committee demonstrates that Judge Carswell has not grasped the lessons of history, does not comprehend the philosophy that underlies the Bill of Rights, and is insensitive to the demands that the future makes upon those shaping the present.

The inescapable truth is that Judge Carswell has no claim to distinction in any field. He was not a preeminent figure at the Bar in the mold of Brandeis, he has not been a major political figure in the mold of Hughes, he is not a scholar in the mold of Holmes, and he it not a great judge in the mold of Cardozo. He is instead, in the words of the deans of our two most respected law schools, a man who ". . . 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, and this century began as I reminded this committee with the elevation to the Supreme Court of the United States of the Chief Justice of Massachusetts, Oliver Wendell Holmes" (Dean Pollak of Yale), and a man with "a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the Court" (Dean Bok of Harvard).

Equally significant is the testimony of Professor William Van Alstyne of the Duke University Law School, a recognized authority on constitutional law. Professor Van Alstyne had testified before the Senate Judiciary Committee in support of Judge Haynsworth, finding him "an able and conscientious judge . . . [whose decisions] even in instances where I could not personally find agreement private or professional with a particular result . . . had been arrived at with reassuring care and reason." But, testifying in opposition to Judge Carswell, he stated that the latter's decisions reflected "a lack of reasoning, care, or judicial sensitivity overall . . . There is, in candor, nothing in the quality of the nominee's work to warrant any expectation whatever that he could serve with distinction in the Supreme Court of the United States."

Since the hearings on Judge Carswell, the faculty of a number of our leading law schools—Stanford, Harvard, Pennsylvania, and others—have opposed his nomination. Twenty Pennsylvania law school professors put their opposition in the following terms:

"Our examination of his opinions in various areas of the law compels the conclusion that he is an undistinguished member of his profession, lacking claim to intellectual stature . . . We submit that Judge Carswell has failed to exhibit those qualifications which the American people are entitled to expect of a Justice."

Even more compelling than the testimony of these distinguished scholars is the silence of Judge Carswell's supporters. Both supporters and opponents have searched Judge Carswell's decisions with diligence to find an opinion that improved or clarified the law in a significant way. Neither has found a single example worthy of mention to the Judiciary Committee. Even Professor James Moore of Yale, who keeps his treatise on Federal Practice up-to-date by following federal decisions with meticulous care, did not cite a single opinion of Judge Carswell as being particularly noteworthy.

Judge Carswell's utter lack of distinction is sufficient to require defeat of his nomination. The Court is not a training ground for the unproven. It is rather, in Chief Justice Taney's phrase, "Equal in origin and equal in title to the Legislative and Executive Branches of the Government." To such an exalted post Judge Carswell can lay no claim.

Judge Carswell's failure to meet the necessary professional attainments does not exhaust the case against him; it is only the beginning. There is much else in his record which disqualifies. As the Leadership Conference on Civil Rights told the Senate Judiciary Committee when the Judge was nominated for the Court of Appeals last year, "Judge Carswell has evidenced a strong bias against Negroes asserting civil rights claims and has been more hostile to civil rights cases than any other federal judge in Florida during his tenure as a district judge." That assessment was fully justified at the time it was made. Now additional evidence has come to light which makes Judge Carswell's hostility to civil rights incontrovertible—as we shall now demonstrate.

JUDGE CARSWELL'S DECISIONS IN THE AREA OF CIVIL AND INDIVIDUAL RIGHTS

The Leadership Conference on Civil Rights presented testimony to the Senate Judiciary Committee that Judge Carswell had been unanimously reversed fifteen times in civil rights and individual rights cases.[1] Far from negating this testimony, Senator Hruska's "Analysis and Comment," prepared in cooperation with the Justice Department, actually reveals that *there were seventeen cases in this category rather than fifteen.*

The Leadership Conference testimony made clear that the Court of Appeals for the Fifth Circuit had unanimously reversed eight of Judge Carswell's decisions in civil rights cases. Senator Hruska's attempt to answer this testimony by citing "Pro Civil Rights" and "neutral" cases cannot withstand analysis. We so demonstrate beyond peradventure of doubt in Appendix A hereto.

The Leadership Conference testimony also set forth seven habeas corpus and Section 2255 cases in which Judge Carswell had been unanimously reversed for refusing even to hear petitions clearly valid on their face. Senator Hruska's "Analysis and Comment" indicates that we missed two such cases, making a total of nine. Senator Hruska's reliance, to offset these nine reversals, on cases in which Judge Carswell was affirmed is wholly misplaced. Appendix B demonstrates that the law in this area was clear throughout the entire period of Judge Carswell's decisions, and that his reversal record which was in excess of 50%, demonstrates not only incompetence but a total lack of sensitivity to the rights of the individual.

JUDGE CARSWELL'S LACK OF JUDICIAL TEMPERAMENT

Judge Carswell's lack of judicial temperament is vividly shown by his hostile treatment of civil rights attorneys when they appeared in his court.

Norman Knopf, a young Justice Department attorney, who had worked in Florida as a volunteer in 1964, found "extreme hostility" between the judge and northern volunteers. He "lectured a civil rights attorney in a high voice a long time," Mr. Knopf said, denouncing lawyers who come down South to "rouse" the local people.

Professor Leroy Clark of New York University, who supervised the NAACP Legal Defense Fund litigation in Florida between 1962 and 1968, said of Judge Carswell, "he was probably the most hostile judge I've ever appeared before; he would rarely let me finish a sentence." He was "insulting" and "hostile" and even turned his back on Professor Clark when he was arguing a case. "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." Professor Clark prepared new lawyers for appearances before Judge Carswell by having them

[1] This compilation of 15 cases does not, of course, include *Gaines* v. *Dougherty Co. Board of Education*, 334 F. 2d 983 (1964), where Judge Carswell, sitting on the Court of Appeals by designation, dissented from the decision of Judges Tuttle and Wisdom ordering that the first, second, and twelfth grades be desegregated; *Martin-Marietta*, where Judge Carswell joined in refusing the grant of a rehearing *en banc* to consider the vital issue of discrimination on account of sex; and *Edwards* v. *State of Florida*, C.A. 1271 (N.D. Fla.), where, almost incredibly, he ignored a habeas corpus allegation that a guilty plea had been coerced.

go through their arguments the night before while he harassed them.

Professor John Lowenthal of Rutgers University testified that when he appeared before Judge Carswell to seek habeas corpus for civil rights workers, the Judge "expressed dislike at northern lawyers such as myself appearing in Florida, because we were not members of the Florida Bar." Members of the Florida bar were, however, unwilling to represent civil rights workers—nor, of course, did Judge Carswell offer to appoint local counsel, as he would have been empowered to do. Finally, attorney Ernst Rosenberger also described various measures taken by Judge Carswell without legal basis to obstruct civil rights workers and their counsel.

Judge Carswell's anti-civil rights bias is evidenced not only by the decisions to which we have already referred and by his hostility to civil rights lawyers, but also by his affirmative efforts to nullify the very rights which it was his sworn duty to uphold.

One such incident involved nine clergymen freedom riders arrested in the Tallahassee airport restaurant. Judge Carswell denied their petition for habeas corpus. The ministers appealed and the Fifth Circuit ordered the Judge to hold an immediate hearing if the State court did not do so. Judge Carswell told Mr. Rhodes, the city attorney, that "if you go ahead and reduce these sentences, then there will be no hearing, there will not be anything. It will be moot." The result was exactly what Judge Carswell sought: the sentences were reduced to the time already served and the clergymen were denied an opportunity to vindicate themselves by a State court judge who told them, "Now you have got what you came for. You have got a permanent criminal record."

The length to which Judge Carswell was willing to go to frustrate the invocation of civil rights may be best illustrated by *Wechsler* v. *County of Gadsden:*

An illegal filing fee was demanded before the petition for habeas corpus by a group of voting registration volunteers was accepted, contrary to *Lefton* v. *Hattiesburg*, 333 F. 2d 380 (C.A. 5).

The proceeding was delayed because the Judge required the petition to be resubmitted on a special form which had been designed for a different class of cases.

The proceeding was delayed further to secure the signatures of the prisoners although the attorney's signature was all that could be required under Rule 11 of the Federal Rules of Civil Procedure.

Judge Carswell told the attorneys representing the civil rights workers that he would try, if at all possible, to deny the petition.

When he finally granted the petition, as the law explicitly required, he violated 28 U.S.C. 1446(f) by refusing to have his marshal serve the writ.

Despite the complexity of the questions posed, without any request from the state and without affording the civil rights workers any hearing whatever, he remanded the case to the state court and made possible their immediate re-arrest.

Notwithstanding the congressional grant of a special right of appeal from civil rights remands, he even refused to stay his remand order, a decision promptly reversed by a single judge of the Fifth Circuit, which subsequently reversed him on the merits.

JUDGE CARSWELL'S PUBLIC STATEMENTS

In his fifty years only two public statements of Judge Carswell have come to public note. The first was in 1948.

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

This speech cannot be dismissed as youthful folly. Judge Carswell was not a callow youth at the time he spoke those words; he was 28 years old. This speech cannot be dismissed, as Judge Carswell attempted to do, on the ground that it was composed prior to *Brown* v. *Board of Education*. It was not simply an endorsement of the separate but equal doctrine of *Plessy* v. *Ferguson*, which would perhaps be understandable in light of the accepted legal doctrine of the day; rather it was an endorsement of "white supremacy," a legal doctrine that had been repudiated in 1868 with the adoption of the Fourteenth Amendment. The objection to Judge Carswell's speech is not that it failed to anticipate the *Brown* decision six years hence, but that he repudiated the principle of racial equality which had been part of the Constitution for sixty years. Nor can it be dismissed on the ground of necessity; the implication that a candidate could compete for public office only by race-baiting insults the intelligence and decency of millions of white Southern voters, and conveniently forgets the many honorable men who succeeded in Southern politics without descending to the depths reached by the 1948 Carswell speech. Finally, this speech cannot be dismissed on the strength of the Judge's recent repudiation of "racism." That repudiation came 22 years late and was not a voluntary action but rather was compelled by the fact that his statement had been exposed in the press and threatened his promotion to the Supreme Court.

The second Carswell statement is equally revealing. Two months ago, while addressing the Georgia State Bar Association, he told the following story: "I was out in the Far East a little while ago, and I ran into a dark-skinned fella. I asked him if he was from Indo-China, and he said, 'Naw, suh, I'se from Outdo' Gawgee.'" This is a crude play on the dialect attributed to Negroes with the purpose of designating them as inferior persons. It is not the humor of a man who has repudiated racism. It is not the humor of a man whose appointment will bring reassurance to those who hope for a peaceful reconciliation of the races based on trust in the law. Possibly Charles L. Black, Jr., Luce Professor of Jurisprudence at Yale Law School, best explained the significance of this Carswell story in his letter of February 10, 1970, to Senator Eastland:

"The 'darkie story' reported by Newsweek Magazine, evidence coming from only a few months ago, is the act of a man callous as if by instinct to the claims of Negroes to dignity; it brings to mind Plutarch's insight that one can often tell more about a man from some playful action of his than from his great public deeds."

JUDGE CARSWELL'S EVASIVENESS BEFORE THE SENATE JUDICIARY COMMITTEE

In 1956 Judge Carswell, then the United States Attorney in Northern Florida, participated as an incorporator and director in a project to change a municipal golf course into a private segregated golf course as a response to the decision of the United States Supreme Court in *Holmes* v. *Atlanta*, 350 U.S. 879 (1955), holding that a municipal golf course must desegregate, and to a pending case in the United States District Court for the Northern District of Florida, *August* v. *Pensacola* (1956), seeking the same relief. Newspaper accounts, affidavits presented to the Judiciary Committee, and the very timing of the action all make out a *prima facie* case of a conspiracy to violate 28 U.S.C. 241 or 242, see *United States* v. *Price*, 383 U.S. 787 (1966), and *United States* v. *Guest*, 383 U.S. 745 (1966). Thus, either Judge Carswell took part in the commission of a serious wrong, or at the least his lack of awareness of developments around him led him to place himself in a situation of conflict of interest relating to his ability to enforce the law. Neither speaks well of his allegiance to civil rights.

Judge Carswell's involvement in the golf course episode is serious in and of itself; his lack of candor in testifying on his role before the Senate Judiciary Committee is totally disqualifying.[2] There were seven discrepancies and misstatements in his testimony on this episode alone. Judge Carswell first denied and then admitted he was an incorporator of the golf course. Judge Carswell denied he was a director in the face of unanswerable documentary evidence to the contrary. He first denied familiarity with the articles of incorporation and then admitted he had read them before he signed them. He first said the venture involved "repairing the little wooden country club" and then admitted that "there would be things going on around the clubhouse." He denied "racial discrimination among the guests" although affidavits make the contrary wholly clear. He referred to the group he helped incorporate as a "defunct outfit that went out of business," when in reality it simply shifted from a profit to a non-profit corporation. He even said that he "read the story [of the golf course episode] very hurriedly," a wholly unbelievable statement in view of the fact that this episode threatened his nomination to the nation's highest legal office.

It is not only these discrepancies on the golf course episode that remain unanswered on the present record; there is also the testimony of the four responsible and well motivated lawyers who testified before the Senate Judiciary Committee as to Judge Carswell's hostility to civil rights lawyers and his extra-judicial anti-civil rights activities. Judge Carswell's letter concerning the testimony of these four lawyers is a model of evasion:

"Lawyers from all parts of the nation have practiced before me over the years without any suggestion of any act or word of discourtesy or hostility on my part notwithstanding assertions to the contrary. I emphatically deny such episodes on my part to those in civil rights litigation or any other, and this is fully supported by statements in the record by counsel in such cases."

Although Judge Carswell might wish to banish the testimony of these lawyers with the wand of these weasel words, he cannot do so. As one commentator put it, his carefully composed reply comes down to the point that there were no complaints against Judge Carswell except for the complaints.

CONCLUSION

We conclude, as we began, with the words of Justice Frankfurter: "Corruption from venality is hardly more damaging than a widespread belief of corrosion through partisanship. Our judicial system is absolutely dependent upon a popular belief that it is as untainted in its workings as the finite limitations of disciplined human minds and feelings make possible." Just three months ago, the Senate fulfilled its constitutional role as the defender of the integrity of the Supreme Court by rejecting Judge Haynsworth because his conduct gave the appearance of "corruption from venality." The record here demonstrates that Judge Carswell has been

[2] Judge Carswell has demonstrated an equal lack of candor in explaining his actions to the public through the press. Only last Friday, February 13, he "remained unavailable for comment" concerning the racial covenant on the land he joined in selling. Ever since the conclusion of his testimony on January 28, he has refused to explain not only his actions in the golf course episode, but also such other items as his large borrowings and his mistreatment of Civil Rights lawyers.

an undisciplined and injudicious judge who has championed the cause of those who still say "never" to equal rights for Negro Americans and who has been the antagonist of those who ask nothing more than a fair hearing, and a decision responsive to the ideal of equal justice under law.

As to civil rights, Judge Carswell is Judge Haynsworth with a cutting edge. Thus, this nomination threatens the Court with "corrosion through partisanship." At this critical juncture in our history, the threat posed by the nomination of Judge Carswell is even more serious than that posed by Judge Haynsworth's nomination. As Professor Black put it:

"The appointment of such a man would be a wrong to the Court, a wrong to the American people, and a bitter wrong indeed to the blacks of America. Like many others, I have publicly and privately exhorted them to trust to the law for redress of the horrible injustice they have suffered and still suffer. I will continue so to exhort them, whatever the event as to this nomination. But if this sort of judge is to be the sort of judge they will have to rely on in the last resort, I shall have some difficulty looking them straight in the eye as I speak."

APPENDIX A: JUDGE CARSWELL'S CIVIL RIGHTS DECISIONS

Senator Hruska's "Analysis and Comment" makes three points concerning the Leadership Conference's testimony on Judge Carswell's civil rights decisions: First, that the Leadership Conference did not adequately consider what he calls "Pro-Civil Rights" decisions; second, that the Leadership Conference did not adequately consider what he calls "neutral" civil rights decisions; and third, that the Leadership Conference included opinions as "Anti-Civil Rights" which should have been treated as "neutral." None of these points is well taken.

A. *Alleged Pro-Civil Rights Decisions.* At the time of the Leadership Conference testimony, the only case upon which Judge Carswell's supporters appeared to rely was the so-called "barber case," *Pinkney* v. *Meloy,* 241 F. Supp. 943 (1965). The Leadership Conference testimony made clear that this was not a "case" in any true sense, for both sides stipulated the two facts which demonstrated that the barber was covered by the Civil Rights Act of 1964. Senator Hruska's "Analysis and Comment" does not even attempt to answer the fact that the case was stipulated rather than decided.

The other seven cases relied upon by Senator Hruska can give him no greater comfort. We consider them one by one.

Brooks v. *City of Tallahassee,* 202 F. Supp. 56 (1961), is actually an anti-civil rights decision. There Judge Carswell refused to issue an injunction against a restaurant operator admittedly guilty of segregation in the operation of his restaurant at the City of Tallahassee Airport. As Professor Orfield indicated in his testimony to the Senate Judiciary Committee, "A violation of the Constitution apparently demanded more gentle treatment than a violation of a criminal statute."

But this was not the worst aspect of Judge Carswell's handling of *Brooks.* In the last paragraph of his opinion, Judge Carswell suggested that the city could legally avoid integration of the airport restaurant by closing it down. This paragraph of Judge Carswell's opinion in *Brooks* has been removed from the official report of his decision appearing in Volume 202 of the *Federal Supplement.* It does appear, however, in the original, unsanitized opinion reprinted in volume 6 of the *Race Relations Law Reporter,* a publication prepared under the auspices of the Vanderbilt University Law School, at pp. 1099 to 1101. The last paragraph reads in its entirety:

"Nothing contained in this order shall be construed as requiring the City of Tallahassee to operate under lease or otherwise restaurant facilities at the Tallahassee Municipal Airport. See *Boynton* v. *Virginia,* 364 U.S. 454 at 460.

"Done and Ordered in Chambers at Tallahassee this 17th day of October 1961."

Judge Carswell's gratuitous suggestion in *Brooks* is reminiscent of his proposal to City Attorney Rhodes in the clergymen case and his unsolicited remand in *Wechsler.*

Youngblood v. *Board of Public Instruction of Bay County, Florida,* 280 F. Supp. 74 (1964) is also an anti-civil rights decision. Judge Carswell allowed Bay County to use a pupil assignment system which was clearly unconstitutional and violated controlling precedents at the time it was given. The Fifth Circuit held in 1959 that a school board could not assign pupils to segregated schools and make them go through cumbersome reassignment procedures in order to transfer. *Gibson* v. *Board of Public Instruction of Dade County, Florida,* 272 F. 2d 763. The Fifth Circuit reaffirmed this position in 1960. *Mannings* v. *Hillsborough County, Florida,* 277 F. 2d 370, 372. In the face of these appellate decisions, Judge Carswell's decision in *Youngblood* clearly violated the law of his Circuit.

The Memorandum's praise of Judge Carswell, because he refused to adopt *Stell* v. *Savannah Chatham County Board of Education,* 220 F. Supp. 667, is relevant only for what it reveals of the views of the authors of the Hruska memorandum. Judge Scarlett in *Stell* permitted proof that black children were inherently inferior to white children in an effort, nine years after *Brown,* to persuade the Supreme Court to reverse itself. The suggestion that Judge Carswell should be praised for rejecting that decision and that the fact that he approved an illegal plan should be ignored shows how low the standard for appointment to the Supreme Court must be set to accommodate Judge Carswell.

Lance v. *Plummer,* 353 F. 2d 585 (1965), where Judge Carswell sat on the Court of Appeals by designation, simply highlights his own failure as a District Judge in *Due* v. *Tallahassee Theaters, Inc.* In the *Due* case, the Judge dismissed a civil rights complaint against two theater corporations, their managers, various city officials, and the City of Tallahassee, and granted summary judgment to the sheriff, all of whom the complaint alleged had conspired together to keep the movie theaters segregated. Judge Carswell was unanimously reversed by the Court of Appeals, 333 F. 2d 630 (1964). In the *Lance* case, on a similar complaint, Judge Bryan Simpson of the Middle District of Florida, after a full hearing, enjoined a group of sixteen restaurants and motels in St. Augustine, Florida, from refusing to serve blacks and further enjoined a local group from intimidating blacks attempting to utilize these facilities, as well as others with knowledge of his order. When the attorneys for the plaintiffs notified Judge Simpson that a local unsalaried deputy sheriff, Charles Lance, Jr., was continuing to intimidate blacks seeking service, Judge Simpson held he had actual knowledge of the injunction and found him guilty of contempt. The Court of Appeals, in an opinion by Chief Judge Tuttle, upheld Judge Simpson's action with a minor modification. Judge Carswell's failure to dissent can hardly reflect much credit on him when he had been reversed by the Court of Appeals for dismissing an almost identical complaint only a year before. What the *Lance* case really highlights is the difference in loyalty to the Fourteenth Amendment between Judge Carswell and his neighbor, Judge Simpson.

The Hruska memorandum then proclaims the existence of two more pro-civil rights decisions in the following cryptic sentence:

"In two unreported decisions, Judge Carswell enjoined restaurants from discriminating against Negroes. *Lamb* v. *Betts Big T* (1966); *Russell* v. *Ski Line Truck Center* (1969)."

One immediately wonders, since no details or language are given, whether parts of these decisions might reflect adversely on Judge Carswell. But even more significant is the fact that the Memorandum fails to deal in any way with, or even mention, Judge Carswell's other unreported decisions and actions. The Leadership Conference testimony made specific reference to these other unreported opinions in the following terms:

"It is an open secret in this town that there are unreported opinions and actions in the Department of Justice's files of the Civil Rights Division. Those files have never been made available to this committee. I suggest that every case which the Civil Rights Division had in front of Judge Carswell be read by some representative of this committee and be made available to the Civil Rights groups."

In the face of this, the Memorandum's utilization of two of these hidden cases without giving any details and without opening the full files on the other unreported cases can only be treated as an admission that the unreported decisions and actions add further to the anti-Carswell case.

The Hruska memorandum next refers to *Baxter* v. *Parker,* 281 F. Supp. 115 (1968), where a Negro plaintiff brought a civil rights action against the sheriff and deputy sheriff of Dixie County and the County Government alleging that the sheriff assaulted him. Judge Carswell denied the sheriff's motion to dismiss and directed the sheriff to file an answer. But what else could he do? There was no question whatever that the complaint was valid, *Monroe* v. *Pape,* 365 U.S. 167, and Judge Carswell's only alternative would have been to grant the motion to dismiss and invite the same summary reversal that occurred in *Due* v. *Tallahassee Theaters, Inc.,* 333 F. 2d 630 (1964). Only when one contemplates the twenty-two years of Judge Carswell's anti-civil rights speeches, activities, and decisions can it even begin to be comprehended how anyone could feel that this case reflected favorably upon him.

The last "Pro-Civil Rights" decision relied upon by Senator Hruska is *Robinson* v. *Coopwood,* 415 F. 2d 1377 (1969). But it is a clear case of grasping at straws to rely on Judge Carswell's failure to dissent from the following three-sentence per curiam:

"Per Curiam:

"The facts giving rise to this controversy and the reasons given by the district court for its decision are to be found in its published opinion in *Robinson* v. *Coopwood,* 292 F. Supp. 926. Under the particular facts and circumstances of this case, this Court has reached the conclusion that the judgment of the district court should not be reversed. It is, therefore,

Affirmed."

In summary, the so-called eight "Pro-Civil Rights" decisions break down as follows: two are actually anti-civil rights, two are unreported and nowhere explained, two could not be decided any other way, and two were simply failures to dissent on the appellate level where the trial judge had reached the obviously proper result.

B. *Ten Neutral Civil Rights Decisions.* Of the ten cases included in this category by the Hruska memorandum, four (*Wechsler, Steele* (*Leon County*), *Youngblood,* and *Wright*) are, as we shall show in the next section, clearly anti-civil rights decisions. The other six are cases in which Judge Carswell's rulings as a District Judge *against* the civil rights complainants were affirmed by the Court of Appeals, or cases in which Judge Carswell, while sitting on the Court of Appeals, joined in a unanimous decision with "liberal" circuit judges holding *against* a civil rights claim.

The Leadership Conference had not relied upon these six cases and could simply pass them by now. Since they have been put in issue by the Hruska memorandum, we desire to make one point about these cases, especially those where Judge Carswell, as a District Judge, ruled for the defendants in civil rights litigation. There is not the slightest evidence that his rulings would not also have been affirmed if he had ruled for the plaintiffs. In civil rights cases, as elsewhere, the District Judge has a large area of discretion in which either result reached would be affirmed by the Court of Appeals. In these so-called "neutral" cases, Judge Carswell used his discretion against the civil rights claims. Despite that fact, we have not included these cases in the anti-civil rights category, for there is a plethora of material without them.

It might be worth noting at this point, as the Leadership Conference testimony noted, that there is not a single case in which Judge Carswell went beyond the views of his fellow Southerners on the Court of Appeals in upholding a civil rights claim. One will look in vain in the Hruska memorandum or elsewhere for a single sentence or a single word in a Court of Appeals decision suggesting that Judge Carswell might have gone an inch too far in this area. On the contrary, all Judge Carswell's cases are ones in which he was reversed for not going far enough, or in which his decision against civil rights claims was upheld. In this context, affirmances of these additional anti-civil rights decisions can hardly be said to make them "neutral."

C. *Five Anti-Civil Rights Decisions.* The Hruska memorandum concedes five anti-civil rights decisions, four unanimous reversals in the Court of Appeals and a dissent by Judge Carswell sitting by designation on the Court of Appeals. The Hruska memorandum argues, however, that four cases of unanimous reversals by the Court of Appeals relied upon by the Leadership Conference are neutral rather than anti-civil rights because they were reversed on the ground of intervening decisions. As we shall show, however, Judge Carswell's decisions in these four cases were reversible on principles announced by the Court of Appeals *prior* to his decisions, and the Court of Appeals simply referred to the latest decision in the area as the one he was to follow in further consideration of the case.

Little further time need to be spent on *Wechsler* v. *County of Gadsden,* 351 F. 2d 311 (1965). We show in the body of this memorandum, "The Case Against Judge Carswell," the legion of errors made in this case. The complexities in this area reflected in the Supreme Court's opinions in *Rachel* and *Peacock* cannot obscure Judge Carswell's several plainly unlawful and erroneous actions, and indeed he was reversed on his refusals to grant a stay as well as on the merits.

In *Steele* v. *Board of Public Instruction of Leon County,* 371 F. 2d 395, the Hruska memorandum relies upon the fact that the intervening *Jefferson* case is referred to in the Court of Appeals' unanimous reversal of Judge Carswell. But Judge Carswell's 1963 order in *Steele* violated the controlling precedents in *Gibson* and *Mannings* just as much as it violated *Jefferson.* Furthermore, as pointed out in the Leadership Conference's testimony, when the Negro plaintiffs sought to reopen the Leon County plan on April 19, 1965, Judge Carswell refused to hear the motion on the ground that "it would just be an idle gesture *regardless of the nature of the testimony.*" It is difficult to think of more obvious reversible error.

Finally, the Hruska memorandum argues that *Youngblood* and *Wright* should not be held against Judge Carswell because the Court of Appeals unanimous reversal referred to the intervening decision of the Supreme Court in *Alexander* v. *Holmes County Board of Education.* But in both cases, like the previous two, Judge Carswell had failed to follow the law as it stood at the time he acted. The *Washington Post* put it well in its editorial on Judge Carswell's three major school cases:

"Eventually, of course, Judge Carswell was reversed in all three cases. It is true, as Senator Hruska's memo argues, that these reversals referred the judge for instructions to an opinion actually written after he had made these decisions. But it is also true that he had available to him earlier instructions in the form of decisions by the Supreme Court and the Fifth Circuit Court taken before he acted, which had made it crystal clear that his orders in all three cases did not meet the test the higher courts were then requiring.

CONCLUSION

Nothing in the Hruska memorandum in any way detracts from the Leadership Conference position that Judge Carswell was unanimously reversed eight times in civil rights cases and indeed the Hruska memorandum admits that this was "technically true." Nothing in the Hruska memorandum sets forth any true "Pro-Civil Rights" action. And the "neutral" cases to which the Memorandum refers, are, as we have shown, actually *neutral against civil rights.* If anything, the Hruska memorandum has buttressed the case that the Leadership Conference made before the Committee on Judge Carswell's civil rights decisions.

APPENDIX B: JUDGE CARSWELL'S HABEAS CORPUS AND SECTION 2255 CASES

The basic case against Judge Carswell in his handling of habeas corpus and 28 U.S.C. 2255 cases—that he ran roughshod over the rights of persons seeking a hearing—was made in the testimony of the Leadership Conference to the Senate Judiciary Committee. Far from rebutting this charge, the Hruska memorandum, prepared in cooperation with the Justice Department, confirms it.

The Leadership Conference set out seven of these cases in which Judge Carswell had been unanimously reversed. The Hruska memorandum points out two more, which we had overlooked because of lack of time to research the subject fully:

Rowe v. *U.S.,* 345 F. 2d 795 (1965) and *Cole* v. *Wainwright,* 397 F. 2d 810 (1968).

Thus there are nine, not seven, unanimous reversals in this area.

The Hruska memorandum attempts to excuse Judge Carswell's failure in this important area of law on two grounds: 1) the law was unclear; 2) he was also affirmed in a number of these cases.

The first attempted defense is specious. The only confusion in the law, as it relates to these cases, is that created by the Hruska memorandum in an attempt to cover up Judge Carswell's record.

The treatment of the case of *Townsend* v. *Sain,* 372 U.S. 293, 1963), on which the Hruska memorandum relies to explain Judge Carswell's poor performance, proceeds from a misinterpretation of the opinion and decision.

The Hruska memorandum takes the view that *Townsend* set new standards for habeas corpus hearings. Whether it set them or clarified them is open to debate, but irrelevant to the issue here. One of these "new" standards, according to the memorandum, is supposed to be that quoted in the memorandum, as follows:

"Where the facts are in dispute, the federal court on habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of trial or in a collateral proceeding." *Townsend* at p. 312.

The foregoing is presented as a holding adopted 5 to 4. This is pure fabrication. The principle set out in the quoted language was accepted by Justice Stewart and the other dissenters. Thus as to this, the Court was unanimous. The Stewart opinion (joined by the other three Justices in dissent) says:

"I have no quarrel with the Court's statement of the basic governing principle which should determine whether a hearing is to be had in a federal habeas corpus proceeding: 'Where the facts are in dispute, the federal court on habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of trial or in a collateral proceeding.' " *Townsend, supra,* 326–7.

In reality the dissenters' exceptions to the majority opinion were on two grounds: 1) the court should not have spelled out in detail all the standards to guide the lower courts in habeas cases. 2) The state courts had given the petitioner a fair and full hearing on the issues he raised, in accordance with the principle enunciated in *Townsend.* These exceptions are, of course, irrelevant here.

In the light of the clear state of the law, as enunciated by a unanimous Supreme Court (it must be noted that eight of the nine reversals of Judge Carswell came after the *Townsend* decision), one could expect a high percentage of affirmances in the routine handling of such cases. Yet the maximum claim for Judge Carswell, as arbitrarily inflated by the Hruska memorandum, is nine such affirmances as against the nine reversals set out in the record.

While it is true that the nine cases the Hruska memorandum relies on were affirmances of Judge Carswell's decisions, it is plain that the total was arrived at by "padding" the record:

The language of *Batson,* 304 F. 2d 459, indicates the petitioner waived the rights he relied on in open court. Thus he in effect stipulated his case away. Therefore, it should be disregarded.

The *Gant* case, 308 F. 2d 728, was not treated under Section 2255, but as a motion for correction of sentence. Unless we want to open up a new area of inquiry, this too has to be disregarded.

The *Young* case, 337 F. 2d 753, was decided by the Court of Appeals on an entirely different basis than that of Judge Carswell's decision—on the issue of jurisdiction, which the Judge apparently did not even recognize as being presented when he had the case. It is quite clear from the issues raised, and from the Rives' dissent, that Judge Carswell would have been reversed had the court reached the merits, on which the Judge's decision was rendered.

This leaves six affirmances with any substance whatever. A quick look at them reveals that none presented any substantial legal issues—that the records on their faces required dismissals of the petitions. This is accentuated by the opinions in the Court of Appeals, generally short per curiams. They were the type of cases in which no judge much less a judge inclined to deny individual rights, could err.

This record—six affirmances against nine reversals—is on the surface a shockingly poor one. It becomes even more alarming when one considers the origin of most of the cases.

It is well known that one of the chief activities of some prisoners is the preparation of petitions for writs of habeas corpus for themselves or fellow inmates—the so-called "jail house lawyers."

A study of the Carswell cases listed by the Leadership Conference and by the Hruska memorandum in the habeas corpus-Section 2255 area shows that most were presented *pro se.* Four of the Memorandum's six actual affirmances were ones in which the petitioner was unrepresented. And of the nine reversals, seven listed by the Leadership Conference and two by the Memorandum, in only two (*Cole* and *Dawkins*) were the litigants represented by counsel. Thus, in seven out of eleven "pro se" cases, the "jail house lawyers" prevailed over Judge Carswell in their legal arguments. To us this means one of two things:

either Judge Carswell is remarkably weak in his legal judgment in this phase of law or he is so callous to the rights of prisoners that he allows his legal judgment to be overpowered by his prejudices.

In the effort to justify Judge Carswell, the Memorandum notes that a fellow judge, Judge Simpson, was reversed four times in habeas cases. But, as the Memorandum is free to concede, two of these reversals were because he granted hearings where he should not have and two were for not having granted them. As compared to the record of Judge Carswell—all reversals for denials of rights—this is certainly more balanced, indicating a judge with an open, rather than closed, mind on the subject.

With respect to Judge Carswell's "liberal" ruling in the *McCullough* case, the only comment necessary is that in the absence of a Supreme Court or Fifth Circuit precedent on the subject, he had little choice but to follow the available appellate precedent—that of the Fourth Circuit.

The Hruska reference to Judge Carswell's record over eleven years is misleading. Eight of his nine reversals were in the period 1965–1968. Their frequency in this period of time appears to indicate a defiance of the appellate court, in that each was reversed on the same ground—a ground on which the higher court had given Judge Carswell ample notice of its attitude.

The conclusion is plain—that the further one searches into Judge Carswell's record, the more convincing is the case against him.

ANNIVERSARY OF LITHUANIAN INDEPENDENCE—ADDRESS BY SENATOR RALPH T. SMITH

Mr. MURPHY. Mr. President, last night my distinguished colleague, the Senator from Illinois (Mr. SMITH), was privileged to be guest speaker at the 52d anniversary celebration of Lithuanian independence.

Senator SMITH has, I believe, expressed the continuing support of this body for the restoration of freedom to Lithuania and her sister captive nations.

Mr. President, I ask unanimous consent that Senator SMITH's remarks and the text of House Concurrent Resolution 416, to which he referred, be printed in the RECORD.

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

LITHUANIAN DAY SPEECH OF SENATOR RALPH TYLER SMITH

It is an honor for me to be included in your anniversary program and salute gallant Lithuanians everywhere, as well as the peoples of other Soviet Russian captive countries who are continuously fighting for freedom, self government, and independence.

As your Senator I have urged that the Voice of America beef up its broadcasts to Lithuania, Latvia and Estonia. I believe that the United States Information Agency must effectively counterattack Soviet Russian propaganda throughout the world. You, my fellow citizen, know from personal experiences Soviet Russian betrayal. I believe that only by maintaining superiority in economic, political, and military fields can we protect our freedom and produce the restoration of freedom for the Lithuanian and the other captive nations of Communism.

Through diligence the United States must work for the restoration of freedom to the people of Lithuania.

This anniversary occupies a special place in the minds of men to whom the pursuit of personal freedom and national independence is a noble and continuing purpose.

Despite the Soviet Russian oppression the light of liberty still flickers strongly in Lithuania and in the other Baltic nations throughout Eastern Europe, as was shown in Czechoslovakia just over a year ago.

So I call on Americans of all nationalities to join with American Lithuanians today in recognition of the anniversary of their independence. It was just 52 years ago that the courageous people of Lithuania won back their freedom and established the independent Republic of Lithuania.

The Declaration of Lithuanian Independence on February 16, 1918 was the culmination of many years of struggle and planning—hope and frustration.

Lithuania has had a glorious history as a citadel of Christianity, but almost continually the Lithuanian people have been dominated by larger powers from all sides, the Polish, the Germans and the Russians. Then it wasn't until the first World War defeat of Germany coupled with the internal revolution in Russia that the time seemed favorable for the Lithuanians to retake their place as the free and independent people they had so long dreamed of being.

The period of independence, during which the nation thrived, saw progress in many areas. The Lithuanian people instituted land reform, reestablished industry, set up transportation facilities, enacted social legislation, and expanded their educational institutions. Lithuania was finally free after all these years and her hardy people could select their own leaders, speak openly on the issues without sinister reprisals by the secret police, and worship in their own Christian tradition.

In short, Lithuania was established and functioned along the lines of the American system—she grew close to America—many people called Lithuania "little America." Lithuania's people lived happily and were content with their freedom—they wished evil to no one and committed no wrong against others. Lithuania was determined and wanted to live as a good neighbor and adopt a "mind your own business" policy.

But this new independence was to last only 22 years until the life of this proud nation was snuffed out in 1940 as Lithuania was declared constituent republic of the USSR by the Russian dictators in Moscow.

I will not repeat the sordid history of Soviet duplicity, infiltration and aggression which against brought slavery, but I must mention that Soviet Russia has deported or killed over 25 percent of the Lithuanian population since their 1940 invasion.

Though their freedom was destroyed and their independence denied when the Soviet Russians moved troops into Lithuania and the neighboring republics of Latvia and Estonia, the Lithuanian people at home and abroad, supported by freedom loving friends throughout the world, have never surrendered their commitment to freedom.

On this 52nd anniversary the most fitting commemoration we can offer to the brave citizens of Lithuania, the heroes who have died in the quest of Lithuanian liberty, and the countless relatives and friends of Lithuania in the United States, is the reaffirmation that the cause of freedom has not been forgotten and the struggle for freedom will continue until won.

You will recall that it was the government of the United States that was the first in line, in 1940, with a strong and unequivocal denunciation of the Soviet seizure of the Baltic states. Our government's statement of July 23, 1940, has become known among the Baltic people as the Freedom Charter of the Baltic States. It states:

"The political independence and territorial integrity of the Baltic Republics, Lithuania, Latvia and Estonia, were to be deliberately annihilated by one of their more powerful neighbors.

The government and the people of the United States are opposed to predatory activities, no matter whether they are carried on by those who use force or the threat of force.

They are likewise opposed to any form of intervention on the part of any state however powerful in the domestic concerns of any other sovereign state however weak.

The United States will continue to stand by these principles because of the conviction of the American people that unless the doctrine in which these principles are inherent once again governs the relations between nations, the rule of reason, of justice, and of law, in other words, the basis of modern civilization itself cannot be preserved."

This doctrine of 1940 has been echoed many times by the United States government. I remind you of the statement made by President Nixon and I quote:

"In committing aggression against the Baltic countries, the Soviet Union violated not only the spirit and letter of international law but offended the standards of common human decency."

The original United States doctrine of the non-recognition of the fruits of the crime to the culprit has since been amended to even stronger policy of liberation or the doctrine of restoration of stolen goods to the lawful owners which hopefully will speed the return of freedom to countries forcibly deprived of it.

As you know, American Independence Day which we celebrate on July 4th, commemorates the signing of our Declaration of Independence in 1776. We are fortunate because we are still free. We are fortunate because we have the opportunities offered only in America to be anything we want to be. We are fortunate because we can cast a secret vote for our leaders without anyone looking over our shoulders. We are fortunate because our nation remains free and unswervingly dedicated to the defense of freedom everywhere.

Certainly all Americans believe in freedom, and the struggles endured by our forefathers. Self determination, freedom, and the desire for independence, won for us in these United States, by great sacrifice, and sustained by a determined vigilance and a dedication to these principles for which men continue to give their lives and their fortunes, must not be denied to any nation whose spirit is bolstered by the hope that the United States will advance their case.

To retreat from this challenge is to diminish our own security as a free nation.

We can be proud as a nation that we have never recognized the Soviet Russian grab of the Baltic states. We can be proud that we continue to accredit the governments-in-exile as the official representatives of the Lithuanian, Estonian and Latvian people. We must on every possible occasion join you in dramatically reminding lovers of liberty and freedom throughout the world that slavery dominates many smaller nations in central Europe enslaved by the International Communist conspiracy. The United States must continue to lead the fight to restore freedom to these liberty loving nations.

Only the people of Lithuania know the burdens, the heartbreaks and the sufferings which have been endured since Soviet Russia lowered the yoke of oppression on her shoulders. Let us hope that soon the great Lithuanian nation can again be restored to her rightful heritage of liberty and independence. Much can be accomplished by supporting the programs of Lithuanian American organizations and the Assembly of Captive Nations, just as we are doing today in commemorating this anniversary.

I shall dedicate my own efforts to obtaining positive action wherever possible to once again permit the sons and daughters of Lithuanians to regain their long sought independence, and to have the rights and blessings of a sovereign nation restored to them.

this on any significant level up to this time, Father Riego said.

The hearing followed requests by Spanish-speaking residents and Sen. Joseph M. Montoya (D-N.M.) to "do something about the reported disgraceful conditions that Spanish face in the city."

A member of the Senate District Committee, Sen. Montoya is the only Senate member of Spanish descent.

Speakers last night called upon the Council to establish a Spanish-speaking affairs unit under the mayor, hire bilingual school teachers and place bilingual employees in every department. They also called for English language classes on a large scale for adults and children.

Martin G. Castille, chairman of President Nixon's Cabinet Committee on Opportunity for the Spanish Speaking, questioned whether a largely black City Council will do as much for the Spanish minority as for the black majority.

"What's at stake here is whether opportunity for some will be achieved at the expense of others . . . whether we will prove wrong what the historians said, that there is no greater oppression than that practiced by a recently oppressed minority."

Castillo said there is a wide gap between the City Council's "reputation for compassion" and the conditions of Spanish-speaking residents in the District of Columbia. Spanish-speaking residents "need the reassurance of action," he said.

[From the Washington Post, Dec. 27, 1969]

OUR LATIN QUARTER

The cry for help from the city's growing Spanish-speaking population is being answered but quite evidently more needs to be done. Exactly how many Spanish-speaking persons live in the Washington area is not known. Unofficial and admittedly inaccurate estimates range from 30,000 to 70,000, with perhaps half the number lacking fluency in English. Most of them live in what is fast becoming a Latin Quarter with ethnic restaurants, food stores and even a motion picture theater offering Spanish language films. This "Spanish" community is concentrated in three adjacent neighborhoods, Adams-Morgan, Columbia Heights and Mount Pleasant, although there is also a small Spanish-speaking enclave in Arlington as well. Because of differences in language and culture, our Spanish-speaking neighbors feel isolated and confused, and a long way from what was home—Puerto Rico, or Cuba or elsewhere in Latin America as well as our own Southwest. Life here is hard for these transplanted people; many live in rundown housing, and suffer from a shortage of community facilities; the level of unemployment is believed high. These conditions are not unique for Washington, but the situation is aggravated by the language problem. Senator Montoya of New Mexico, the only member of the upper house of Spanish descent, has made the cause of the Spanish-speaking community his own and has pressed the city to identify the group's needs as a step toward meeting them. A hearing before the city council is scheduled for next month.

Meanwhile, the city has moved to improve communication between the Spanish-speaking group and the city government by adding a Spanish-speaking person to the city's Information and Complaint Center, by beginning a program to train 23 policemen in Spanish, and by adding Spanish community representatives to the Human Relations Commission, the Recreation Advisory Board and the Committee on Veterans Affairs. Pilot projects are being conducted at two public schools to help Spanish-speaking students and their parents adjust to the Washington environment. A request for funds for a bilingual teaching program in the so-called model schools division was rejected by HEW last year, but will be resubmitted and, we hope, approved this time.

The city lacks information on the community's exact population, its citizenship status, level of education, unemployment rate and housing conditions: a prompt effort should be made by the city's Human Relations Commission to find public or private funds to secure the data. It would help also if one person were assigned, either by the commission or the mayor's office, to serve as a primary point of contact for the Spanish community. New York City and Miami with large Spanish-speaking populations have provided such a resource and so has Arlington, and we would do well to follow their lead.

THE GI BILL—A SOUND INVESTMENT IN AMERICA'S FUTURE

Mr. YARBOROUGH. Mr. President, the soundest investment in America today is education. Every dollar our Government invests in educational programs comes back many times over in the form of taxes on the increased earnings of the people who receive advanced education.

One of the most important education programs we have is the cold war GI bill. This important legislation offers the over 6 million veterans of the cold war era and the Vietnam war the chance to obtain the education and training they need to compete in our complex society.

Unfortunately, participation in the GI bill education programs is far too low. The reason for this poor rate of participation is the low allowance rates that are paid veterans under this bill. To cure this problem, the Senate in October of 1969 passed H.R. 11959, which would increase these rates by 46 percent. This bill is presently in conference between the House and the Senate.

For those who think that this bill is inflationary and an unnecessary drain on the country's finances, I wish to direct their attention to a short item that appeared in the February issue of Government Executive magazine in which it is pointed out that the Government realizes a return on money it pays out under the GI bill of eight times the cost of the veterans education.

Mr. President, I ask unanimous consent that this statement entitled "GI Bill Pays for Itself," from the February issue of Government Executive, be printed at this point in the RECORD.

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

GI BILL PAYS FOR ITSELF

The Veterans Administration spends $4,680 for 36 months of college for an ex-GI. With a college degree, Labor Department statistics indicate, a man will earn $541,000 in his lifetime, or $201,000 more than a high school graduate. He'll pay about $38,000 in income taxes on that extra $201,000—about eight times the cost of his education.

THE FLIMSY CASE AGAINST CARSWELL

Mr. GURNEY. Mr. President, on Monday, February 16, 1970, the Tampa Tribune ran a lead editorial by editor James A. Clendinen dealing with Judge Carswell. The editorial, entitled "The Flimsy Case Against Carswell," highlights some of the petty and frankly silly efforts that have been made to discredit Judge Carswell in recent weeks. Editor Clendinen, in his usual perceptive fashion, demolishes some of these futile muckraking excursions. I ask unanimous consent that this editorial be printed in the RECORD.

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

THE FLIMSY CASE AGAINST CARSWELL

Because of the importance of the office it is essential that nominees to the U.S. Supreme Court be thoroughly investigated by responsible agencies. This is true in the case of Judge G. Harrold Carswell of Tallahassee or any other nominee.

We cannot recall, however, that the background of any appointee to the Supreme Court or other high office has been so minutely sifted in a search for faults as has Carswell's.

Civil rights and labor forces have been the most energetic sifters. They have had help from liberal Senators and newspapers.

Since the most exhaustive probing of Carswell's finances turned up no suggestion of impropriety—but mainly the fact that he has to live on his salary—opponents had to look elsewhere for stones.

One rather desperate tactic has been to tie him to Ed Ball, the Florida financier, in hope of whipping up stronger opposition by organized labor. The hard-fisted Ball is toxic to labor unions because the Florida East Coast Railroad of which he is the largest stockholder has been on strike since 1963 and is running profitably.

Critics triumphantly produced an old newspaper clipping reporting that Ball, who also lives in Tallahassee, had attended a party at the Carswell home. They also made an attempt to read significance into Carswell rulings in an anti-trust case against a Ball company, but the record showed the litigants did not appeal the verdict in Ball's favor.

The latest move to discredit Carswell was a newspaper's "discovery" that Carswell's wife in 1963 acquired from her brother some waterfront property in Wakulla County which carried a whites-only ownership restriction. She sold the property three years later, with this and other restrictions remaining in the deed.

Anyone familiar with Southern land transactions knows that a similar restriction is to be found in the deeds of almost all subdivision properties, and that it is meaningless because the Supreme Court some years ago held such clauses unconstitutional. Despite that decision, many deeds still carry the restriction because of the legal complications of formally removing it. Long after the Supreme Court outlawed school segregation, for example, Florida's Constitution and laws still contained old segregation requirements. They were simply dead limbs, awaiting convenient pruning.

These wispy implications of bias, strung on a white supremacy speech which Carswell made as a political candidate 20 years ago and has repudiated, constitute the main case against him.

It is a case so flimsy that the Senate ought to brush it aside and confirm Judge Carswell with little debate.

NOMINATION OF JUDGE CARSWELL TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. HARRIS. Mr. President, yesterday the Senate Judiciary Committee finished its consideration of the nomination of the Honorable G. Harrold Carswell to be Associate Justice of the U.S. Supreme Court and recommended approval of this

nomination. A minority of the membership of the Judiciary Committee voted against this recommendation and were given time to file a minority report.

Having considered this matter carefully, I must state that I do not agree with the action of the committee. I cannot vote to confirm this nomination.

In reaching this decision, I have been particularly impressed by the testimony of Prof. William Van Alstyne, of the Duke Law School, and by Dean Louis H. Pollak, of the Yale Law School. These men have carefully studied the judicial decisions rendered by Judge Carswell since he has been a member of the Federal judiciary. Based upon the record, Professor Alstyne, who, incidentally, supported the nomination of Judge Clement F. Haynsworth to be Associate Justice of the Supreme Court, has recommended against the confirmation of Judge Carswell, and Dean Pollak has said that his analysis led him to conclude that Judge Carswell "presents more slender credentials" than those of any other nominee for the Supreme Court in this century.

Based upon the testimony before the Senate Judiciary Committee, I do not feel that Judge Carswell has the kind of distinguished judicial record which is required for this important position, and I am concerned, on the record of his judicial decisions in such matters, about his judicial sensitivity in the basic and fundamental field of human rights.

As others have pointed out, President Nixon could easily find among the outstanding lawyers and jurists of America a good many men who are both residents of the South and strict constructionists of the Constitution who would not be subject to the objections which I and others have raised concerning Judge Carswell. That has not been done in this instance.

Appointments to the U.S. Supreme Court, unlike appointments to the President's Cabinet, for example, are for life. It is, therefore, essential and in the public interest that such appointments meet an exceptionally high test. This appointment does not do so and, accordingly, should not be confirmed by the Senate.

LITHUANIAN INDEPENDENCE

Mr. HARTKE. Mr. President, February 16 marks the 52d anniversary of the Lithuanian Declaration of Independence. It is particularly appropriate, in view of the dedication of the United States to the principles of freedom and self-determination, that we stand together with free Lithuanians all over the world, to commemorate the day when Lithuania was made an independent nation.

An ancient civilization, whose rich political, economic, and cultural heritage extends over nearly a millenium, Lithuania was established as a free republic on February 16, 1918, and recognized by the United States in 1922. For 22 years thereafter, the people of Lithuania enjoyed the blessings of liberty and domestic security under a democratic form of government. In 1940, despite the fierce resistance and resolute courage of its patriotic citizens, this small but proud nation was invaded and occupied by armies of the Soviet Union. Forced to surrender their traditional values and robbed of their basic freedoms, the Lithuanian people were subjected to a policy of systematic terror and political persecution that characterizes Communist rule wherever it is instituted. Following a period of brutal Nazi tyranny, during which the Jewish population of Lithuania was virtually exterminated, the Russian military forces returned in 1944 to reoccupy the war-torn nation. Since that time, in violation of international law and against the will of its people, Lithuania has remained incorporated into the Soviet state.

In the face of this oppression, the Lithuanians courageously continue the struggle for restoration of their fundamental human rights. The United States has consistently refused to recognize the illegal incorporation of Lithuania into the Soviet Union, and over the years has manifested warm sympathy for the Lithuanian cause of once again achieving freedom and self-determination.

On this occasion, I want to assure the people of Lithuania that America continues to support their just aspirations for liberty and independence, and I want to express my personal hope that the goal of Lithuanian self-determination will soon be realized.

"WILD RIVER"—A TELEVISION DOCUMENTARY PRESENTED BY THE NATIONAL GEOGRAPHIC SOCIETY

Mr. McGEE. Mr. President, I hope that many of the Members of this body had the opportunity recently to take in the television documentary "Wild River" presented by the National Geographic Society.

The film presented two notable ecologists, Drs. Frank and John Craighead, residents of Moose, Wyo., and their children. Washington Post critic Lawrence Laurent wrote of it in words that do justice to the film and to the subject, which is much more than the joys of riding white water, but the study of the ecology of the river and the creatures who depend on it.

I ask unanimous consent that Mr. Laurent's article be printed in the RECORD.

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

A TRULY FINE FILM

(By Lawrence Laurent)

School children all over the United States will be sitting in front of television sets tonight doing homework. They will be watching "Wild River," a one-hour documentary from the National Geographic Society (7:30 p.m., CBS, Channel 9).

Only four such specials are telecast each season. Tonight's is this season's third, and the 19th documentary since the National Geographic Society entered TV in 1965. By all odds, executive producer Robert Carr Doyle is entitled to make at least one program that is dull and disappointing. "Wild River," however, isn't that one.

This hour brings back to television the zestful, purposeful Craighead family. They were seen two years ago when the Geographic televised a study of their work on the grizzly bear of the American West.

Doctors Frank and John Craighead are twins who grew up in Chevy Chase, and were graduated from Western High School. Both earned doctorates in ecology. Each has three children, two boys and a girl.

Their association with the National Geographic began when they were 17 and had begun to study the hawks that nested in the cliffs at Great Falls on the Potomac.

That association with the Potomac is part of the story of "Wild River." Thirty-three years ago the Craigheads swam in the Potomac and drank from it. The present pollution of the Potomac and the Hudson River in New York is used as contrast for the clear, swift beauty of the Salmon River in Idaho.

Throughout the hour, narrator Joseph Campanella speaks writer Ed Spiegel's carefully documented words about the horrors of air and water pollution. The lesson, however is subtle, and it is overpowered by the fine color photography and the obvious joy that the Craighead family finds in the unspoiled wilderness.

The Craighead family sets out to tour the "Wild River" in kayaks and rubber rafts. John Jr., 14, has even mastered the Eskimo trick of flipping a kayak underwater and causing it to right itself.

For this energetic and handsome family, however, the trip is much more than just shooting rapids. Along the way they check the effect of pesticides on the endangered golden eagle, inspect the remains of a once lively mining town, study the life cycle of the salmon fly and forage for a meal of yampa plant, camas plant, fish, mussels, fresh water clams and rattlesnake.

Rattlesnake? Narrator Campanella says: "To the Craigheads, the rattlesnake is a prized catch to be added to the evening meal. It's a delicacy with the flavor of chicken."

After the month-long trip up the Salmon River, the Craighead family is seen in the Florida Everglades, visiting 80-year-old Dr. Frank Craighead Sr. He is trying to protect the wildlife in that threatened area.

"Three generations of Craigheads have fought for the wilderness," Campanella says. "They see it threatened and they wonder what will be left for those who follow?"

One thing that will be left is a spectacularly lovely film called "Wild River" that will be useful for years to come.

PRESERVE BIG THICKET'S ARTERIAL SYSTEMS BY CREATING A NATIONAL PARK

Mr. YARBOROUGH. Mr. President, one of the most pressing issues of our time is that of protecting our natural heritage from despoilation and destruction. Growing numbers of individual citizens and groups are becoming aware of this threat to the delicate ecological balance in our dwindling areas of natural beauty and wonder, and are demanding action to preserve the remnants of our once unspoiled natural wonders. Support for the effort to establish the Big Thicket National Park in Texas is growing daily and I have received numerous letters of endorsement for my bill, S. 4, from these concerned individuals and groups.

Many articles about the Big Thicket have appeared in conservation and nature periodicals published throughout the Nation. One of the most thoughtful and pertinent articles published to date is one authored by my fellow Texan and fellow conservationist, Mr. Edward C. Fritz. Mr. Fritz proposes a plan whereby the lifeblood of the Big Thicket—its beautiful waterways—should be included in any plan for preservation of the Big Thicket for posterity. Mr. Fritz quotes the Izaak Walton League of America, which sup-

NOMINATION OF JUDGE CARSWELL

Mr. INOUYE. Mr. President, after carefully considering the proceedings of the Judiciary Committee's hearings on the elevation of Judge G. Harrold Carswell to the Supreme Court, I am ready to announce my decision on this nomination. I am ready to announce that I will vote against Judge Carswell's nomination to our Nation's Highest Court.

When our President indicated that his nominee to the Supreme Court would be a man of great judicial distinction as former Justices Oliver Holmes and Louis Brandeis, I expected Judge Carswell to be a man of great stature—a man who would stand as tall as his illustrious predecessors. Yet the hearings on his nomination have shown Judge Carswell to be a man lacking legal distinction. During these hearings, the foremost legal scholars in our Nation severely questioned his record on the bench. A case in point is the testimony of Dean Louis H. Pollak of the Yale Law School who stated that Judge Carswell was a man who "has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our Highest Court," and concluded:

> The nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century.

To elevate to the bench of the Highest Court in our Nation a man whose judicial career has been described as one of consistent mediocrity, even by some who support his nomination, would serve only to deteriorate the credibility of the Supreme Court at a time when its very welfare and prestige hang in the balance. To support his nomination would be to violate my conscience and that of the American people.

Judge Carswell's lack of legal luster would alone be grounds enough for questioning his nomination. The Judiciary hearings have, however, revealed yet another area of concern. I speak here of his philosophy on one of the most critical issues facing our Nation today—civil rights.

While I admit that I would have expected a nominee to the Supreme Court to have shown by word and deed a deep commitment to the principle of equal opportunity for all citizens, so eloquently expressed in the 14th amendment of our Constitution, I do not base my opposition to Judge Carswell on the speech he delivered in 1948 expressing his vigorous belief in the "principles of white supremacy." I am, however, alarmed by the fact that since delivering this speech 22 years ago, Judge Carswell has done little to indicate by deed or decision that his views on civil rights have changed in any way.

The Senate Judiciary hearings have, in fact, revealed that between 1958 and 1969, 15 of Judge Carswell's decisions on civil rights and individual rights cases were unanimously reversed by the Fifth Circuit Court. Even those who support his nomination have admitted that his decisions in five cases "may fairly be described as anticivil rights." To support Judge Carswell's nomination in view of this record would serve only to further polarize our Nation in opposing camps. This I cannot and will not do.

The hearings also pointed out that as recently as 4 years ago Judge Carswell sold property with a provision that ownership, occupancy, and use of the property would be restricted to members of the Caucasian race.

I was astounded that the White House reacted to this disclosure by stating that "this particular incident is not isolated at all." While I have no doubt that there are hundreds if not thousands of real estate deeds in this country which contain racial covenants, it is quite another matter to find such a covenant appearing in a deed held by a man who aspires for the High Bench. That Judge Carswell claims he was not aware of the covenant is hardly an excuse we can accept from a lawyer and judge.

If Judge Carswell had, in fact, renounced the doctrine of white supremacy enunciated in his 1948 speech, he should have shown a change of heart by deed rather than mere rhetoric. Opposition to the racial covenant covering the property he sold would have illustrated his belief by deed. Here was an opportunity he "missed."

To support Judge Carswell's nomination under these circumstances would cause a serious loss of faith on the part of the American people in our commitment to the principle that every citizen should have an equal opportunity to participate in the system and share its rewards. To support his nomination would undermine the prestige of the highest court in our Nation at a time when its very strength is being tested.

It is only because I do not think Judge Carswell meets the standards of the high bench that I have decided to vote against the confirmation of his nomination to the Supreme Court. It is my belief that the members of the highest court in our Nation must demand our complete confidence.

APOLLO 12 EXHIBIT AND LECTURE

Mr. MANSFIELD. From 2 until about 3:30 p.m. today in the hearing room of the Senate Committee on Aeronautical and Space Sciences—room 235, Old Senate Office Building—there will be a display of material brought back by the Apollo 12 mission, including a lunar rock. There will also be examples of the effect of lunar soil on the growth of molds and plant life.

At 2 p.m. there will be a short lecture by an expert from NASA, after which the display will be available for inspection.

All Senators and staff members of the Senate are invited to attend.

AN INTERVIEW WITH ALF LANDON

Mr. PEARSON. Mr. President, the State of Kansas has been the home of many fine men. And one of them is Alf Landon.

Remembered nationally, perhaps, only as the man who was defeated for the Presidency, Alf Landon is recognized in Kansas today as one of the country's most progressive and discerning thinkers. This man is surprisingly contemporary. Yet this thought bear the unmistakable ring of history and clarity.

I invite the attention of the Senate, then, to the important ideas expressed by this friend of mine in a recent interview which appeared in the Kansas City Star magazine on January 18, 1970. I ask unanimous consent that the interview be printed in the RECORD.

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

THE VIEW FROM TOPEKA: A CHAT WITH ALF LANDON

(By Ivan G. Goldman)

(Goldman, a STAR Magazine staff writer, taped the accompanying interview and sent a transcription of it to Landon. It was returned with the comment, "That's as good an interview as I've ever had.")

After being soundly trounced in his 1936 presidential bid, Alf Landon never again ran for public office. But the affable Kansan was not the man to sulk or fail to speak out, and from his Topeka home over the years he has kept a watchful eye on America and its place in the world, issuing statements from time to time on topics ranging from oil tariffs to disarmament.

Meanwhile, dignitaries throughout the years have streamed to Landon to pay homage, or, more often than not, to seek advice. Among them was George Romney, who came to regret his failure to heed Landon's words. In 1966 Landon told the presidential contender to avoid national exposure and concentrate on his Michigan gubernatorial duties until at least the fall of the following year. But Romney opted instead to grab an early lead in the national limelight—a strategy that proved unsuccessful.

Landon's adherence to Progressive Republicanism goes back more than a half-century; his has been a continuous effort to moderate the Grand Old Party. But Landon's policy statements have oftentimes been pointedly nonpartisan, placing praise or blame with regard to issues, not political affiliations. And this independence understandably engendered enmity from certain party stalwarts. At the 1948 National Republican convention, for example, his opposition to Gov. Thomas E. Dewey of New York caused such bitterness among the Kansas leadership that to this day it has not wholly subsided.

Landon is a man who denounced the Kansas Ku Klux Klan during its zenith in the '20s, when supposedly courageous politicians kept expediently quiet. He is an oilman who fought the big oil companies, and not long ago he publicly advocated a reduction in the oil depletion allowance. And Landon was a conservationist long before most individuals knew the word's definition.

But despite his achievements and abilities, Alfred M. Landon still is most widely known for the election of 1936, when he opposed the popular presidential incumbent, Franklin Roosevelt, and lost 27,476,673 to 16,679,583 in the popular vote. Until the Goldwater debacle of 1964, Landon lost the presidency by a greater margin than any man in history. He admitted afterward that he knew he would lose, although, of course, one would never have known it by watching his determined campaign.

It is almost certain that no Republican could have ousted Roosevelt that year, and Landon's campaign was in fact a sacrifice for the party good. The only Republican governor to win reelection in 1934, he became the leading G.O.P. contender two years before his bout with Roosevelt. Landon had won the governorship in 1932 in a tight 3-way race; he went on to inspire confidence in his fellow Kansans during those dark De-

agreement negotiated with Japan on Okinawa, I want to say that I am fully cognizant—as is Secretary Rogers—of the implications of the Senate vote on Senator Byrd's resolution of November 5. We intend to stay in close touch with the Congressional leadership and appropriate committees as our negotiations with Japan go along. As you know, we have already discussed Okinawa reversion with many members of the Congress and have benefited from your views.

It was because of the importance of Congressional judgment that we inserted into the Joint Communique of November 21 the statement that consultations with Japan would be expedited with a view to accomplishing the reversion during 1972 subject to the conclusion of specific arrangements with the necessary legislative support.

Let me assure you that the Executive Branch will continue to maintain close contact with the Legislative Branch in order to work out mutually satisfactory arrangements for handling the problem of Okinawa reversion, including the appropriate form of Congressional participation in this matter.

You also expressed concern, as a result of your discussion with our commanders in the Far East, that we could not fulfill our commitments in the Far East with the restrictions of the 1972 formula. I want to assure you that I gave the fullest consideration to this most important aspect of my talks with the Prime Minister. He and I agreed, as the communique stated, that it was important for the peace and security of the Far East that the United States should be in a position to carry out fully its defense treaty obligations in the area and that reversion should not hinder the effective discharge of these obligations.

As a result of my talks with the Prime Minister, I am convinced that the arrangements we will make for reversion will not impair our ability to meet our security commitments in Asia. This belief is shared by my senior military advisers. I also feel strongly that resolution of the Okinawa question is essential to healthy relations over the long term with a most important Asian ally, the Government and people of Japan.

I appreciate your writing to me about this important matter.

Sincerely,

RICHARD NIXON.

AMERICAN BAR TO COSPONSOR LAW CONFERENCE WITH ISRAEL BAR IN TEL-AVIV

Mr. GURNEY. Mr. President, I ask unanimous consent to have printed in the RECORD a news release from the American Bar Association concerning a forthcoming 3-day conference—March 30–31, April 1, 1970—on the "Legal Aspects of Doing Business in the United States and Israel" which is jointly sponsored by the American Bar Association and the Israel Bar.

The conference is designed to provide meaningful and practical legal information to American and Israel lawyers, business executives, and managers on how to export to, sell in, or manufacture within the United States and Israel.

The American Bar Association is asserting a new leadership in a positive allied program of economic cooperation with Israel. I wish to express my admiration for the American Bar Association and my high esteem for its officers and members for their great contribution to the expansion of American-Israel trade relations.

I think it appropriate to speak out at this time also concerning the mindless and indiscriminate murderous acts directed against civil aviation by Arab terrorists in recent days. The Soviet agitators in the Middle East and their Arab puppets are apparently insensitive to world public opinion. They should know, however, that civilized people deplore these acts of premeditated murder and that they are revolted by them. These insane tactics cannot be allowed to continue. In this connection, I ask unanimous consent to have printed in the RECORD an editorial from the New York Times, Sunday, February 22, 1970. The Times' suggestion contained in the editorial, seems most appropriate:

The appropriate response lies in a worldwide cut-off of air traffic to and from the Arab states by all carriers of all nations until such time as there is assurance that a way has been found to end the Palestinian threat to unoffending planes, passengers, and crews.

There being no objection, the news release and editorial were ordered to be printed in the RECORD, as follows:

AMERICAN BAR TO COSPONSOR LAW CONFERENCE WITH ISRAEL BAR IN TEL AVIV

CHICAGO.—An international conference on the legal aspects of doing business in the United States and Israel will be held in Tel-Aviv March 30, 31 and April 1 under the joint sponsorship of the American Bar Association and the Israel Bar.

In announcing ABA participation in the conference, President Bernard G. Segal said it was part of a continuing effort to foster closer cooperation between the U.S. legal profession and lawyers of other nations.

The conference will be open to any interested U.S. lawyer. It will bring together recognized legal authorities of both countries as speakers, panelists and workshop leaders exploring legal problems and solutions affecting trade and investment between the two nations. Topics will include taxation, import-export regulations, and foreign investments. The sessions will be held at the Hilton hotel in Tel-Aviv, Israel.

The American Bar Associations Section of International and Comparative Law is arranging U.S. participation through a committee under the chairmanship of Charles R. Norberg of Washington, D.C. The ABA Section is headed by David M. Gooder of Oakbrook, Ill.

Program, registration and travel information may be obtained by writing to Foreign Tours, Inc., 500 Fifth Avenue, New York, New York 10036.

ARAB AIR OUTRAGES

The death of 47 persons as the result of a bomb explosion aboard a Swiss airliner bound for Israel is the ultimate outrage in the murderous campaign Palestinian terrorists have been conducting against innocent air travelers. The response must come from the world, not from Israel alone.

The boundless nature of the peril as well as its recklessness is made plain by the fact that only a miracle kept 38 other persons from going to their death when another bomb went off in a mail sack aboard an Austrian airliner over Germany. Even though no official determination has been made, there is no reason to question the boast of a fanatical guerrilla organization in Beirut that it was responsible for the fatal explosion.

A competition in murder has apparently developed among these groups of ultra-militants, each trying to outdo all the others in the monstrosity of its excesses. They are an abomination to whatever is legitimate in the cause of the Palestinian refugees, profaning their aspirations to national recognition.

The destruction of a planeload of people, among them one of Israel's most distinguished chest specialists, is an unspeakable horror. Now come warnings of more "incidents" and a special concern over the safety of Israeli Foreign Minister Abba Eban, scheduled to arrive in Munich today for a visit to the memorial to the Jewish dead at Dachau. There is a kinship in bestiality between the indiscriminate killing practiced by the Palestinian extremists and that of Hitler's Nazis.

The answer lies in effective action by responsible Arabs to punish and restrain these fanatics, but it is clear that no will to act will develop in the absence of the most severe external sanctions. These must not take the form of punitive bombings directed against Arab civilian centers by the Israelis, great as is the provocation. The appropriate response lies in a worldwide cut-off of air traffic to and from the Arab states by all carriers of all nations until such time as there is assurance that a way has been found to end the Palestinian threat to unoffending planes, passengers and crews.

CARSWELL: OPINION OF HIS FELLOW JUDGES

Mr. ALLOTT. Mr. President, I have decided to vote in favor of the confirmation of the nomination of Judge Carswell. In doing so, I have been particularly impressed by the high opinion in which he is held by his fellow judges of the U.S. Court of Appeals for the Fifth Circuit. I think it is just a matter of commonsense to say that it is much easier to fool people at a distance than it is at close range. If you are an athlete, you may be able to fool the spectators in the stands as to how good a player you are, but you cannot fool your teammates. By the same token, the best and most critical evaluation of a judge ought to come from his fellow judges, with whom he works year in and year out. Here is what three of his fellow judges from the Fifth Circuit have said about him to the chairman of the Senate Judiciary Committee:

Judge Carswell is a man of impeccable character. He is dedicated in his work and vigorous in its application. As a member of our court, his volume and quality of opinions is extremely high . . . Judge Carswell has the compassion which is so important in a judge.

Those are the words of Circuit Judge Homer Thornberry. Here is what Circuit Judge Warren Jones said about Judge Carswell:

I regard Harrold Carswell as eminently qualified in every way—personality, integrity, legal learning and judicial temperament—for the Supreme Court of the United States.

Judge Elbert P. Tuttle, for many years Chief Judge of the Fifth Circuit, also advised the Judiciary Committee of his opinion of Judge Carswell:

I have been intimately acquainted with Judge Carswell during the entire time of his service on the federal bench, and am particularly aware of his valuable service as an appellate judge, during the many weeks he has sat on the Court of Appeals both before and after his appointment to our court last summer. I would like to express my great confidence in him as a person and as a judge.

The opinion of distinguished judges such as these fortifies my conclusion that Judge Carswell will serve his country well as an Associate Justice of the Supreme Court.

professions personnel)" after "training persons" each place it appears in clause (1).

(6) (A) by striking out "Surgeon General" and inserting in lieu thereof "Secretary", and (B) by inserting at the beginning of such section the following heading: "Health Services for Domestic Agricultural Migrants".

And the Senate agree to the same.

That the Senate recede from its amendment to the title.

RALPH W. YARBOROUGH,
HARRISON WILLIAMS,
EDWARD KENNEDY,
GAYLORD NELSON,
THOMAS F. EAGLETON,
ALAN CRANSTON,
HAROLD E. HUGHES,
PETER H. DOMINICK,
JACOB K. JAVITS,
GEORGE L. MURPHY,
WINSTON PROUTY,
WM. B. SAXBE,
Managers on the Part of the Senate.

HARLEY O. STAGGERS,
JOHN JARMAN,
PAUL G. ROGERS,
DAVID SATTERFIELD,
WILLIAM L. SPRINGER,
ANCHER NELSEN,
TIM LEE CARTER,
Managers on the Part of the House.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. YARBOROUGH. Mr. President, the conferees have agreed to an extension of the Migrant Health Act, H.R. 14733. For the Nation as a whole, 900 counties furnish seasonal homes, or work areas—or both—for an estimated 1,000,000 migrant farmworkers and their dependents. About one-fifth of the Nation's total migrants live seasonally in 117 counties of Texas, and go out from Texas, their homeland, to work the fields in other States.

For a variety of reasons, migrant farmworkers and their families are the group most likely to be bypassed by national health gains. They are poor, live in inadequate housing, are often geographically isolated, belong to various minority groups—chiefly Mexican-American and Negro—and frequently lack knowledge of good health practices and of community health resources.

The "channels" to gain access to health care frighten and confuse them, for they fear the sterile atmosphere of the typical clinic or hospital. Moreover, their constant movement hinders continuity of the scanty services they do receive. Many of their temporary communities look upon them as transients for whom the community feels no responsibility. These communities often lack enough physicians, dentists, and nurses to meet the needs of local residents, let alone the needs of people "just passing through."

The result is a heavy burden of illness and disability. Tuberculosis is 17 times more frequent and infestation with worms 35 times more frequent among migrants than among ordinary patients. Mortality from tuberculosis and other infectious diseases is 2½ times the national average. Mortality from accidents is nearly 3 times the national average. Infant mortality is at the national rate of 20 years ago. As late as 1966, in two Texas border counties—Cameron and Hidalgo—which are home for many thousands of Mexican-American migrants—29 percent of the births occurred outside of hospitals, compared with 2 percent for the Nation as a whole.

At the fiscal 1969 appropriation level of $8 million, the amount available nationally per migrant is $8. Even when contributions from other than migrant health sources are added, the total average health expenditure per migrant is little more than $12. This can be compared with the national average per capita health expenditure of over $250.

Because of these great needs, the conferees have agreed to legislation which would extend the Migrant Health Act for 3 years and increase the appropriation authorization from $15 million in 1970 to $30 million in 1973.

The House bill provided that the Secretary may use funds under the Migrant Health Act to provide health services to nonmigrants the same as to migrants if the Secretary of Health, Education, and Welfare determines that the expenditure would improve the health of migrants. The managers on the part of the Senate have agreed to this amendment recognizing that, in some circumstances, it is difficult to achieve the purpose of the act without improving health conditions for all persons when living and working together. Sanitation programs, water supply improvement, and rat control efforts are examples of this fact. We agreed that in using funds appropriated to carry out the purposes of this provision, the Secretary shall be reasonably assured that this will not result in a reduction of effort or unduly discourage an expansion of the effort by any State, county, or municipal body to provide health care services to migrants. We wish to emphasize that in providing services under the Migrant Health Act, under all circumstances, all other resources should be exhausted and responsibilities assumed for nonmigrants should be transferred to appropriate local bodies whenever possible.

The Senate amendment provided that the Secretary must be satisfied that persons representative of the population served and others in the community knowledgeable of migrant health needs have been given an opportunity to participate in the development and implementation of each program. The House bill contained no provision on this subject. The managers on the part of the House have agreed to this amendment.

Two years ago, when this act was last extended, the conferees agreed that it "should also be considered as a permanent and separately identifiable program." Because residency requirements still exclude migrants from many State health programs and because there continues to be a lack of willingness or financial ability to include migrants in State and local programs for the general population, we wish to restate this position and express concern that the 1968 Public Health Service reorganization may have seriously compromised the separately identifiable status of the program, contrary to the intent expressed in last extending the act.

The extension, the increases in funds, and the improvements in the act agreed to by both Houses are absolutely necessary if we are ever to meet such great needs.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

THE CARSWELL AFFAIR

Mr. BROOKE. Mr. President, the Senate will soon be called to act upon the nomination of Judge G. Harrold Carswell to be Associate Justice of the Supreme Court. The Senate bears no less responsibility than the President in the process of selecting members of the Supreme Court; for both the Senate and the President are charged by the Constitution to insure the integrity and high quality of the third branch of Government. Thus, the question of confirmation in such cases is of unique importance. I have withheld comment on the nomination until the completion of my study of the hearing record and other relevant materials, including a number of Judge Carswell's written opinions as a district judge. I have given the pending nomination as careful and deliberate an evaluation as I could.

I will vote against confirmation of Judge Carswell.

Mr. President, I had earnestly hoped for a nominee who would unite this body and this Nation in approval of his qualifications. I would have been pleased to conclude that the criticism of this nomination was unfounded and that Judge Carswell's performance as a lawyer and jurist should be rewarded by appointment to the highest court. In some areas of the law I believe that Judge Carswell shows competence, though not the clear distinction which the country rightly demands in a Justice of the Supreme Court. But competent service on a lower court may well be a prelude to growth on the highest tribunal. If that standard alone governed, Judge Carswell might easily be entitled to the benefit of the doubt.

Particularly in this instance, however, that is not the only relevant test. It could not be sufficient for a man who began his public career with a profound and far-reaching commitment to an anticonstitutional doctrine, a denial of the very pillar of our legal system, that all citizens are equal before the law. G. Harrold Carswell's 1948 pledge of external allegiance to white supremacy, even when read in the context of a heated political campaign, is irreconcilable with the American system of justice. It is important to recognize that his professions in that year are not only alien to the law as it stands today; they were clearly hostile to the constitutional standard which had prevailed at least since Plessy against Ferguson before the turn of the century.

I doubt seriously that, had the nominee's expressed views of 1948 been known to the President, Judge Carswell's name would have been sent to the Senate. Had they emerged prior to the nomination, a more careful analysis of the prospective nominee's overall record would have been required, and analyzed in that context; it would probably have been found lacking. While such remarks by a young, but mature political candidate may not by themselves be disqualifying, they do pose in stark relief a central question: What

subsequent evidence indicates that the individual has abandoned a doctrine clearly offensive to the law and the ideals of this Nation.

I confess that I was eager to discover such evidence. I searched the record for convincing proof that Judge Carswell's later actions revealed a true dedication to the principles of equal rights under law. I searched in vain.

It is, of course, true that the judge has publicly repudiated the 1948 statement and has denied that he is not a racist. His declaration deserves to be considered fairly, out it cannot be allowed to weigh more heavily than his deeds. In examining his private and public record, I find it barren of the kind of affirmative statements and efforts which would suggest that Judge Carswell had in fact rejected his earlier views. On the other hand, that same record includes a number of actions which either confirm or invite suspicion that his anticonstitutional inclinations continued to hold sway. Given such an extreme initial pronouncement, substantial and positive evidence would be required to demonstrate that the individual had adopted a position compatible with the Constitution. If such evidence exists, the nominee has not offered it.

Five years after the now-famous speech, Mr. Carswell became a principal subscriber and charter member of the Seminole Boosters, Inc. It appears that notarized documents bearing his signature, dated April 14, 1953, and carrying the letterhead of his law firm, explicitly excluded nonwhites from membership. Even though the university supported by this club has subsequently integrated, there has reportedly been no amendment of the original "whites only" provision of the booster club's charter.

Three years later, in 1956, after the Supreme Court had begun desegregation of municipal golf courses, U.S. Attorney Carswell joined others in arranging to convert the Tallahassee public golf course into a private country club. The judge denies any intent or knowledge that this was a device to exclude black citizens from use of the facilities.

I consider Judge Carswell's testimony on this episode disingenuous. I cannot believe that he was unaware that the scheme had a discriminatory purpose transparently at odds with then-current ruling of the Supreme Court. Indeed, affidavits from black and white citizens of Tallahassee attest to the fact that the private country club arrangements were commonly known to be a ruse to evade compliance with the Court's standards. Least of all is it likely that a U.S. attorney, familiar with developing Federal law in this field, could have been oblivious to the implications of this maneuver. Most serious is the indication that Mr. Carswell, who had sworn to uphold the Constitution and the laws of the land, would have lent his support to such an effort. What might be discounted, though not condoned, on the part of some private citizens, is a grave breach of responsibility on the part of a Federal official responsible for enforcing the guarantees of equal protection of the law to all citizens. It does nothing to remove the lingering suspicion that he continued to adhere to his 1948 views.

Judge Carswell's later service on the Federal district court, and more recently on the appellate court, presents a complicated picture. The law is ever complex, and a judge's decisions must necessarily include some contradictions and ambiguities. Nevertheless, the judge's decisions afford no sufficient reassurance that he has come to recognize his responsibilities to protect the equal rights of all those appearing before him. This disturbing observation is reinforced by the judge's failure to rebut or even to address in detail reports by a number of attorneys that he was on occasion personally hostile to them and to their efforts to seek relief on civil rights complaints.

It is not possible to discuss all the relevant cases in depth, but several highlights stand out in the record. In the field of school desegregation, Judge Carswell appears to have consistently moved at the slowest possible pace, repeatedly stretching out judicial action and effectively delaying relief for those seeking reasonable compliance with the historic requirements of the 1954 Brown decision.

Is it really suggestive of a commitment to equal opportunity that Judge Carswell consistently approved desegregation plans that would have postponed compliance until the mid-seventies, two decades after the Court decreed that school boards should act with all deliberate speed?

Is it really suggestive of such commitment that, as late as 1966, Judge Carswell denied the right of Negro children to sue for desegregation of the State reform school, holding that the children were no longer inmates and hence had no standing? The Supreme Court had already held repeatedly that a plaintiff could sue as a former or potential user of a facility.

Is it really suggestive of such commitment that Judge Carswell dismissed a 1968 civil rights case merely on the basis of a defendant's affidavit, when higher courts had already made clear that such affidavits had no probative value?

Is it really suggestive of such commitment that Judge Carswell so frequently chooses to dismiss habeas corpus actions without even granting hearings to the petitioners?

Or do these and other cases in which Judge Carswell was so often reversed by higher courts suggest a pattern of dilatory, minimal action which tended to frustrate rather than promote the cause of justice?

Especially in light of Judge Carswell's previous history, I cannot dismiss this pattern as simply the product of a strict constructionist. I share the willingness of other Senators to confirm a strict constructionist, from the South or any other region of the country. But I have concluded that Judge Carswell's self-proclaimed conservatism cannot excuse the behavior and decisions which tend more to confirm than to contradict the thrust of his initial views on racial supremacy.

A true conservative, a true strict constructionist would fully respect and uphold the individual rights which are this Nation's greatest legacy.

Judge Carswell has many fine attributes: He has served his country in war and peace, he has acquired a good education, he has raised a family of which he can be proud, he has avoided dubious financial arrangements or apparent conflicts of interest. But in his public acts and pronouncements, the manner in which he apparently conducted his court, treated litigants, and regarded counsel, he has shown that he lacks an essential sensitivity to the preeminent issue of our time.

I cannot in good conscience support confirmation of a man who has created such fundamental doubts about his dedication to human rights.

President Nixon, in his inaugural address, proclaimed his commitment to bring us together. I share that commitment, for I profoundly believe in the goal of an integrated society in which all men can live in dignity and mutual respect. All my efforts—in Massachusetts, in the Senate, as a member of the Kerner Commission and in other capacities—have been directed toward that goal. I do not believe this nomination serves that vital goal.

We have problems in our country and in our world which must be overcome—problems of economic underdevelopment, of environmental pollution, of the antagonism of one nation or one ideology against another. We cannot succeed—indeed, we cannot even survive—if we do not learn, and learn soon, to overcome the superficial barriers of race, ethnicity, or religion which presently pose the most difficult and the most irrational hedges to human achievement.

It is in the nature of extended legislative review that the Senate has an opportunity to review Judge Carswell's nomination more thoroughly than did the President. If it concludes, as I have, that the President's laudable quest for greater harmony in our society will be undermined by this appointment, I trust that the Senate will deny confirmation of this regrettable nomination.

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

Mr. BROOKE. I yield to the Senator from New York.

Mr. GOODELL. Mr. President, I commend the Senator from Massachusetts for his very eloquent statement. I know full well that the Senator from Massachusetts did not prejudge this nomination on any superficial grounds. I know full well the intense examination of conscience which the Senator from Massachusetts has undergone since this nomination was sent to the Senate. I think this eloquent statement is a significant development in the consideration of this nomination by the Senate, and I commend the Senator for it.

I know that the Senator, as a former attorney general and a distinguished lawyer, took an objective view of this nomination and found in conscience that he could do nothing but oppose it.

Mr. BROOKE. I thank the distinguished Senator from New York. I am very grateful to him for his understand-

ing of the deliberation and the consideration that I had to give to this nomination.

I assure the Senator from New York that, as he has said, I considered the nomination with the benefit of my legal training and with the strong convictions that I hold concerning this Nation and the problem of race relations in this Nation.

I think it is regrettable that there has been sent to the Senate for confirmation to the highest court in the land the nomination of a man who, by his own public pronouncements, demonstrated that he harbored racist views. I think it is even more regrettable that at no time during his relatively long public career has he showed any indication of having changed. I looked, as I have said, to find this change in his mind and in his heart, but I found no evidence of change which would enable me in good conscience to vote for confirmation of his nomination.

I know that this particular nomination is one which all our colleagues will have to consider with great thought. It comes behind another nomination which the Senate felt it had to reject. I know that each one of the 100 Senators had hoped that the President would submit a name for confirmation that, frankly, all of us could in good conscience support.

The statement of the junior Senator from New York, given much earlier after his careful review, and the additional statements which have been made by some of our other colleagues, certainly now indicate that there will be far from a unanimous vote on this nominee.

I expect that the debate will be somewhat lengthy. I am sure that it will be one in which both sides will be given equal opportunity to discuss the cases, the deeds, as well as the words of Judge Carswell. I hope that that will be true. I believe that no man in the Senate, regardless of where he comes from, objects to voting for a southerner, or a westerner, or a northerner, or an easterner, or for strict constructionist. I am certain that those of us who are lawyers have great respect for a strict constructionist. But, again, let me say that it is an unfortunate circumstance that the President has seen fit, in his attempt to find a southerner and a strict constructionist, to nominate G. Harrold Carswell, whose statement, in my opinion, went far beyond the bounds of political rhetoric.

We are all politicians in this body. We make speeches and sometimes we say things that, perhaps, in quieter or saner moments we might not have said. But I read that 1948 statement closely, as did the Senator from New York, I tried to put myself in the position of this man as best I could, under the circumstances prevailing at that time, to see if these were just political words or whether they went deeper.

I found that they were deeply felt words.

Then I examined the age of the nominee at the time the statement was made. He was 28 years old. I know we are considered to be men at 28 years of age.

At that age, I had spent 5 years in war. In many respects, Judge Carswell and I were passing through a similar period, since we were both coming out of military service and had both gone to law school at the same time.

I think that I was pretty much a man at 28 years of age. Today the question of lowering the voting age to 18 is being considered in this country, so that the young people can anticipate decisions, and vote in Federal, State, and municipal elections at the age of 18. We now believe that young people are mature and responsible. Certainly they are intelligent and aware of their surroundings. And I do not believe the times were so different 20 years ago. Thus, I do not believe a man is or was immature at 28. There may be some exceptions, but Harrold Carswell was a man who had been trained in the law.

Then I said, "Well, a man can change." Men do change.

Great social changes have taken place in this country. The spirit of the time of Pope John XXIII and the Ecumenical Council changed the minds of many people in this country as well as in the world. I said, "Let us look for that change." As I am sure the Senator from New York did, I searched the record looking for that change. But I must confess, regrettably, that I did not find any. In fact, I found considerable evidence to the contrary. I found that in periods along the way in Judge Carswell's public career, he had made statements and had acted and conducted his court in a manner which indicated to me that there was no change, that he still harbored racist views.

Then I thought about our country. Where is our country going today? Many things that have been happening in this country recently, including the statements of some of our highest political leaders made me think, Are we really moving, as the Kerner Commission report suggested, toward two societies, one black and one white?

Do we really want war between the races of this Nation?

Did President Nixon really mean it when he said he would bring us together?

I had taken great hope from the President, who is a member of my political party, because if there is anything more important in this Nation than bringing people together, I do not know what it is.

Mr. BAYH. Mr. President, will the Senator from Massachusetts yield to me?

Mr. BROOKE. I am happy to yield to the distinguished junior Senator from Indiana.

Mr. BAYH. Mr. President, I sat on the other side of the aisle listening with a great deal of interest to the statement of the Senator from Massachusetts, which has been so well described by the distinguished Senator from New York (Mr. GOODELL).

As a result of being chairman of the committee engaged in relation to the last nomination for the Supreme Court, and being in a similar situation now relative to having to decide in my own mind whether I would vote to report out this nominee, I admit to some deep, soul searching myself.

Perhaps, at the bottom of my conscience, I am not proud of it, but perhaps there was a scintilla of hope that there would be some way for me to ignore some of the facts that have been laid out on the record, so that while I opposed one man, I could favor the other.

In the final analysis—and I have not made any statement on the floor—the thing that concerns me about this whole matter is the point just made by the distinguished Senator from Massachusetts; namely, the drifting apart of our people, rather than tending to solidify as one Nation indivisible.

I hope I do not have the reputation of being an alarmist. I do not consider myself to be one. But, I have not had the practical experience that many other Senators have in analyzing the relationships among groups, income levels, and so forth, in the various sections of the country. But I am becoming alarmed at some of the emotions rampant in the country today, directed in such a manner that it almost plays upon the worst in us rather than inspiring us to get up on our toes and do our best.

To the large numbers of people I have been talking to and have been appealing to—as other Members of this body have been appealing to—I have urged them to stay in the system, that it has its faults, but it is better than any other system of government there is in the world; to have faith; to stay out of the streets; to build instead of burn; and to avoid the cliches we tend to throw around.

The thing that concerns me is, how are the people going to look at the system if they know that a man who unfortunately has this background, is sitting at the very top of it?

This matter is of deep concern to me. I appreciate that it is probably much easier for me to express this from the other side of the aisle than it is for the distinguished Senator from Massachusetts. I, therefore, wish to salute him for the extra effort he is making, which is so characteristic of him.

Mr. BROOKE. I appreciate very much the statement of the distinguished junior Senator from Indiana. I certainly would like to support my President, as I am sure he is well aware and has so intimated. I voted for President Nixon. I campaigned for him. I certainly would like to support his nominee for the Supreme Court of the United States.

But I have been very much concerned and deeply burdened in recent months by many things. This nomination is one of them.

The Senator from Indiana mentioned the divisions in the country. They are not all racial divisions. The conflict of the young versus the old seems to be getting deeper and deeper.

Sectionalism is beginning to reappear again.

Religious bias seems to be coming back a little bit more, although we enjoyed a beautiful period, as I said, at the time of Pope John XXIII, and the Ecumenical Council.

Thus, it seems to me the most inappropriate time in our history for a man to be presented to the Senate for confirmation of his nomination for the Supreme Court who has at one time in his life admittedly spoken out publicly for white supremacy.

I have fought separatists, black separatists, at every step along the way. I am in great disfavor with those in the black community who favor separatism and militance and violence. I do not believe there is any master race, black or white. We went to war once about a master race. Thank God we won that one.

Here we are called upon to confirm a man to sit on the highest court in this land, who will be sitting in judgment and giving supposedly equal justice to all, who has the record that G. Harrold Carswell does.

I do not know the man. I have never met him. I have no personal animosity toward him. But I do not think this Nation can afford G. Harrold Carswell on the Supreme Court of the United States. My colleagues may think differently. I do not know. But I think it would be a great mistake.

I certainly understand that sometimes a man changes in a job. I think the President, in a press conference in response to a question from one of the reporters, likened this nomination to Ralph McGill of Georgia. In my opinion, that is not a valid comparison. McGill changed under very different conditions, if we recall the facts. He did change. He harbored these views I am sure at one time in his life. But he outgrew them. Social change took place in the country, and he became more knowledgeable. He used to have the kind of prejudice and bias that comes from ignorance. But as he grew older he changed, and he gave clear evidence of that change.

G. Harrold Carswell was not an ignorant man in 1948. He was not an ignorant man when he sat on the district court. He certainly was not an ignorant man when he sat on the court of appeals. Nor was he an ignorant man when he served as U.S. district attorney and took an oath to uphold and defend and enforce the Federal laws in this land.

That fact—his behavior while he was U.S. attorney in Florida—gave me the greatest difficulty. I understand the situation. I am not naive. I remember that period during the 1950's after the Supreme Court decision came down that there would be integration of public facilities such as golf courses, and so forth.

Not only in the South, but also across the Nation, there cropped up these private clubs which were created for the sole purpose of circumventing the law of the land. And I understand that some politicians joined in this endeavor, and some private citizens did. Though I cannot condone it, I understand it.

But here is a Federal law-enforcement officer sworn to enforce the law of the land who joins in a devious move to circumvent the law that he is sworn to enforce. If he had been a mayor or some other officeholder, perhaps it would have been somewhat different. But he was a Federal officer.

If he goes now to the Supreme Court of the United States and he writes a decision which, in effect, becomes the law of the land, would he then expect and would he then understand U.S. attorneys, Federal law-enforcement officers, circumventing that law?

This matter is very difficult for me to understand, perhaps as difficult as any of the decisions I had to read concerning his handling of litigation or his alleged hostility toward counsel or various litigants who appeared before him.

Then, I take very seriously a writ of habeas corpus. His handling of the habeas corpus cases, in my opinion, was reprehensible.

And so, my colleagues, it is because of all of this that I have formed my opinion. And let me point out very clearly that in judging Judge Carswell, I tried as best a human being can to divorce the matter from the other things that were happening in the country at the time.

I did not judge Judge Carswell on the basis of the statement made by my Vice President in Chicago. I did not judge him on the basis of the Voting Rights Act or any of these other things which I have mentioned this evening.

I judged him solely on the record which the Senator from Indiana, the Senator from Maryland, and the other very distinguished members of the Judiciary Committee brought out in the hearings.

I must presume that Judge Carswell made his strongest case before the Judiciary Committee. I did not read all 4,000 cases. But I cannot conceive that his best opinions were not presented to the committee for its consideration. I have to presume that. I think it is a fair presumption.

The best cases were certainly considered by the committee, together with the worst cases, and perhaps the not so good, or not so bad cases. That consideration also enabled me to arrive at my findings. I thank the distinguished members of the Judiciary Committee that carried on the investigation. And I understand the sacrifice which the Senator from Indiana personally makes.

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

Mr. BROOKE. I yield.

Mr. MATHIAS. Mr. President, I would observe that some men are gifted with eloquence. Some men are able to speak dispassionately. It is a very rare thing that a man can be both eloquent and dispassionate at the same time. I think it is a tribute to the distinguished Senator from Massachusetts as a Member of the Senate, as a distinguished lawyer, and as a former attorney general, that he has been able to deal with the matter as clearly and dispassionately and eloquently as he has today.

Whatever decision I make myself with respect to this nomination, I feel that a discussion carried on at the level that the distinguished Senator from Massachusetts has employed today would certainly justify me in my feeling that this was a case that should be brought before the Senate.

There could be judgment on the basis of the broad discussion the Senator has engaged in this afternoon. Definitely, all of the implications and all of the elements of our time are inextricably intertwined and involved.

I want to personally thank the Senator from Massachusetts for the light he has shed on the matter here today.

Mr. BROOKE. Mr. President, I thank the distinguished Senator, and particularly for referring to my remarks as dispassionate. I assure the Senator I am not an angry man. I have tried my best to be an objective man since I have been a Member of this very distinguished body, and since I have been in public life.

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

Mr. BROOKE. I yield.

Mr. PERCY. Mr. President, I address my comments to my fellow Senator who came to the Senate at the same time I did. He has contributed immensely to the Senate and to this particular Senator in the past 3 years. I am proud he is a Member of the Senate and I am proud he is my friend. I know I look forward through the years to the great contribution he is going to make in improving the quality of life in America for all Americans.

I mentioned in this Chamber this morning, in connection with another debate, the deep concern that the Committee on Violence and Civil Disorders, under the chairmanship of Dr. Milton Eisenhower, had for the internal threat, the threat inside the country, which it seemed to conclude is greater than the external threat.

I think we are all deeply concerned about equality and justice in American life, and want to be certain that the promise of American life and the promise as contained in the founding documents that enabled us to become a Nation and a people, are fulfilled and fulfilled in our time.

Certainly when we consider the Supreme Court we are considering a third branch of Government, coequal with the other two branches. One member of that Court has a vote equivalent to 60 Senators and Representatives when we take into account the divisibility of nine into 535. So this is an exceedingly important matter.

I have not come to a conclusion myself, but certainly, as long as I have been in the Senate, I have not heard a more eloquent or more dispassionate or heartfelt argument; and I detect a sense of sadness which I have shared that we have not been able to face up to our problems in the past as we should. I know it is the deep hope of the distinguished Senator from Massachusetts, who is a member of the bar and who has contributed greatly to the legal profession, that we can achieve a degree of excellence in every branch of Government that would be beyond question. This, of course, is the hope of all of us. We have all benefited from the comments of the distinguished Senator from Massachusetts and I am grateful that I was in the Chamber at the time he delivered his address.

Mr. BROOKE. Mr. President, I am very grateful to my cherished colleague from Illinois and my classmate. I certainly appreciate his very kind and generous words. I know he will give the utmost consideration to this nomination, as he gives to everything he does in the Senate.

I am certainly glad that he strengthened the statement relative to the Senate's responsibility to advise and consent, particularly as it applies to the Supreme Court.

As has been said before, and as has been said by the Senator himself, a nomination for the Supreme Court is not like the confirmation of an Ambassador or an agency head or a Cabinet member because they pretty much serve at the pleasure of, and are an extending arm of, the Executive in our three-party system. But when one gets to the Supreme Court, or the Federal courts for that matter, we are talking about a third coequal branch of Government. So it is not just a matter of supporting or confirming the nominee of the President of your own party. I think it certainly shows no loyalty or disrespect to the President to reject the nominee if in your mind and heart you think he should not serve in that particular position at all.

I think it is a matter of a man's own conscience. I have exercised mine; I trust Senators will exercise theirs.

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

Mr. BROOKE. I yield.

Mr. KENNEDY. Mr. President, I, too, wish to join Senators in commending my good friend and colleague from Massachusetts for his statement and comment before the Senate this afternoon.

I think all of us are very much aware that we will reach in the next few weeks an extensive and important discussion and debate on this nomination.

I think the Senator has provided for the membership a very clear, precise, and studious presentation of his views, and a presentation which will be given great weight by Members on both sides of the aisle.

I think the Senator is to be commended, because as pointed out by my colleagues, this is a difficult decision for the Senator both as a member of a party that is in power and as one who recognizes full well the very heavy presumption that goes with any nomination a President makes.

I think you have shown great courage in giving this nomination the kind of thoughtful consideration you have in reaching this decision. I think all of us realize the very significant impact your voice had in the rather crucial times during the discussion of the nomination of Judge Haynsworth. I think your statement here is of significance and importance. I wish to congratulate the Senator for the statement and for the timeliness of the statement. I wish to urge Senators on this side of the aisle to take the time to give it the kind of very careful consideration the statement deserves.

I commend my colleague.

Mr. BROOKE. I thank my distinguished senior Senator from Massachusetts. I also wish to thank him for the fairness of his interrogation during the hearings before the Committee on the Judiciary, of which he is a member. Certainly his incisive questions and the answers thereto were most helpful to me in my consideration of this nominee's qualifications for the Supreme Court.

I wish to add that I am happy to see that the Senator has recovered from his illness and is back in the Senate Chamber again.

I yield the floor.

MAJORITY PARTY'S ASSIGNMENTS TO SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY

Mr. KENNEDY. Mr. President, on behalf of the majority leader, I send to the desk a resolution, and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated.

The bill clerk read the resolution (S. Res. 361), as follows:

S. RES. 361

Resolved, That the following shall constitute the majority party's membership on the Select Committee on Equal Educational Opportunity, pursuant to S. Res. 359 of the 91st Congress: Walter F. Mondale (chairman), John McClellan, Warren G. Magnuson, Jennings Randolph, Thomas Dodd, Daniel Inouye, Birch Bayh, William Spong, Jr., Harold Hughes.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. KENNEDY. Mr. President, one of the most important decisions which the Senate reached during the consideration of the elementary and secondary education amendments last week was to establish a select committee of the Senate, whose purpose, in the wording of the resolution itself, is to study the effectiveness of existing laws and policies in assuring equality of education opportunity, including policies of the United States, with regard to segregation on the ground of race, color, or national origin, whatever the form of such segregation and whatever the origin or cause of such segregation, and to examine the extent to which policies are applied uniformly in all regions of the United States.

I am happy to report to the Senate that the Democratic steering committee met today and selected nine outstanding members of the majority to serve on the select committee, including, as chairman, the Senator from Minnesota (Mr. MONDALE), and as members, the Senator from West Virginia (Mr. RANDOLPH), the Senator from Virginia (Mr. SPONG), the Senator from Washington (Mr. MAGNUSON), the Senator from Hawaii (Mr. INOUYE), the Senator from Indiana (Mr. BAYH), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Connecticut (Mr. DODD), and the Senator from Iowa (Mr. HUGHES).

In my opinion, Mr. President, this is an excellent choice of Senators who will, I am confident, be sensitive to the heavy responsibilities placed upon them by membership upon the select committee.

Mr. BYRD of West Virginia. Mr. President, as an ex officio member of the steering committee, I wish to take occasion at this time to say that the choice of the Democratic Members who will serve on this select committee is a very excellent one throughout. Geographically, they have been selected with due consideration being given to all parts of the Nation. They come from the West, the East, the North, the South, a border State, the Midwest.

I think also that, from the standpoint of seniority, those Democrats who will make up the select committee represent Members who have served long in this body while at the same time there are Members who are among the more junior Senators with respect to service in this body.

Finally, from the standpoint of philosophy, Mr. President, it seems to me that the selection which has been presented to the Senate represents a very careful choice of Democratic Senators who will reflect a feeling ranging from the conservative to the liberal and with no Member representing an extreme in either direction.

So, Mr. President, I compliment the Senator from Minnesota (Mr. MONDALE) on the idea of having a select committee created. I think that his selection as chairman is a good one. As the author of the resolution which created the select committee, he, of course, is deserving of the honor that has been accorded to him by the select committee.

I believe that this select committee can and will perform a great service to the Senate and to the Nation.

I have confidence in its Democratic members because I think they are all even minded, even tempered, reasonable, knowledgeable, capable, fair individuals. I think that first and most of all they will want to serve the cause of public education in the Nation.

I trust that out of their diligent efforts there will come a very clear, well-reasoned, well-balanced opinion which can guide this body in its future deliberations dealing with the thorny problems that concern public education. Quality education has suffered in recent years because it has too often been made secondary to the cause of forced integration. Integration will never work unless it be purely voluntary, and it should never become the primary purpose for the existence of a public school system. Unfortunately, integration has lately been accorded such inflated importance on the part of some of our government leaders—politicians, judges, and bureaucrats—that public education, as a consequence, has been impaired and the schoolchildren, black and white, have suffered. Moreover, as a result, a better understanding and good will between the races have not been promoted, but, quite to the contrary, racial frictions have increased.

I hope that the minority members of the select committee, when they are announced, will reflect the same good geographical and philosophical balance as has been reflected in the Democratic makeup of the committee. If this proves to be the case, I think we all can have proper cause to expect that the committee's work eventually will culminate in the kind of report that will insure a saner course than that which has been pursued in recent years and which, if continued, will destroy quality education and the public school system in many parts of this country.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to.

THE OIL IMPORT PROGRAM

Mr. KENNEDY. Mr. President, President Nixon's refusal, despite the recommendations of a Cabinet task force, to

The expected enemy thrust could force a crucial decision on Washington: whether or not to increase American involvement in Laos when standing fast might be tantamount to backing off. An American plunge into another Asian quagmire is almost unthinkable at present, but Richard Nixon's willingness to concede control of a contested country to communist forces is equally hard to envision. U.S. policymakers had been hoping to avoid such a decision by keeping this conflict stalemated until a Vietnam settlement, involving Laos, could be reached. They managed that until last June, when a turnabout in enemy tactics drastically changed the course of this war. Now, with no Vietnam settlement in sight, time may be running out on American hopes in Laos.

Last June's enemy assault involved an estimated seven North Vietnamese battalions in a successful four-day siege against the government outpost of Muong Soui, straddling the Plain of Jars' western edge.

Moreover, the North Vietnamese didn't stop at Muong Soui. They pushed south and west, severing road links to the royal capital and probing at Long Cheng, northern nerve center of the CIA and operations base for General Vang Pao's so-called secret army.

The enemy's steamrolling drive shattered the morale of government forces and brought U.S. and Laotian officials to the verge of despair. In late summer the shaken officials decided to hit back hard. A secrecy-shrouded counter-offensive was launched, marked by fierce American aerial pounding and increased American logistical support. The government won back Muong Soui, regained the Plain of Jars.

Vientiane officials now try to play down the late-summer action, particularly the Americans' role. They talk of government troops "waltzing in" to the Plain of Jars, finding that the North Vietnamese had abandoned it, leaving behind large amounts of supplies.

These officials have no evidence to support that theory. Moreover, when pressed in a private interview, a top-ranking American official conceded that the September events "weren't exactly quite so simple." He admitted that "some pressure" had been applied to enemy encampments before government forces advanced. Some pressure? Could it be, he then was asked, that the pressure consisted of unusually intensive American air attacks? "Look," he said, "let's just say there was considerable pressure and leave it at that. I can't discuss this any further."

So now American officials and government forces await retribution. In the event of a strong enemy strike Vientiane undoubtedly is ready to accuse the other side of escalating the conflict.

U.S. officials deny the conflict is escalating and discount the possibility of Laos evolving into another Vietnam. They say the fighting will remain limited, largely because Washington and Hanoi both want it that way. Some of these officials resent the recent furor about Laos and the Senate subcommittee hearings that developed from it.

At the hearings' end, Senator J. W. Fulbright, chairman of the influential Senate Foreign Relations Committee, said that U.S. operations in Laos had been conducted without the knowledge or consent of Congress. He concluded that Washington's involvement in Laos was "most unusual and irregular—if not unconstitutional."

The American people have yet to be told by their government that their nation is militarily involved in Laos. American officials still seek to officially conceal U.S. violations of the 1962 Geneva Accord, which bars all forms of foreign military intervention in Laos. They contend that Hanoi's refusal to concede the presence of North Vietnamese troops here makes it diplomatically unfeasible for the U.S. to act otherwise.

Consequently, everyone in Vientiane, from the Russian ambassador to the mamasan of the legendary White Rose, knows what the Americans are doing here. But the American public remains ignorant of the fact that their government is arming, training, supplying, transporting and directing approximately 70,000 Laotian troops in a war which threatens to get out of hand.

Instead of setting the record at least partially straight, U.S. officials here do things like allowing Vang Pao to declare recently, before a sizable contingent of visiting journalists that his Meo forces fight with antiquated weapons, inadequate communications and inconsequential American support. As he was speaking, American F-4 Phantom jets roared overhead, several American observation planes were parked nearby and three cargo-laden American transport planes landed in quick succession at his official Sam Thong base. After denying he even received indirect U.S. military support, Vang Pao calmly climbed into an unmarked American helicopter, guarded by Laotian troops carrying American-made M-16 automatic rifles, and was flown back to his secret Long Cheng headquarters by a three-man American crew.

Vang Pao and official verbiage notwithstanding, American involvement in the Laotian conflict takes the following principal forms: in addition to 75 military advisers listed as embassy "attachés," about 300 men are employed in a variety of clandestine military activities supervised by the CIA. Although technically civilians, many CIA agents in Laos are former Special Forces soldiers recruited because of military expertise and Vietnam experience.

These ex-Green Berets train government troops, assist wide-ranging reconnaissance teams and plan guerrilla and psychological warfare operations. They wear combat fatigues and work out of three main camps, where they administer rigorous training in jungle warfare, guerrilla tactics, communications handling and weaponry. The CIA also maintains and largely controls Vang Pao's army of approximately 15,000 full-time troops. Official instructions to the contrary, CIA personnel occasionally accompany these forces on combat forays. More than 20 agents have been killed in Laos.

"These guys are tigers," says an American personally acquainted with many CIA agents in Laos. "They're tough, intelligent guys who know how to handle themselves. They're not afraid to mix it up out in the jungle." The American is a civilian engineer who befriended many agents while helping to build airstrips on several of their remote outposts. "They came to Laos because they were fed up with having their hands tied in Vietnam," he says. "Here they're doing things the way they want to and getting better pay for it as well."

Learning about these activities prompted Senator Fulbright to raise a key question about the CIA's role here: since its function ostensibly is to gather information, why is this agency running a war in Laos? "I don't approve of this kind of activity at all," Fulbright said, "but if it is in the national interest to do this, it seems to me it ought to be done by regular U.S. Army forces and not by an intelligence-gathering agency." He added that the National Security Act, which created the CIA, "never contemplated this function" for the agency.

The CIA mission chief in Laos is Lawrence Devlin, listed as a "political officer" in the U.S. Embassy. Unlike most political officers, however, Devlin flatly refuses to see reporters.

Cargo and military supplies—as well as personnel—are ferried throughout Laos by Air America and Continental Air Services, private charter firms under contract to the U.S. government. They are better known as the "CIA Airlines," and most of their pilots are ex-Air Force officers.

Another form of American air service in Laos constitutes the most direct U.S. involvement in the fighting. Under the euphemism of "armed reconnaissance flights," Thailand-based American jets and bombers have mounted aerial bombardments equal to the pounding taken by North Vietnam prior to the bombing halt in 1968. The Ho Chi Minh trail in southeast Laos has been the prime target of American air attacks, but enemy encampments and troops on the Plain of Jars came under heavy fire during the recent government offensive.

The sum total of American assistance here is reliably estimated at between $250 million and $300 million per year. Of that, only the technical aid budget—about $60 million—is made public. The rest, undisclosed, goes almost entirely for military purposes.

U.S. officials here stress that American money and manpower expenditures in Laos are minuscule compared to those in Vietnam. Washington is spending about $30 billion in Vietnam and has lost almost 40,000 servicemen there. Less than 200 U.S. personnel—mostly airmen—have been killed in Laos. A small conflict fought by volunteers may not be laudable, they say, but it beats a big bloody one by draftees.

Perhaps, but what happens when a little war threatens to escalate into a huge ugly one like Vietnam? As the *N.Y. Times'* Tom Wicker pointed out: ". . . In an ironic twist on the domino theory, anything that puts an end to those pressures in the South, including defeat for Hanoi as well as victory or a negotiated settlement, could cause North Vietnam to try either to recoup or keep up its momentum in Laos."

A top embassy official in Vientiane argues: "There is no chance of turning this into another Vietnam. We know the mistakes made in Vietnam and we have no intention of repeating them. Hanoi understands our position here. We seek no wider war."

Does it sound familiar?

Mr. MANSFIELD subsequently said: Mr. President, so that my previous reference in the RECORD to Green Berets possibly being in Laos may be clear, I was referring to former Green Berets or ex-Green Berets. That should be made clear; otherwise, what I said previously might be misconstrued. So far as I know no active members of the Special Services, sometimes known as Green Berets, are in Laos, although according to the article in Atlas magazine former Green Berets or ex-Green Berets are there. I hope the RECORD will be clear in this respect.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the order heretofore entered, the distinguished Senator from New York (Mr. JAVITS) is now recognized for 15 minutes.

"NO" ON JUDGE CARSWELL'S CONFIRMATION

Mr. JAVITS. Mr. President, I have sought this time and appreciate its being made available to me by the leadership, to announce my position in respect to the confirmation of Judge Carswell to be a Justice of the Supreme Court of the United States.

I have approached the Carswell nomination as I did the Haynsworth nomination with a presumption in favor of the President's nominee. I considered this my duty both as a Senator and as a Republican. But I find that I cannot

vote to confirm Judge Carswell for essentially the same reasons that I could not vote to confirm Judge Haynsworth.

As with the Haynsworth nomination and with all nominations to the Supreme Court, I view the Senate s role of advise and consent as to require me to judge the nominee's fitness on the basis of character, philosophy, and professional attainment, and not on the basis solely of "name, rank, and serial number," as some would argue. The President is entitled to choose a conservative or strict constructionist for the Supreme Court. But this does not preclude me from making a substantive finding on the question of Judge Carswell's qualifications to sit on the High Court.

Many Senators voted against Judge Haynsworth's confirmation for reasons of conflict of interest, or because they strongly opposed his record in labor cases. My opposition, however, was based primarily on his insensitivity to the real meaning of equal protection when it comes to racial segregation. In announcing my decision on Judge Haynsworth, I stated that I had reached this conclusion because "his views on the application of the Constitution to the most critical constitutional question of our time—racial segregation—are so consistently insensitive to the centuries-old injustice which we as a Nation have caused our black citizens to bear, that I could not support the introduction of his judicial philosophy into the Nation's highest court." And that is the reason that I announce my opposition to Judge Carswell's confirmation today.

Indeed, the record in the case of Judge Carswell also contains statements and actions of the nominee as a private citizen which reinforce my impression that he will not as a Justice be diligent in extending equal protection of the law to all our citizens in civil rights cases

G. HARROLD CARSWELL AS CITIZEN

At least three incidents involving Judge Carswell as a private citizen have been brought to light since this nomination was sent to the Senate. All three indicate an attitude toward black Americans which I find unacceptable. I believe the insensitivity which produced them is also reflected in Judge Carswell's decisions.

First, in chronological order, there is the 1948 speech strongly reaffirming the nominee's dedication to the doctrine of white supremacy. Granted that the speech was made in the heat of a political campaign, but the words themselves were particularly strong and repugnant to Americans concerned with equal justice:

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

Granted that this speech was made 22 years ago, and was repudiated last month by Judge Carswell after it was revealed for the first time. And without any further support, this could have ended the matter. But when read in the light of subsequent events and in conjunction with some of Judge Carswell's most recent decisions, it cannot be rejected and must be held to shed some light on the philosophy of the judge. We should also remember that these sentiments were expressed by a man who in this very speech—delivered to an American Legion meeting—emphasizes his war record and his personal efforts to overcome the fascist doctrine of racial superiority; and that it was made at a time—1948—when the armed services were already being desegregated and the Nation was just embarking on the long and difficult road to ending racial discrimination.

Judge Carswell had been outside the South, had met and served with black Americans in the Navy, and had at least been exposed to life outside rural Georgia. The 1948 speech indicates to me that he had rejected these influences at that time; and I seriously question whether he has basically rejected them now, even though I do not challenge his sincerity in saying he rejects them.

Second, we come to the question of the Tallahassee Country Club. The facts are now well known: municipal golf course owned and operated by the city of Tallahassee, was turned over to a group of white citizens for a nominal sum—rent of $1 a year on a 99-year lease—at the very time that suits were pending all over the State of Florida demanding that such public recreational facilities be desegregated. Whatever the motives of the incorporators—and Judge Carswell is particularly vague on this point—the fact is that because the property was transferred to private ownership, the club was able to maintain a white-only policy and the black citizens of Tallahassee were denied access to the course.

Judge Carswell is listed in the corporate documents as an incorporator and a stockholder of the club. He held the position of U.S attorney for the northern district of Florida at that time, 1956, and it is difficult for me to accept the proposition that he was not aware of the state of the law on this subject. Less than a year before, the Supreme Court had decided *Holmes* v. *City of Atlanta*, 350 U.S. 879, requiring that city to desegregate its municipal golf course, and a sunilar order was entered against the city of Pensacola by a judge in the very court in which Judge Carswell served as U.S. attorney exactly 2 weeks after the city of Tallahassee approved the transfer.

The circumstantial evidence that this transaction was a calculated attempt to avoid integration is simply overwhelming—and Judge Carswell's active participation, combined with his certainly imputed knowledge of the law is very damaging indeed. And so this incident, coming 8 years after his Georgia speech, appears to me to show continuance, rather than the opposite, of a private inclination to keep the races separate notwithstanding the law.

Finally, and most recently, we have learned since the hearings have been completed, that Judge Carswell, and his wife, transferred real property in 1966 with a restrictive racial covenant It seems almost incredible to me that any lawyer, let alone a U.S. district judge would sign such a deed since a covenant contained in it was declared legally unenforceable almost 20 years before. *Shelly* v. *Kraemer*, 334 U.S. 1, which was decided in 1948 clearly established the nonenforceability of such a covenant and is a landmark case which should be familiar to all lawyers. It may be true that many old deeds contain the clauses, but it is most unusual that they should have been inserted after 1948

The clause in question originated in 1963 when Judge Carswell's brother-in-law transferred the lot to him, and was incorporated in the instrument by which Judge Carswell sold the lot 3 years later. Why would a lawyer or a judge countenance such a clause, even with the knowledge that it is legally unenforceable?

G. HARROLD CARSWELL AS JUDGE

Now a few comments upon Judge Carswell's opinions as a judge. Again, I believe that as a Senator it is my duty to examine the philosophy and approach which a nominee brings to the High Bench, not with respect to the record of his being liberal or conservative, but merely from the point of view of enforcing the Constitution and the laws.

All of the foregoing details might be coincidental to the question of confirmation if they had not entered into the nominee's decisions as a judge. But on the contrary, I have found on reviewing Judge Carswell's reported cases, about the same pattern of delay and failure to come to grips with the racial crisis which I found in Judge Haynsworth's civil rights opinions.

For more than 10 years, during a critical period in the history of this Nation, Judge Carswell had the responsibility for overseeing the desegregation of schools in three Florida districts

In Augustus against Board of Public Instruction of Escambia County, Judge Carswell first dismissed for lack of standing, that part of a suit filed by Negro pupils aimed at desegregating faculties He was unanimously reversed by the fifth circuit which held that whether or not the pupils could be hurt by being taught by a segregated faculty was a question of such importance as should not be settled on a motion to strike without a hearing. Although this suit was originally filed in the spring of 1960, it was not until January of the following year that the fir t factual hearing was held

Two months later, an order was issued requiring the school board to formulate a desegregation plan—a task for which they were given 3 months' time. Hearings on this plan were not held until August 1961, and it was not accepted until the following month—too late to be implemented during the new school year The following July, the court of appeals again reversed Judge Carswell, finding the plan he had accepted to be ineffective and

remanding to the district court with instructions to devise and implement a new plan before September, if possible. Apparently ignoring the concern expressed by the circuit, Judge Carswell did not even set a hearing on the new plan until November, thus postponing the possibility of its taking effect until the 1963–64 school year.

When suit was filed in Leon County, which contains Judge Carswell's home city, Tallahassee, he accepted a plan almost identical to one on which he had been reversed by the fifth circuit in Escambia. In Steele against Board of Public Instruction of Leon County, he approved a weak plan allowing the automatic reassignment of all pupils to previously segregated schools and putting the burden on black students to apply for transfers. Affirmative desegregation was to be accomplished on a grade-a-year basis, in spite of the circuit's directive in Escambia, that unless complete desegregation could be accomplished by 1963, plans should provide for at least two-grades-per-year desegregation. Once again, he was reversed by the fifth circuit.

It is difficult to understand how Judge Carswell could ignore two reversals on these grounds and accept an essentially identical plan from a third district a year later, but that is exactly what Judge Carswell did. Youngblood against Board of Public Instruction of Bay County. In this 1964 case he accepted a plan which would not have brought about complete desegregation of the district until the fall of 1976. It was not until an exasperated fifth circuit court set a deadline of 1967 for complete desegregation throughout the circuit in Stout against Jefferson County Board of Education that Judge Carswell amended this and other weak plans which he had accepted.

It is exactly this kind of persistence in error which characterized Judge Haynsworth's decisions and which I also find unacceptable in this nominee. It seems to me that the Judge would have read the fifth circuit's remand in the Escambia case as requiring more than a token freedom-of-choice plan which would take a full 12 years to implement. But Judge Carswell seemingly chose to ignore that aspect of the decision and continued to accept plans in violation of the remand.

There are other indications of Judge Carswell's insensitivity to race problems scattered throughout his decisions. In 1961, for example, in correctly holding that a restaurant in a municipal airport could not maintain segregated facilities, he added a final paragraph subtly suggesting an evasive course of action.

> Nothing contained in this order shall be construed as requiring the City of Tallahassee to operate under lease or otherwise, restaurant facilities at the Tallahassee Municipal Airport (*Brooks* v. *City of Tallahassee*, 202 F. Supp. 56.)

This sentence which appears in the opinion reprinted in 6 Race Relations Reporter 1099, was deleted from the opinion later published in the Federal Supplement.

The nominee was also quick to dismiss without a hearing, charges raising constitutional questions. He dismissed for failure to state a cause of action, a suit filed by black citizens alleging a conspiracy on the part of private business and public officials to maintain segregated facilities. Due against Tallahassee Theatres, Inc., 1963. Five months before, the Supreme Court had decided the identical question of law in reversing convictions of black citizens seeking desegregated services. *Lombard* v. *Louisiana*, 373 U.S. 267. The fifth circuit, of course, found Judge Carswell's dismissal "clearly erroneous."

And in 1964, he dismissed for lack of standing, a suit to desegregate Florida State reform schools which had been filed by former inmates who were, at the time of filing, on probation. Singleton against Board of Commissioners of State Institutions. He was reversed again by the fifth circuit.

In 1968, he was again reversed for granting summary judgment in favor of defendants in a similar suit alleging bad faith in initiating prosecutions of civil rights workers. *Dawkins* v. *Green*, FD Supp. 772.

The hearing record on this nominee is replete with charges and countercharges involving Judge Carswell's attitudes toward civil rights litigants and their attorneys; and it even has been charged that he collaborated with local law-enforcement officials to rearrest demonstrators freed by his own court orders. I do not base my conclusion on these charges for I believe that the rest of the record is sufficient of itself to justify my own decision.

Clearly, Judge Carswell—on his personal record and his public record, at the very least—shows a desire to slow the movement toward equal opportunity for all Americans insofar as it can be established by law. My respect for the Supreme Court and my strong desire to see the cause of equal opportunity and civil rights advanced, make my consent to this nomination impossible.

Mr. President, I close, as I began, by saying that this is not a reflection—and I intend none—on Judge Carswell as a man. So far as I am concerned, there is no reason to go into that question at all. The fact is that I cannot cast my vote to confirm his nomination as a Justice of the Supreme Court of the United States. It is for the reasons I have stated: his insensitivity to the equal protection of the laws, and because I believe it is my duty in respect to our advice and consent responsibility, to be convinced that whatever may a judge's personal philosophy—liberal, conservative, strict construction, or liberal construction—he must be a man equal to the task of being a Supreme Court Justice, and I do not find that to be the case here.

Mr. President, I ask unanimous consent to have printed in the RECORD a statement signed by four very distinguished members of the New York bar—Bruce Bromley, a former judge of the New York Court of Appeals; Francis T. P. Plimpton, 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; and Bethuel M. Webster, former president of the Association of the Bar of the City of New York—giving in fine reasoning their feeling why the vote should be "no" on the Carswell nomination.

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 areas, 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 not 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 the 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 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 introduction. At that time former City Commissioner H G. Easterwood, now a county commissioner, blasted the lease agreement.

"He said racial factors were hinted as the reason for the move.

'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 500)

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 purposes of taking property for racial purposes or discriminatory purposes." (TR 151)

Senator Kennedy: "Did you have any idea hat 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 anythiug 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

[1] References are to the transcript of the hearings on the nomination before the Senats Committee on the Judiciary.

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. Eight 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 ws 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:[1]

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 City of New York.

ORDER FOR ADJOURNMENT UNTIL 10 O'CLOCK A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 o'clock tomorrow morning.

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

(Subsequently, this order was modified to provide for a recess until 9:30 a.m. tomorrow.)

NEW POLICIES ESTABLISHED BY NIXON ADMINISTRATION

Mr. ALLOTT. Mr. President, there are two indisputable and highly significant new policies established by the Nixon administration.

One is the change with respect to the Vietnam war. The clear fact is that American troop levels are being steadily reduced, after 8 years of being steadily increased under the Democrats. Casualty rates are declining, after 8 years of steady increase under the Democrats. More and more of the defenses against the North Vietnam invaders are being taken over by the South Vietnamese, after 8 years of steadily increasing American responsibility for the defense of that country.

Yet, the Democrat policy council criticizes the Nixon administration on Vietnam, charging that we are not getting out fast enough, and that we should furnish the enemy with an exact timetable on our leaving.

Thus, we have the unique display of the party under whom our involvement mushroomed, who later tried—but failed—to turn its back on its own actions, now saying "you're not doing fast enough what we were unable and unwilling to do ourselves."

The Democrat policy council is faithfully following the pattern set by former Secretary of Defense Clark Clifford. Mr. Clifford was barely out of office before he began to berate the Nixon administration for not moving fast enough in dismantling the discredited Vietnam policies which he, as a long-time adviser to President Johnson, had helped to formulate and administer.

Now the Democratic policy council is behaving similarly. The council complains that the Nixon administration is not acting swiftly enough in its steady reversal of the policies inherited from the Democrat administration. This is worse than a bad case of 20/20 hindsight. This is a bald case of retrospective conversion. They now like the Nixon administration's policy of prudent Vietnamization. They just want more of it.

The second indisputable and highly significant policy established by the Nixon administration is an actual, and firm, reduction in the military budget.

The defense budget for fiscal year 1970 was the first part of the Johnson administration budget to be cut by the Nixon administration. In fact it was cut twice. The fiscal year 1971 defense budget request by the Nixon administration is more than $5 billion less than that for fiscal year 1970

Compare this with 8 years of steadily increasing military spending under the Democrats, rising from $47 billion in 1961, to $81 billion in 1969.

In fact, the first Nixon year and the first Kennedy year afford a nice contrast. Kennedy almost immediately began to increase military spending. Nixon almost immediately began to cut it.

Second, in another sense this budget represents a restoration of proper balance in American spending. It represents a decisive shift in the relationship between military and nonmilitary spending, a shift in favor of nonmilitary programs. It has been 20 years—two full decades—since the Defense Department has been promised such a small share of Federal expenditures. It is now at 34 percent of the national budget, an all-time low of those 20 years. This is the reality not the mere rhetoric, of reordering national priorities.

Again the Democratic policy council is attacking the Republicans for not accomplishing well enough, or quickly enough, something the Democrats were unable or unwilling to do during those 8 long years when they were in control of both administrative and legislative branches of the Federal Government.

Yet, we are now bitterly attacked because "we aren't doing it fast enough."

And, Mr. President, statements such as those made before the Democratic policy council comparing Federal expenditures on national defense, with expenditures on specific items of welfare, education, health, and so forth, are misleading in the extreme. There seems to be a tendency among these people to miss one important fact, and that is that the taxpayer has only one pocketbook. Everybody who dips into that pocketbook goes to the same source of funds.

National defense is the sole responsibility of the Federal Government. Therefore, the sole funding for national defense must come from Federal moneys. But the general welfare of our people is not solely the responsibility of the Federal Establishment; it is shared by both State and local governments. And both State and local governing bodies go to the same taxpayers the Federal Government taps to get the wherewithal to finance health, education, and welfare programs.

The HEW budget submitted by Presi-

[1] Mention of an organization is purely for descriptive purposes, and not to indicate an expression of the views of the organization.

There appears, however, to be one positive aspect to this ominous situation. In a world where international hostility and entrenched nationalism threaten mankind with swift destruction, the great powers are beginning to see, in threats to the environment, a common enemy. Many have argued that only under the menace of such a common danger would the established patterns of thought be broken

NEW SCHEME

Last week it became known that Soviet and American scientists, as well as others, are working on a scheme for global monitoring of the environment. Stations and substations, earth satellites and ships at sea would watch for changes in earth, air and water, as well as in the populations of plants and animals living in those realms, that might indicate threats to the balance of nature.

For two days last week American scientists met at the National Academy of Sciences in Washington to begin drafting plans for one of the 20-odd stations envisioned for the main monitoring network The scheme is an outgrowth of the International Biological Program, a global effort by many nations now under way.

Also last week the Soviet Union and the United States agreed on scientific and cultural exchanges for this year and 1971 that place special emphasis on the exchange of specialists in such subjects as air pollution and waste water treatment.

These developments call to mind the "convergence" theory espoused by a number of scientists and others in both East and West, namely that the problems common to highly technological societies are forcing nations of diverse ideologies to evolve along converging economic and social lines.

At the organizational meeting of the task force that will plan a prototype monitoring station Dr. Dale Jenkins, director of the ecology program of the Smithsonian Institution, pointed out that there are now some 2.5 million known chemical compounds and that each year 500 new ones go into widespread use. Yet, he said, "little attention" is paid to their long-term biological effects.

The adverse effects known to have occurred are picayune compared to what can happen (or may already be happening) in the view of ecologists—those concerned with the interdependence of all life forms in a particular environment and their interactions with that environment.

The episodes in the news last week are therefore but a taste of what may happen:

(1) A tanker broke apart on Cerberus Shoal between Nova Scotia and Cape Breton Island, pouring oil into the Atlantic Ocean, already so polluted that there is more oil than drifting life on portions of the mid-Atlantic.

(2) A group of Colorado scientists charged that a plant operated for the Atomic Energy Commission by the Dow Chemical Company had released enough radioactive plutonium to present "a serious threat to the health and safety of the people of Denver."

(3) Eleven companies, including such giants as International Harvester, Penn Central, Olin, Procter and Gamble and Pure Oil, were charged by the Justice Department with seriously polluting waterways in the Chicago area. Similar charges have been made in New York and elsewhere.

At the meeting at the National Academy of Sciences, it was reported that DDT is being detected in winds blowing across the Atlantic from Africa to Barbados. While industrialized nations have begun to curtail the use of this persistent pesticide, which is fatal to many forms of life, it was reported that India is planning to use it on a massive scale to kill malarial mosquitos. Not to do so, the Indians argue, would be a form of genocide.

The greatest concern is for effects too subtle to be immediately apparent. A report recently submitted to the National Institute of Environmental Health Sciences says: "Virtually every person in the United States is exposed daily to food additives, drugs and pollutants of water and aid that were unknown prior to the present era."

"In most cases," it continues, "the biological effects of these substances are poorly understood." While it is comparatively easy to test additives and drugs for toxicity—their potency as poisons—it is difficult to assess their hereditary effects. "A particular drug," said the report, "is never tested in all the situations (such as pregnancy) and in all the combinations with other environmental agents that would occur, should it come into general use."

THALIDOMIDE EXAMPLE

The thalidomide disaster, in which thousands of deformed children were born to mothers taking that tranquilizer, is the classic example. In recent weeks attention has focused on 2,4,5-T, a defoliant widely used in Vietnam and, in this country, along power lines. There are indications that it, too, may cause birth defects.

This report, drafted by a committee of leading geneticists and other specialists, recommended that the blood of mothers and newborn infants, taken from the umbilical cord and placenta, be monitored on a spot-check basis to watch for any signs of increased mutation rates.

It is know that radiation and some chemicals can cause mutations, or changes in the coded genetic information of the cell. A certain number occur naturally. Some lead to congenital abnormality and mental retardation. A widespread increase in mutations could be disastrous for the human race.

Geneticists in the Soviet Union have been developing a similar monitoring project. The inclusion of such a program is being considered for the projected global monitoring, but the latter would be concerned with all life forms—not only human beings. The ecologists believe that preservation of the diversity of life on this planet is essential for the long-term preservation of life itself.

NOMINATION OF JUDGE CARSWELL TO THE SUPREME COURT

Mr. BELLMON. Mr. President, I have carefully considered the charges and responses which have been made in connection with Judge Carswell's nomination, and would like to make an observation that seems to me to bear heavily in favor of its confirmation. My point, stated, is this: the case against Judge Carswell is largely based upon statements and testimony of persons who have had little, if any, personal contact with him, while those who appeared in support of the nomination did so on the basis of a long and continuous relationship during which there were numerous opportunities for them to observe the nominee as a man and a judge. This being the case, it seems clear to me that any "conflicts in the testimony" should be resolved in favor of Judge Carswell.

Let me give an illustration. During the committee hearings, a number of individuals who had represented civil rights plaintiffs on isolated occasions in Judge Carswell's court testified that he had been discourteous to them and had exhibited hostility to their cause. In direct conflict with this testimony were communications received from Judge Carswell's fellow trial and appellate judges, who worked with him year in and year out, and lawyers and court attendants who were in frequent or regular contact with Judge Carswell while he sat as a district judge. The lawyers who submitted these telegrams or letters in support of confirmation had appeared before Judge Carswell, not sporadically like those attorneys opposing the nomination, but numerous times over an extended period of time. I find most compelling the fact that each of these attorneys stated that he had never seen an act of discourtesy or hostility toward a civil rights attorney or his client on the part of Judge Carswell. I ask unanimous consent that copies of these communications be printed in the RECORD at the conclusion of my remarks.

I find that the charges against Judge Carswell have not been proven. Much has been said on the Senate floor about Judge Carswell's qualifications—his wide-ranging experience as U.S. attorney, district judge, and circuit judge, his superior intelligence, impeccable integrity, and high judicial temperament. I agree with those urging confirmation that all of these necessary qualities are present in Judge Carswell. For that reason, and because I believe the philosophical objections which have been raised are baseless, I shall be pleased to vote for confirmation.

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

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

DEAR SENATOR EASTLAND: I was Judge Harrold Carswell's law clerk from February 1960 to June 1962, a period of approximately two and a half years. I believe I was his law clerk longer than any other law clerk he had before or since. I am a member of the Florida Bar practicing law in Melbourne, Florida.

As a member of the Jewish faith and consequently a member of a minority, I sincerely believe that the day to day association which I had with Judge Carswell, both in and out of the courtroom, would have revealed any racist tendencies or inclinations, had there been any. Without the slightest hesitation, I can assure you and the members of your committee that the litigants in the United States Federal District Court in Tallahassee were not judged by their race, creed or color. Judge Carswell's integrity and honesty is beyond question in this regard. He dealt fairly, honestly and respectfully with all those who came before him. His judicial manner was not altered by the race or color of those who appeared before him. I believe that I am more qualified to judge this man than are his accusers. I would be willing, at my own expense, to testify under oath, that none of the decisions rendered by him during my tenure of office were tainted in any manner with a so-called racist philosophy, nor were civil rights lawyers or litigants treated in any manner other than the respectful manner accorded to all litigants and attorneys appearing before him.

The people of this country have a right to know the truth about his beliefs, unsullied by false accusations and innuendo.

I deeply resent the attempt of some to tarnish the reputation of a man of Judge Carswell's caliber. He would be a great asset to the Supreme Court.

Should a further statement regarding my association with him be desired, I would welcome the opportunity to further elaborate.

More sincerely yours,

MIKE KRASNY.

MELBOURNE, FLA.

FEBRUARY 3, 1970.
Re confirmation of G. Harrold Carswell.
Senator JAMES EASTLAND,
Chairman,, Senate Judiciary Committee, U.S. Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: Judge Carswell should be confirmed as an Associate Justice of the Supreme Court. I have been a law professor at Southern Methodist University since 1959 and have been a visiting professor at Florida State University since 1968. With deference to Lowenthal, Von Alystyne and Orfield, their statements as reported in the news media, do not present a rational basis for opposing or delaying Judge Carswell's confirmation.

An examination of Judge Carswell's decisions in civil rights cases demonstrate a fair and reasoned approach in keeping with the highest standards of judicial integrity. This is a significant accomplishment particularly because, as the committee is well aware, emotionalism and fervor so pervade the sensitive area of civil rights that many well meaning persons become totally intolerant of any view other than their own.

For example, on jurisdictional grounds Judge Carswell should be praised not condemned for his ruling in *Wescher* v. *Gadsden County*. The only issue therein properly before the court involved the construction of a removal statute. The 5th circuit remanded the case for further consideration because after the district court had ruled, the 5th circuit in two cases, *Rachel* v. *State of Georgia*, 347 F2 679, gave a broad interpretation of removal jurisdiction. Subsequently in line with Judge Carswell's earlier decision the Supreme Court reversed the 5th circuit in *Greenwood*, 384 U.S. 808, and on narrower grounds affirmed *Rachel*, 384 U.S. 780.

For the Supreme Court's decision in Greenwood, it would be absurd to say the Supreme Court justices are racial bigots and it would be equally absurd to apply the same type of fallacious reasoning to any other jurist.

It is my firm belief that Judge Carswell's rulings are not based or influenced by race, creed or color in any way. Judge Carswell merely rules upon the facts and issues of the cases before him.

His record unequivocally shows that he rules fairly and without regard to the fervor and emotion of those on either side. Judge Carswell's records of over 4,500 civil and criminal cases clearly demonstrates an unusual skill of addressing his ruling to the issues at hand. He emphasizes the total picture. It seems that those who criticize his rulings are merely disappointed litigants who cannot evaluate Judge Carswell fairly in the light of their zeal for their cause.

The civil rights of all men must be protected and I respectfully submit that Judge Carswell's record when properly viewed is highly commendable. I say this not only as a legal educator but as an attorney who has appeared in cases before the 5th Circuit and the Supreme Court. (For example see habeas corpus appeal in *Brooks* v. *Beto* 336 F.2d, involving the issue of whether purposeful inclusion as distinguished from purposeful exclusion of blacks on a grand jury violated many clients constitutional rights.)

Judge Carswell would bring humility and skill, which coupled with his outstanding judicial experience will provide a basis for his making a significant contribution to our highest court.

I would be pleased to testify under oath in support of Judge Carswell if the committee would be so inclined.

Respectfully,

WILLIAM VANDERCREEK.

TALLAHASSEE, FLA.

FEBRUARY 4, 1970.
Senator JAMES O. EASTLAND,
New Senate Office Building,
Washington, D.C.:

From early 1960 and for sometimes thereafter I served as school board attorney in the suit brought against it by Augustus, et al. At no time in the various hearings in this case at which I was present did Judge G. Harrold Carswell, either in Chambers or in open court, treat any counsel or any party or any witness with other than courtesy and respect. There was no indication or any intimation that any counsel was treated discourteously or any counsel for either side received any treatment other than that received by all, and there was definitely no actual, implied or suggested discourtesy or unpleasant treatment extended any one involved in the case in my presence, or within my knowledege.

RICHARD H. MERRITT,
Attorney.

PENSACOLA, FLA.

FEBRUARY 4, 1970.
Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
New Senate Office Building, Washington, D.C.:

As Bailiff in Judge Carswell's court for eleven years, I was daily within hearing distance of his chambers at practically all times when hearings were held. In August, 1964, when counsel in the Wechler case appeared before Judge Carswell in Chambers, I was present in the room throughout the whole proceeding. At no time then, or any other time, did Judge Carswell speak in a shrill or rude voice to these attorneys or any other attorneys or anyone, or treat anyone in a hostile manner. He did not express any statement at all about lawyers from other parts of the country or express opposition to what they were doing. They were treated courteously in every way. I don't know about the legal orders entered, but at the conclusion of the hearing I thought the attorneys there were pleased with the results because they had gotten the writ they had come for. Neither Judge Carswell nor anyone else on his staff showed any hostility or discourtesy whatsoever to these attorneys.

WILLIAM T. CORROUTH,

TALLAHASSEE, FLA.

FEBRUARY 3, 1970.
Senator JAMES O. EASTLAND,
New Senate Office Building,
Washington, D.C.:

I was attorney representing Alachua County School Board in the case of *Wright* v. *Board of Public Instruction of Alachua County* from the time the suit was filed until I resigned as attorney for the Alachua County School Board just prior to my appointment as United States District Judge of the Northern District of Florida in January of 1968. Having attended all of the hearings before the court as counselor for the school board, I can state un-equivocably that Judge Carswell never once displayed hostility or discourtesy to any attorney, party or witness in this case. His demeanor in chambers and on the bench was at all times fair and courteous to all. This was true in all other litigation in which I appeared before him.

WINSTON E. ARNOW,
U.S. District Judge, Pensacola, Fla.

FEBRUARY 3, 1970.
Re Newsweek article February 9 issue concerning Judge Carswell's speech to Georgia State Bar Association, Atlanta.
Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
Senate Office Building, Washington, D.C.:

I was present as a guest at the speakers table on that occasion. The anecdote which Judge Carswell told in his speech relative to General Stillwell carried no racial overtone, indignity or implication of any kind. To hold otherwise would be an unfair attribution.

ROBERT A. AINSWORTH, Jr.,
Judge, U.S. Court of Appeals, Fifth Circuit, New Orleans, La.

JANUARY 29, 1970
Hon. JAMES EASTLAND,
Senate Building,
Washington, D.C.

It is with extreme pleasure for my family the Isenbergs originally of Gordon, Ga., Wilkinson County, to endorse Hon. G. Harrold Carswell for the high honor of Justice of the Supreme Court. The family of Judge Carswell are of the finest stock and there never has been nor never will be any racist feelings in any of this fine Georgia family. Judge Carswell's father was a personal friend of my family who are a member of the minority group and we feel sure that he will serve with distinction and honor if confirmed to this high office. I am a former member of the General Assembly of Georgia representing Glynn County and past president of the Chamber of Commerce and past chairman of the Brunswick, Georgia Port Authority. If I can be of any further assistance in your investigation of this upright Christian gentleman please do not hesitate to call me and I will gladly appear at my own expense before your honorable committee.

JOE ISENBERG.

ST. SIMONS ISLAND, GA.

Re "Newsweek, Feb. 9 concerning Judge Carswell's Atlanta speech for Georgia Bar.
Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
New Senate Office Building,
Washington, D.C.

I, along with a number of Federal judges, sat on the platform and heard the full talk. The facts are these: Judge Carswell was reponding to an introduction by Judge Bell, who noted that Judge Carswell had lived in many parts of Georgia as a young man. To this, Judge Carswell, referring to himself, responded in substance: Yes I like Judge Bell, have lived in many Georgia towns, I am somewhat like the man Georgia's distinguished Senator Russell is said to have referred to in an anecdote concerning General Vinegar Joe Stillwell of Southeast Asia. The general prided himself in his ability to identify by nationality any person at a glance. He said, see that man over there, he is from France, he is from Canada, and that deeply tanned soldier there is from Indo-China, to which the soldier replied, no sir General, I am from outdoor, Georgia. Carswell then confessed, I am that man, I am from many parts of Georgia.

There were no suggestions of racial overtones whatsoever in his speech.

LEWIS R. MORGAN,
Circuit Judge, U.S. Court of Appeals for the Fifth Circuit, Newnan, Ga.

FEBRUARY 3, 1970.
Re Judge G. Harrold Carswell,
Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.:

I have been actively representing school board of Alachua County, Florida and integration litigation since October 1968 as well as Florida High School Activities Association in which black lawyers were involved on the other side. All of this litigation in the lower court was before Judge Carswell. I have never seen Judge Carswell discourteous to any lawyer. He disagreed on occasions with their contentions as he did mine but did so in both cases in the same manner.

HARRY C. DUNCAN,
Attorney for School Board, Alachua County, Fla.

FEBRUARY 4, 1970.
Senator JAMES O. EASTLAND,
New Senate Office Buildin,
Washington, D.C.

DEAR SENATOR: This will advise you that I have known Judge Harrold Carswell for approximately fifteen years. My acquaint-

ance with him stems from my appointment by President Eisenhower as United States Attorney for Northern Indiana, and later as Special Assistant to Attorney General Herbert Brownell and then William P. Rogers as Executive Officer in charge of all U.S. Attorneys. Shortly following the controversial Brown decision on segregation I held a conference in Washington of all the Southern United States Attorneys to help the Department of Justice to implement the decision. Harrold Carswell was the only United States Attorney who was helpful to me and the department in this respect. I will be glad to substantiate this by personal testimony or affidavit. Please feel free to call upon me to assist your honorable committee in any way that I can.

Sincerely and respectfully yours,

JOSEPH H. LESH

HUNTINGTON IND.

FEBRUARY 3, 1970

Senator JAMES O. EASTLAND,
Washington, D.C.:

I have at all times been an attorney for the defendant Board of Public Instruction of Escambia County, Florida in the school integration case instituted against it by Dr. Charles A. Augustus, et al., as plaintiffs, and attended every conference and hearing in the case before Judge Carswell. Judge Carswell was never rude or discourteous in any way to any of the attorneys in the case and he was always equally courteous and respectful to the attorneys for the plaintiffs.

J. EDWIN HOLSBERRY,
Holsberry, Emmanuel, Sheppard, & Mitchell
PENSACOLA, FLA.

FEBRUARY 3, 1970

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

My law firm has represented the board of public instruction of Leon County, Florida, in the school desegregation case styled Clifford N. Steele, et al. vs. board of public instruction of Leon County, Florida, since the filing of that suit in the United States District Court for the Northern District of Florida in March 1962. Judge Harrold Carswell presided over that case from its inception until he was elevated to the court of appeals for the Fifth Circuit.

I personally appeared as attorney for the Leon County school board in the Steele case in March 1967, and have been actively engaged in the representation of the board since that time to the present date. I have appeared in that capacity innumerable times in open court. Judge Carswell has always conducted himself with dignity and courtesy to all attorneys of record in the Steele case.

There have been not less than 12 different lawyers sent to Tallahassee from New York and elsewhere to represent the plaintiffs in this case against the school board. On many occasions these attorneys were unfamiliar with prior proceedings and attempted to reargue points which had long since been ruled upon by Judge Carswell, and in many instances unreasonably demanded the right to do so. Judge Carswell on several occasions did understandably show impatience with these attempts to relitigate points previously adjudicated, but in no sense was this a reflection of personal animosity toward the lawyers or the cause they repesented, but an effort to handle the case expeditiously.

I do hereby unequivocably state that Judge Carswell has not exhibited disrespect or hostility toward the plaintiffs attorneys in the Steele case and his attitude and demeanor toward north attorneys has always been considerate and well-mannered. I have read about the testimony of some of these out-of-State attorneys before your committee, and I cannot stand idly by and not reply to what I consider ridiculous and unwarranted charges.

C. GRAHAM CAROTHERS

TALLAHASSEE, FLA.

FEBRUARY 3 1970

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

DEAR SIR: I have been lead counsel for the Bay County school board in the case of Youngblood and USA vs Board of Public Instruction of Bay County, Florida. Marianna Florida civil action number 572 since 1964 when this case was originally filed, Judge G Harrold Carswell w s the United States trial judge in this case from the beginning until his elevation to the Fifth Circuit Court of Appeals. In five years of litigation, there were by actual count fourteen attorneys in his court representing the plaintiff in this desegregation case. Often there were different attorneys at each of the several consecutive hearings His patience and courtesy to all counsel was remarkable to behold, particularly in view of the fact that counsel for the plaintiffs changed on several occasions. All counsel in our case were treated with respect and fairness by the court regardless of his cause or residence. If Judge Carswell indicated any impatience at all it was at my clients for failing to get on at the job of desegregating the public schools of Bay County, Florida.

JULIAN BENNETT,
Attorney for Bay County School Board.
PANAMA CITY, FLA.

FEBRUARY 5, 1970

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

DEAR MR. CHAIRMAN: I am writing to the Committee at this time because for a period of five years, from 1958 to 1963, I represented plaintiffs in civil rights cases in the Federal Court for the Northern District of Florida, which was then presided over by Judge G. Harrold Carswell. I also represented criminal defendants and other civil clients in his court during this period of time. Previous to his taking the bench in 1958, I had opposed him as defense counsel in criminal prosecutions brought by the United States when he was United States Attorney. I am certain that during the five-year period from 1958 to 1963, I appeared before Judge Carswell on a minimum of not less than thirty separate days in connection with litigation which I had pending in his court.

As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court, there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions. I represented the plaintiffs in three of the major school desegregation cases filed in his district He invariably granted the plaintiffs favorable judgments in these cases, and the only disagreement I had with him in any of them was over the extent of the relief to be granted. In the case *Augustus v. Escambia County Board of Public Instruction*, Judge Carswell entered an order granting the school board ninety days in which to submit a desegregation plan for the entire school system. On the next to the last day permitted by the court order the board submitted a plan similar to ones which were adopted in the Florida metropolitan areas of Tampa and Miami. Judge Carswell's ruling in this case was reversed by the Fifth Circuit only on the question of faculty desegregation.

I attach to this letter a clipping from the *Pensacola News* of Friday, March 17, 1961, which gives a contemporary account of Judge Carswell's school desegregation order in that case. I also attach a clipping from the *Baltimore Afro-American*, which fairly describes my activities in the field of civil rights litigation

I am presently employed as Deputy Chief Conciliator for the United States Equal Employment Opportunity Commission and reside here in Washington.

Yours very truly,

CHARLES F. WILSON.

ENVIRONMENTAL QUALITY. ECOLOGISTS AND POPULATION

Mr. TYDINGS Mr. President ecologists have a great responsibility to help solve the environmental crisis, particularly since their basic ecological attitude is itself a partial solution to the problem

An article entitled "All About Ecology," written by William Murdoch and Joseph Connell, and appearing in the January issue of the Center magazine, published by the Center for the Study of Democratic Institutions, in Santa Barbara, Calif., discusses an important element of ecology: the limited capacity of the environment to collect, absorb, and recycle our wastes so that they do not accumulate as pollution. We can now observe the gross effects which occur when those limits are exceeded.

The basic task of the newly discovered science, the authors argue, is not to tinker with technology but to create a determination among policymakers to slow down the rush toward disaster. It is interesting to note that this point is exactly the one made by Lord Ritchie-Calder in his brilliant article entitled "Mortgaging the Old Homestead," originally published in Foreign Affairs.

In a questionnaire sent to about 500 University of California freshmen regarding topics to be included in a general biology course for nonmajors, "Human Population Problems" was selected by 85 percent of the students.

Ecologists believe that they must convince us that the only solution to the problem of population growth is not to grow; that the standard of living is beginning to have an inverse relationship to the quality of life; and that a careless increase in the gross national product is disastrous. It is even possible that changes which man has imposed on the ecosystem may prevent a recurrence of the events which produce and sustain the human and natural community.

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

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

ALL ABOUT ECOLOGY

(By William Murdoch and Joseph Connell)

The public's awakening to the environmental crisis over the past few years has been remarkable A recent Gallup Poll showed that every other American was concerned about the population problem. A questionnaire sent to about five hundred University of California freshmen asked which of twenty-five topics should be included in a general biology course for nonmajors. The top four positions were: Human Population Problems (85%), Pollution (79%) Genetics (71 3%), and Ecology (66%)

The average citizen is at least getting to know the word ecology, even though his basic understanding of it may not be significantly increased Not more than five years ago, we had to explain at length what

whose whims the refugees would thus be left, we can hardly approve the latter part of this suggestion. But if the largesse of the free nations is to be misused through the misconduct of certain governments, then it is logical that those governments should bear the burdens which we up to this point have shouldered.

THE SOCIETY FOR THE PREVENTION OF WORLD WAR III has expressed its views in a telegram to President Richard M. Nixon, reading in part as follows:

"It is authoritatively reported in the press and officially conceded by the Commissioner-General of UNRWA that control and policing of 14 Arab refugee camps in Lebanon is in hands of Palestine commandoes or guerrillas primarily armed with weapons of communist origin. . . . In Jordan also UNRWA camps have long been used by guerrillas as centers for training and recruitment. For years UNRWA has been derelict in its duties in failing to correct this situation. Continuation of large American financial support for these camps is therefore tantamount to maintaining a guerrilla army operating against our own interests and condoning terrorism. The American government has no right to use tax money to subsidize terrorism. We therefore urge that you refrain from making new financial commitments to UNRWA until such time as the use of UNRWA installations for guerrilla war purposes has been effectively ended and the control of refugee camps is vested exclusively in the hands of dependable authorities."

We deeply regret the necessity for such a conclusion. We are firmly devoted to the amelioration of human needs wherever they may be discovered but we are also pledged to give such advice as will advance the permanent peace of the world, or at least not contribute to plunging it again into the holocaust of war. We think that the misuse of UNRWA funds is at this time contributing to the latter danger.

We also think that UNRWA, as at present functioning, is not viably performing its primary duty of relief. It has let the refugees become pawns in an international power play, and has permitted war-makers to traffic with their fate for alien purposes. Until this is corrected, the United States ought not to make any further unrestricted pledges to UNRWA—and its support should be explicitly contingent, from month to month, upon a thorough housecleaning of this entire operation.

NOMINATION OF JUDGE CARSWELL

Mr. ALLOTT. Mr. President, yesterday the Senator from Massachusetts (Mr. KENNEDY) placed in the RECORD a statement from the Senator from South Dakota (Mr. MCGOVERN) explaining why Senator MCGOVERN is going to vote against the confirmation of the nomination of Judge G. Harrold Carswell.

Most of the objections Senator MCGOVERN mentions have been discussed in recent weeks. But one objection which Senator MCGOVERN shares with journalist Michael Harrington does merit special attention.

Mr. Harrington, with Senator MCGOVERN concurring, argues that President Nixon is trying to politicize the Supreme Court even more than Franklin Roosevelt did in his ill-fated attempt to pack the Court.

Mr. President, this is a misunderstanding of what President Nixon is trying to do.

It is not true that President Nixon is trying to pack the Court. It would be closer to the truth to say that the President is trying to unpack it. He is trying to restore some semblance of balance to the Court.

If we are faithful to the meaning of "court packing" as that term emerged from President Roosevelt's attack on the Court, we must surely see that what President Nixon is doing has nothing to do with packing the Court.

In fact, the President is acting in accordance with nothing more radical than the U.S. Constitution, which vests in him the responsibility for appointing new members to the Court.

Unlike Franklin Roosevelt, President Nixon is not trying to alter the very structure of the Court.

Unlike Franklin Roosevelt, President Nixon is not asking the Senate to tamper with the number of Justices.

On the contrary, President Nixon is asking the Senate to fulfill its part of the constitutional partnership by bringing the Court up to full strength.

In fact, whereas Franklin Roosevelt was convinced that nine justices were insufficient, there are some persons today who seem to think that nine justices are too many.

Mr. President, I think President Nixon is correct in his approach to this matter. He believes that the court should be composed of nine members as Congress has specified. He thinks that a team of nine can afford a few strict constructionists.

I do not think that a baseball manager is "packing" his lineup if he includes a mixture of lefthanded and righthanded batters. And President Nixon does not think that a judicious mixture of judicial philosophies constitutes a "packing" of the Supreme Court lineup.

In short, Mr. President, the nomination of Judge Carswell tests the willingness of some persons to practice what they preach.

There are some persons who express great enthusiasm for dissent and diversity in many parts of our national life, but who became very nervous when they believe dissent and diversity may emerge in places more important than undergraduate rallies.

Mr. President, the confirmation of the nomination of Judge Carswell will help the Court to perform its difficult functions. American institutions thrive on diversity. The Court is no exception to this rule.

THE RELATIONSHIP OF FUTURE FOREIGN ASSISTANCE PROGRAMS, THE NATIONAL INTEREST, AND THE NEEDS OF DEVELOPING NATIONS—AN ADDRESS BY SENATOR EDMUND S. MUSKIE

Mr. EAGLETON. Mr. President, this past Wednesday, at a luncheon meeting of the International Development Conference in Washington, the Senator from Maine (Mr. MUSKIE) delivered a thoughtful as well as thought-provoking address on foreign aid. He has pointedly raised the urgent matter of restructuring our foreign assistance programs and simultaneously restructuring the political base for them. So that all Senators may have an opportunity to read it, I ask unanimous consent that Senator MUSKIE'S address be printed in the RECORD.

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

THE CHALLENGE OF THE 1970'S—A NEW LOOK AT FOREIGN ASSISTANCE

(Remarks by Senator EDMUND E. MUSKIE, of Maine, at a luncheon meeting of the International Development Conference, Washington, D.C., February 25, 1970)

If I had believed the headlines and the public opinion polls, I would have called my talk: "Epitaph for a Lost Cause." The subject of foreign aid is not popular, and its prognosis is not favorable. My presence here may be more a testimony to the unsinkable optimism of an elected Maine Democrat than an indicator of my political judgment.

But, to paraphrase Mark Twain: Rumors of the death of foreign aid are greatly exaggerated, and calls for its end, or its decline, are greatly misguided.

I share the conviction of the young people who are involved in the International Development Conference: "Our aim must be to change international attitudes so as to make it impossible for our political leaders to continue to neglect, and often to aggravate, the obscene inequities that disfigure our world."

The time has come, friends of development aid, not to bury that aid, not to praise its past accomplishments, but to commit ourselves to a new understanding of its place in our world and a determination to use it effectively. We must use it to give new life and hope to those who are the victims of those "obscene inequities."

To do that, we need the energy, and the enthusiasm which move the young people who have joined in this conference. We need to reinforce that energy and enthusiasm with the perspective of those who know where we have been, what has worked and what hasn't, and why we went there in the first place.

In looking backward, we can derive some satisfaction from what has been achieved. Foreign aid, properly speaking, began with the Marshall Plan, a success which had everything working for it.

After two world wars, Americans believed that Europe was worth sacrifices in peacetime, too. The dramatic results were due in part to the fact that aid was used, not to build, but to reconstruct previously developed economies. In a sense the early 1950's, with their stress and achievement, are a heroic period in the history of foreign aid, but it is one to which we cannot return.

By the mid-1950's, the Marshall Plan had proved its worth. Europe for the moment seemed to have been made safe for the West and freedom. The suceeding decade presented new challenges to respond to development needs on a broader scale. The newly independent nations of the world needed all the assistance they could get. And we suspected that if we did not help, others might act in our place.

As the front between the two blocs became stabilized in Europe, each side sought to protect or advance its interests in Africa and Asia.

Today, however, I think many would agree that the relationship between foreign assistance and the national interests of the donor powers is not as direct as it once appeared. No nation since World War II has lost its sovereignty because of Communist foreign aid.

That fact has cut some of the urgency of the security arguments for foreign aid. At the same time other supports were weakening, too.

There have always been those profoundly critical of foreign aid. In recent years, they have been joined by those sunshine supporters of aid who—like some university alumni—have come to doubt whether the

"while permitting states to set more stringent standards" of their own.

Furthermore, the President would have Federally established national emission standards for plants emitting pollutants extremely hazardous to health, regardless of the amount of the pollutant, and for selective classes of new facilities that could be "major contributors to air pollution."

Finally, he proposed that industries or municipalities failing to meet water and air quality standards and correction schedules be subject to court action, ranging from injunctions to fines up to $10,000 a day.

Congressional environmentalists fear Mr. Nixon's water programs might represent a backward step by permitting plants to dump pollutants up to the "assimilative capacity" of a river rather than insisting on a clean-up. They also feared that his program would permit degradation of the streams now unpolluted. They also feared his minimum national air quality standard would become a maximum standard in many states.

But these were not fears of many industrialists and Republicans in Congress. What they saw was the tremendous cost of installing the devices to control pollution in order to meet the standards.

Administration officials have been saying with one voice that the antipollution costs were properly "a cost of doing business" and thus could be passed on to the consumer. But industrialists and those in Congress who are attentive to their views do not see the matter in quite such simple terms. They fear that there is a limit to what the consumer will bear and when that limit is reached, the remaining antipollution costs will be reflected in lower corporate profits.

Furthermore, they contend that costs which big companies and new efficient plants can possibly absorb become insupportable for small companies and old plants. The upshot, they say, may be unemployment with accompanying outcries from local government, especially in small towns where a plant is the principal employer.

A preview of the possible trouble ahead, they suggest, was provided last week in Duluth, where the 50-year-old United States Steel plant employing 2,500 was under orders of the Minnesota Pollution Control Agency to install smoke abatement equipment. Herbert Dunsmore, director of U.S. Steel's environmental affairs, said that compliance would cost $5-million; that it would "further price the facility out of the market," and that if the state insisted on compliance, the only alternative was to shut the plant down.

Many Republican Congressmen, and not a few Democrats also, are far from keen about the President's proposed fines, even though the draft legislation makes it clear they are not mandatory. Even so, a tough judge could make things very difficult if he imposed $10,000 a day over an extended period.

POSSIBLE TROUBLE

That the Administration recognizes the possible legislative trouble ahead on enforcement and penalties was evident last week when it placed them in a separate bill on the water pollution program. This would give many Republicans an opportunity to vote for other parts of the program—such as reform and financing of waste treatment legislation—while still voting against severe penalties for violators. Congress watchers are waiting to see whether William C. Cramer, ranking Republican on the Public Works Committee and a not overzealous environmentalist, will sponsor the bill dealing with enforcement and penalties.

Meanwhile, Democratic environmentalists, led by Senator Edmund S. Muskie, chairman of the subcommittee on air and water pollution and author of most of the antipollution legislation in the past decade, saw a quite different opportunity for attack in the President's money requests for his program.

Mr. Nixon has asked for authority to obligate $4-billion over four years as the Federal share in a $10-billion program for waste treatment facilities. Senator Muskie, however, would have the Federal Government obligate $12.5-billion over five years, with state and local government matching this for a total of $25-billion—compared to the President's $10-billion. Mr. Muskie's proposal is based on an estimate prepared by the executive department back in 1966, that $20-billion would have to be expended by fiscal 1972. It takes into account the failure of Congress to appropriate the amount authorized in the 1966 Clean Waters Restoration Act and the inflation that has since occurred.

FIGURES MISSING

The President has not set a figure on the amount he will request for his clean air program after the next fiscal year. However, his appropriations request for fiscal 1971 is $106-million an increase of only $10-million over what Congress has appropriated for this fiscal year. By contrast, Mr. Muskie will introduce a bill asking for appropriations of $325-million a year for three years beginning in fiscal 1971.

In his State of the Union Message, Mr. Nixon said, "The price tag on pollution control is high." The Democratic response is going to be, "You're right, and are you prepared to ask for the money?"

CARSWELL AND THE ABA

Mr. HATFIELD. Mr. President, as one who was an educator before entering public life and is not a lawyer, I have paid very close attention to the records of the committee hearings and the debate on the Senate floor as the Senate has considered nominees for membership on the U.S. Supreme Court. As a result of this study, I was pleased to give Chief Justice Warren Burger my complete endorsement and support. As I said at that time, he is a strict constructionist and gives the Court a balance. Senators are aware that recently I was unable to support Judge Haynsworth.

As I study the hearing record of Judge Carswell, I would like to draw the attention of Senators to the American Bar Association's recommendation. The American Bar Association has set up a special committee to pass upon the qualifications of judicial candidates nominated by the President of the United States to the Federal courts. The committee consists of 12 members, each from a different part of the country. The committee is appointed by the president of the American Bar Association, and has been playing a role in evaluating Presidential nominees for judicial positions for many years.

Although in the case of nominees for lower Federal courts, the committee has a series of ratings, in the case of nominees for the Supreme Court of the United States, the committee has only two ratings: "qualified" and "unqualified." The committee at the time of Judge Carswell's nomination found him to be qualified; and at its recent meeting in Atlanta, during the midwinter meeting of the American Bar Association, the committee reconsidered the nomination and again unanimously found him to be qualified to sit on the Supreme Court of the United States. I ask unanimous consent to have printed at this point in the RECORD a letter to Senator EASTLAND from Lawrence E. Walsh, supporting Judge Carswell.

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

AMERICAN BAR ASSOCIATION,
New York, N.Y., January 26, 1970.

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

DEAR SENATOR: Thank you for your telegram of January 21, 1970 inviting the comments of the American Bar Association Standing Committee on the Federal Judiciary with respect to Judge G. Harrold Carswell, who has been nominated for the office of Associate Justice of the Supreme Court of the United States. The Committee is unanimously of the opinion that Judge Carswell is qualified for this appointment.

This committee has previously investigated Judge Carswell for appointment to the District Court in 1958 and for appointment to the Court of Appeals for the Fifth Circuit in 1969. On each occasion Judge Carswell was reported favorably for these appointments. The Committee has now supplemented these investigations within the time limits fixed by your telegram.

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 of 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. Accordingly, the opinion of this Committee is limited to the areas of its investigation.

In the present case the Committee has solicited the views of a substantial number of judges and lawyers who are familiar with Judge Carswell's work, and it has also surveyed his published opinions. On the basis of its investigation the Committee has concluded, unanimously, that Judge Carswell is qualified for appointment as Associate Justice of the Supreme Court of the United States.

Respectfully yours,
LAWRENCE E. WALSH,
Chairman.

Mr. HATFIELD. Mr. President, at its midwinter meeting in Atlanta recently, the ABA Committee on the Federal Judiciary reaffirmed its earlier unanimous finding. At this point I ask unanimous consent to have printed in the RECORD a portion of a Sunday, February 22, 1970, New York Times article dealing with the Carswell nomination.

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

BAR PANEL REAFFIRMS VIEW THAT CARSWELL IS QUALIFIED FOR SUPREME COURT

(By Fred P. Graham)

ATLANTA, February 21.—The American Bar Association's Committee on the Federal Judiciary reaffirmed today its earlier unanimous finding that Judge G. Harrold Carswell was qualified to serve on the Supreme Court.

After reviewing recent disclosures of alleged segregationist actions by Judge Carswell and considering charges that he lacked qualifications for the position, the committee again

concluded that he was qualified to be an associate justice. Nine of the 12 members on the committee were present.

Lawrence E. Walsh of New York, chairman of the committee, said at a news conference at the American Bar Association midwinter meeting here that his committee had studied the various questions that had been raised by law professors and A.B.A. members concerning Judge Carswell's suitability.

The major allegations that have arisen since the committee first approved Judge Carswell on Jan. 25 were that he harbored racist feelings toward Negroes.

It has been disclosed that Mr. Carswell helped to form a private golf club to take over Tallahassee's municipal facilities when they might have been forced to desegregate, that he sold a piece of property with a restriction in the deed against future occupation and purchase by non-Caucasions, and that he chartered an all-white booster club for Florida State University.

Judge Walsh explained that the committee had re-evaluated its endorsement of the nominee's judicial qualifications "as a matter of routine" because the nomination is still pending before the Senate. The A.B.A. committee rates judicial nominees on the basis of professional competence, judicial temperament and integrity.

The nominee is a member of the United States Court of Appeals for the Fifth Circuit in New Orleans.

CONGRESS SETS RECORD WITH HEALTH LEGISLATION

Mr. YARBOROUGH. Mr. President, for the information of the Members of the Senate and for our friends in the press, I would like to point out the remarkable record which the Congress has made this week in the area of health legislation. On Wednesday afternoon the Senate adopted two conference reports, previously agreed to with House conferees, on major health bills. Yesterday, the House of Representatives also adopted the conference reports on these two bills, thus sending them to the President for his signature, and at the same time adopted two additional health conference reports which in the matter of a few hours came to the Senate floor and late yesterday afternoon were approved by the Senate and sent on to the President. Thus without any fanfare or great publicity, the House of Representatives and the Senate, in 2 days, approved and extended four major health programs. Never, to my knowledge, has such expeditious action in both Houses on such a large number of important bills of basic legislation been accomplished out of one subcommittee.

This quiet carrying out of the responsibilities of the Congress was possible only by the complete cooperation of all members of the Committee on Labor and Public Welfare, and when I say all members, I include all members of the full committee, both the majority and minority, and particularly those members of the Subcommittee on Health whose duties under our system are to hold hearings and to sit during executive sessions to hammer out the details of the legislative proposals.

The members of the Subcommittee on Health—Mr. WILLIAMS of New Jersey, Mr. KENNEDY, Mr. NELSON, Mr. EAGLETON, Mr. CRANSTON, and Mr. HUGHES for the majority side; and Mr. DOMINICK, Mr. JAVITS, Mr. PROUTY, and Mr. SAXBE for the minority side—spent hours and days working on these legislative proposals. They unselfishly gave of their time to attend hearings; they sat in executive sessions and considered, discussed, and perfected amendments, and they lent their support when these bills came to the floor.

Mr. President, it would not be fair for me to praise only the members of the Subcommittee on Health of the Committee on Labor and Public Welfare. Such a remarkable record would not have been possible without the complete cooperation and assistance of the House of Representatives, in the persons of Mr. HARLEY O. STAGGERS, the chairman of the House Committee on Interstate and Foreign Commerce, the ranking Republican on that committee, Mr. WILLIAM L. SPRINGER of Illinois, and also members of the Health Subcommittee, Mr. JOHN JARMAN of Oklahoma, Mr. PAUL G. ROGERS of Florida, Mr. DAVID E. SATTERFIELD III of Virginia, Mr. ANCHER NELSEN of Minnesota, and Mr. TIM LEE CARTER of Kentucky.

The House and Senate conferees met on 2 days, February 17 and 18, and in 2 days produced four conference reports on major bills. I believe all members of the conferences set some kind of a record by this prompt and responsible action and they should be congratulated.

The four bills which are now on their way to the President for signature are: S. 2523, the Community Mental Health Centers Amendments of 1970; S. 2809, amendments to the Public Health Service Act for assistance to schools of public health; H.R. 11702, the Medical Library Assistance Extension Act of 1970; and H.R. 14733, to amend and improve the health program for migrant workers.

Mr. President, I think a brief description of the health programs which were extended and improved by action of the Congress this week is appropriate at this point.

S. 2523, the Community Mental Health Centers Amendments of 1970, extended for 3 years the program of assistance for construction of community mental health centers and contains a total authorization of $270 million for this purpose spread over the 3-year period. In addition, the bill provides for $155 million over a 3-year period for grants for staffing community mental health centers, and both increases the share of Federal money which will be made available and extends the Federal assistance in this area for 8 years. The bill would give increased emphasis to our efforts to meet the problems of alcoholism and drug abuse by nearly tripling the funds available for this purpose. The Congress authorized $105 million over 3 years for this improved and strengthened program. And finally, the Congress, recognizing the growing problem of mental health in our youth and adolescents, provided a separate program to aid with mental health problems of children and provided an authorization of $62 million over the 3-year life of this program.

Mr. President, this is a tremendously important bill to all our citizens. It will provide for better care in more local mental health facilities and for new treatments in areas which in the past have been neglected.

S. 2809 extended for 3 years the program of formula grants for assistance to schools of public health, and increased the authorizations to fund projects for training in public health programs. Schools of public health are the only source to train vitally needed health professionals and this program has been strengthened and improved by this act of the Congress. It will help to fulfill a recognized need for additional public health manpower.

The provisions of H.R. 11702, the Medical Library Assistance Extension Act of 1970, are extended for an additional 3 years, with significant improvements in this very important program. The bill provides additional financial assistance for the construction of health library facilities so that our medical schools will have the necessary tools to assist in their educational efforts in the training of medical personnel. It will support training of health librarians and information specialists to bring the newest medical information to the attention of students and doctors alike. It will expand and improve health library services by providing grants for additional resources in terms of medical and scientific journals and publications so that the best and latest thinking will be available to the medical profession. It will also support the development and improvement of a national system of regional medical libraries so that information can be quickly transmitted from major central libraries to the area that has an immediate need for the information.

To carry out these improved and strengthened programs, the committee authorized, over the 3-year extended period of the programs, an appropriation of $63 million.

The fourth bill which was sent to the President this week by the Congress of the United States was H.R. 14733, which extended for 3 years the program of assistance in providing health services for our migratory agricultural workers and their families. Nine hundred counties in this country furnish seasonal homes or work areas, or both, for an estimated 1 million migratory farmworkers and their dependents.

Migratory farmworkers and their families are the group most likely to be bypassed by national health gains. They are poor, they live in inadequate housing, and they are often geographically isolated. Less than $12 yer pear per migrant is spent for health care of these people as compared to $250 for the average person living in this country. The significant improvement in this legislation was to increase the group to whom services will be available by adding domestic migratory agricultural workers where the Secretary finds that the provision of health services will contribute to the improvement of health conditions of migratory workers and their families. In many cases it is impossible to distinguish be-

I urge the Treasury to act promptly to institute reforms of the depreciation schedules—thereby insuring that business investment remains at high enough levels to guarantee the continued competitiveness of American industry. I am hopeful that the Administration will move quickly to adopt revised depreciation schedules as a stabilization and growth tool which could be most useful if, to use Secretary Kennedy's phrase—"in the months to come, the economy should begin to slide off too far . . ." I would hope that Secretary Kennedy keeps an open mind on legislation or administrative action in this area this year.

In conclusion, I am confident that the Federal Reserve under Dr. Burns will move gradually to ease the unduly restrictive monetary policy of the past six months and that the disruptive effects of yo-yo monetary policy are now history and not present policy.

I urge the President and his economic advisors not to let the economy slip out of their control as it did for the Johnson Administration during its closing years. If the signs of a deepening recession become more prevalent, the Administration and the Congress must lay the contingency ground work today to enable the Federal Government to act promptly to put our economy on the tracks of steady, sustained growth.

NOMINATION OF JUDGE CARSWELL

Mr. HANSEN. Mr. President, just last Friday the Judiciary Committee favorably reported to the Senate the nomination of G. Harrold Carswell to be an Associate Justice of the U.S. Supreme Court. I noted over the weekend that two more of our colleagues, Senator PEARSON and Senator SMITH of Illinois, have announced their intention to support the President's nominee. I commend them for announcing their intention publicly and intend to join them in support of Judge Carswell.

The Supreme Court has been without its full complement of Justices since Mr. Fortas submitted his resignation to former Chief Justice Warren last May 14, 1969. Although I am not a lawyer, I can fully appreciate the difficulties that are experienced in the administration of justice with only eight men deciding the cases. Almost a year has passed with no change in this situation.

Cases which reach the Supreme Court usually involve difficult legal issues. These cases have been the subject of scrutiny by other lower courts and, in some cases, judges on these courts are not unanimous in their decisions or rulings. Commonsense dictates that the highest court in the land has an odd number of judges so that tie votes can be resolved in favor of one party or the other. Both justice and the expeditous administration of justice demand no less.

We must remedy this problem as soon as practicable. The Judiciary Committee has held hearings and considered the nomination on its merits. By a vote of 13 to 4, the committee reported it to the Senate. The record is before us and it is time for us to act.

I urge this body to consider Judge Carswell's nomination early and favorably. Only then will the Supreme Court regain its position as a functional third branch of Government.

RHODESIA

Mr. BROOKE. Mr. President, at 1 minute past midnight on Monday, March 2, Southern Rhodesia unilaterally declared itself a republic. This is a startling step backward in the history and progress of the world.

The year 1960 marked the beginning of a decade of independence in Africa. In that year alone, 17 new nations were born amid glowing dreams and uneasy speculation. By the end of the decade, 42 independent states blanketed the African Continent. Contrary to the fears of many Westerners, none of those states has gone Communist. None has declined in productivity or per capita income; in fact, all have increased their economic output. True, three African states have engaged in civil war—but that is a remarkable record when one compares it with the history of the West. And all of these states have expanded—some more rapidly than others, some more colorfully than others—the political and economic opportunities available to their people. The free peoples of Africa have shown great progress, and even greater potential.

By contrast, the decade of the 1970's has begun with the birth of the so-called Republic of Rhodesia. I hope, for the sake of Africa and for the peace of the world, that this event is an historical anomoly, not a harbinger of things to come.

The other nations of Africa became independent in order to end alien domination; the Government of Rhodesia seeks to clamp oppression even more tightly upon the face of the land.

The other African nations sought, through independence, to expand political participation; the Government of Rhodesia has chosen to imprison political opponents and deny significant representation to blacks.

The other nations of Africa utilized their independence to give their people greater economic opportunity; the Government of Rhodesia continues a policy of driving people from their homes and circumscribing their chances for advancement.

Rhodesia is a rich and fertile land, with 240,000 white settlers and an indigenous black population of 4.5 million persons. The tax load is probably the only aspect of government policy which is apportioned equitably, yet so great is the poverty among the blacks that they bear less than 1 percent of the burden. Most of the African inhabitants are still subsistence farmers, and even these people are being driven from fertile tribal areas to make room for the plantations and truck gardens of the wealthy white colonialists. The constitution in fact insures that the land shall be equally divided, in quantity if not in quality, between the 5 percent who are white and the 95 percent who are black.

Rhodesia's new constitution, adopted last year in a referendum of the nation's 90,000 voters, denies the right of majority rule to the people of Rhodesia forever. Its inflexible and unjust terms can only serve to provoke the very turbulence and disorder which its founds seek to avoid.

Mr. President, there is not much the United States can do about the internal affairs of another state, no matter how reprehensible its programs or unjust its political philosophy. Rhodesia, like other nations, must find its own salvation.

But while America cannot solve Rhodesia's problems, it does not have to support them. And support—both moral and political—is exactly what the illegal Rhodesian regime derives from the continued presence of an American consulate in the capital city of Salisbury.

Surely we do not need a full-fledged consular office and staff to look after the affairs of 1,000 American citizens and less than $3 million worth of trade per year. Britain, with its much greater economic investment, its many thousands of resident British citizens, and its close family ties with many of the English-speaking settlers, has yet had the wisdom and the courage to sever all ties with the self-styled new Republic. Many other Western governments have let it be known unofficially that they would withdraw their representatives if the United States would do the same.

There is no cold war being fought in Rhodesia. There are no strategic resources there which cannot be obtained elsewhere. There are no vital ports or airbases, no communications installations, there are not even any neighboring states whose security requires our continued presence in the country.

There is little enough we can do to further the struggle for justice and human dignity beyond our own borders. But here in Rhodesia we have a natural opportunity to take a stand which is more than rhetoric, less than direct involvement, and which in terms of the welfare of the people and our own international image, will cost absolutely nothing.

I was encouraged by the statement issued from the White House over the weekend that our policy toward Rhodesia is still under review. I would hope that the foregoing points would be given the most careful consideration. And I hope, at the end of that review, that the consulate will be closed, as an indication that we reject unequivocally the principle of white supremacy, and share a common faith in the future of free men.

RITA HAUSER, CHAMPION OF HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, I have great admiration and respect for the U.S. representative to the United Nations Human Rights Commission, Mrs. Rita Hauser. Since President Nixon named Mrs. Hauser to the Human Rights Commission she has skillfully fought a tireless battle to achieve American ratification of several Human Rights Conventions, among them the Genocide Convention. Mrs. Hauser, a member of the American Bar Association, argued forcefully in favor of ABA's endorsement of the Genocide Convention at the recent ABA's House of Delegates meeting. Her

tee then would be in a position to conclude the hearings and release the hearing record, which at that time would have a balanced presentation.

I am advised that the company responded by saying that as soon as the Wisconsin case had concluded, they did want an opportunity to file a statement regarding their position, because, as they put it, they did not want the record to stand as it was then.

Mr. FONG. Mr. President, I ask unanimous consent that we be given another 3 minutes.

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

Mr. HART. Mr. President, I think that describes fully the action taken unanimously by the committee. This does not mean there was not disagreement as to the appropriate course to be followed, and the transcript will show that; but, on balance, I think the decision was a sound one.

Mr. FONG. I agree that the decision was a sound one.

I want to ask the Senator if this was a secret hearing, as Mr. Anderson has described it—"in dark secrecy" his words were.

Mr. HART. It is probably true that not too many people read the record that we worry about each day, but there was public notice of the intention to take the testimony of Professor Webb initially. He was listed as a witness. That public notice was filed in the subsequent executive committee record, and a note attached to that notice described the subject matter, namely, what action should be taken on the Webb testimony.

Mr. FONG. I believe the Senator from Michigan issued a press release after that.

Mr. HART. Which I believe the Senator from Hawaii has put in the RECORD.

Mr. FONG. Yes; I have put it in the RECORD.

Mr. HART. One always hopes that press releases indicate that we would like attention to the subject matter, not suppression of it.

Mr. FONG. May I ask the distinguished Senator one more question? The decision of the committee was unanimous, was it not?

Mr. HART. I have said that. I repeat it. The Senator is quite correct.

Mr. FONG. The unanimous decision was to have Mr. Webb testify, but not to have the report sent.

Mr. HART. The Senator is correct.

Mr. FONG. I thank the distinguished Senator for clarifying this matter.

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska (Mr. STEVENS), is recognized for 5 minutes.

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

Mr. STEVENS. Mr. President, since President Nixon announced the nomination of Judge G. Harrold Carswell to be an Associate Justice of the Supreme Court, much has been said about the nominee. The principal characteristic of most of these comments on Judge Carswell has been a lack of any personal knowledge of Judge Carswell on the part of the commentators. As one of the few Members of the Senate who has known Judge Carswell in the past, I feel it important to share those experiences with my colleagues.

In 1953, I was appointed U.S. attorney for Fairbanks, Alaska, and served in that capacity until joining the staff of Secretary Fred Seaton in the Interior Department in 1956. During that period, Harrold Carswell was serving as U.S. attorney to the northern district of Florida. We had occasion to meet, at least annually, at the national U.S. attorney conferences during our service as U.S. attorneys. These were memorable days for me as a U.S. attorney. Not only was the law being changed dynamically by the Congress, but the direction of law enforcement and those charged with prosecution of violators were also changed under the leadership of Attorney General Brownell and his capable Deputy Attorney General, now Secretary of State Bill Rogers. We also were given great leadership in the field of Federal civil litigation by the then Assistant Attorney General in charge of the Civil Division, the present Chief Justice of the U.S. Supreme Court, Warren E. Burger.

As U.S. attorneys, our duty was to enforce the laws and to follow the policy guidance we received from Washington. Just as we all did, Harrold Carswell responded to that duty. I particularly remember during one of these conferences following the Supreme Court's decision in Brown against Board of Education, Harrold Carswell indicated his own sincere desire to enforce this decision. At that time, the whole Eisenhower administration was ready to assume the challenge and anxious to participate in complying with the Supreme Court's decision.

G. Harrold Carswell, a southerner by birth and rearing, was living in the South. Yet he responded to the challenge as a trial attorney would, and his actions led to his appointment as a U.S. district judge.

Now I do not want to leave the impression that I have been a long-time personal friend of Judge Carswell. I have not been. But those of us who served with him in the 1950's know he is not the man his detractors want us to believe he is.

Joseph H. Lesh, who served as a U.S. attorney during this same period and later here in Washington, D.C., reported in a telegram to the chairman of the Senate Judiciary Committee as follows:

> This will advise you that I have known Judge Harrold Carswell for approximately fifteen years. My acquaintance with him stems from my appointment by President Eisenhower as U.S. Attorney for northern Indiana, and later as Special Assistant to Attorney General Herbert Brownell and then William P. Rogers as executive officer in charge of all U.S. Attorneys. Shortly following the controversial *Brown* decision on segregation I held a conference in Washington of all the southern U.S. Attorneys to help the Department of Justice to implement the decision. Harrold Carswell was the only U.S. Attorney who was helpful to me and the department in this respect. I will be glad to substantiate this by personal testimony or affidavit. Please feel free to call upon me to assist your honorable committee in any way that I can.

Joe Lesh has come forward to stand up for Harrold Carswell, and I want to do the same thing. Judge Carswell was confirmed by this body as a U.S. attorney. He was confirmed as a U.S. district judge on March 26, 1958, and he was confirmed a judge of the U.S. court of appeals on June 19, 1969.

As I pointed out earlier, most of the criticism of Judge Carswell's record has stemmed, not from those who have had any personal contact with him, but rather from those whose political philosophy is clearly in conflict with that of the judge. It must be viewed in that light. Those who have known him feel, as I do, that his nomination should be confirmed. This is not to say that I agree or disagree with his philosophy but that I know he has the background and the training to be a distinguished member of the U.S. Supreme Court.

Separation of powers—and this is a fundamental part of our constitutional republic—is really the basic question we face. Our Constitution provides that the President shall appoint Justices to the Supreme Court and the Senate shall decide whether to advise and consent to those nominations. In the past few years the question has been raised whether the Senate can, by repeatedly rejecting the President's nominees, coerce the President into nominating the Senate's choice. In other words, can the Senate usurp the Presidential power of appointment and thus make the Supreme Court a product of this branch alone. Should this happen, a serious breach in the doctrine of separation of powers will have occurred.

Mr. President, I do not believe this Nation is best served by the Senate attempting to detract from the Presidential power of appointment. The Senate's function should be to assure that the President's nominee is qualified to be an Associate Justice. Judge Carswell has extensive experience, both as a U.S. attorney and as a district and appellate court judge. He has the endorsement of the American Bar Association, a prestigious assembly of peers. Those who have known him personally support his nomination. He is qualified.

An interesting fact has escaped many people. Judge Haynsworth and now Judge Carswell were nominated by President Nixon to fill the vacancy created by the resignation of Justice Abe Fortas of Tennessee. Somehow, many people read into these nominations by our new President ominous signs of a "southern strategy" or implications of a change of philosophy by this administration. I cannot subscribe to either theory. Geographical balance has been a fact of life on the Supreme Court, and acceptance of this fact by the Senate has not been detrimental to the Court in the past.

Some people apparently want us to count the pages of Judge Carswell's opinions to determine whether he was a good trial judge. Others decry the lack of published legal treatises by the Judge

during his 17 years of public service. And there are those among us who appear to be saying that we should have another chance to vote on Judge Haynsworth.

I, for one—as a former U.S. attorney, as one who served as Solicitor of the Department of the Interior, and as a lawyer who stuck up his own shingle in a new State—am grateful to President Nixon for nominating to the Court a man whose complete background spells commonsense, and the crying need in our system today is for commonsense decisions. Commonsense is too often an uncommon virtue among lawyers and judges and law professors.

In any event, these attacks on Judge Carswell are misguided. The ultimate conclusion from them could only be that there is a senatorial-determined mold for Supreme Court Justices and, if the nominee does not fit the mold, he should be rejected. The fact remains that our role has not been, and should not be, either that of coercing the choice of the nominee or the establishment of a mold which in fact limits the freedom of choice of the Chief Executive.

I shall vote for the confirmation of G. Harrold Carswell to become a Justice of the Supreme Court.

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

Mr. STEVENS. I yield.

Mr. HRUSKA. Mr. President, I commend the Senator from Alaska for the statement he has made. He spoke as one who has followed the nomination and the nomination hearings in the Judiciary Committee very carefully, and who has scanned and studied the printed record in that respect.

The testimony of the Senator from Alaska is especially meaningful here on two counts, at least: First because of the research and the documentation that he has lent it by reason of his reference to the record, and second because his statement comes from a man who has known and observed the nominee.

Mr. President, when the testimony of some academicians and practitioners holding to the idea that Judge Carswell is a mediocre judge and that he does not possess the necessary quality to be a Supreme Court Justice is scanned, it is readily seen that it comes from men who have not known or observed the nominee. And that is very, very meaningful. There is ample testimony from many, including now the Senator from Alaska, who have known him, who have observed him, and who are acquainted with his record which will certainly be very helpful as a foundation for those who will support Judge Carswell.

I commend the Senator again, and thank him for that very serious and close study that he obviously has given to the record compiled in this connection.

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

I think that the time for those who wished to object to Judge Carswell should have been at the time when we advanced him from the district judgeship to the court of appeals.

Mr. HRUSKA. Which was last June.

Mr. STEVENS. That is right. At that time he had 17 years' experience, or approximately that, in Federal service. He certainly had a record, and a record that was open to everyone. It was available for those who might want to object to his record. And yet we elevated him without opposition, as I understand it.

Mr. HRUSKA. That is correct.

Mr. STEVENS. To the position of judge of the court of appeals. That, to my knowledge, above everything else, means that today those who detract from this nomination are doing so on the basis, not of his judicial qualifications nor his experience, nor his ability to become a good Supreme Court Justice, but on the basis of what they consider to be his personal philosophy.

I think Joe Lesh's telegram demonstrates that those of us who knew him at the time of the very critical decisions of the Supreme Court in the early 1950's know that Harrold Carswell was willing to face up to the problem of implementing those court decisions in the Deep South, and he has done so.

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

Mr. STEVENS. I yield.

Mr. ALLOTT. I congratulate the Senator on his brilliant statement on Judge Carswell, which reflects my own attitude and beliefs.

I think the point the Senator has made that there are some who think perhaps they might carry on a continued vendetta against the President of the United States, in the hopes that eventually they could take away from the President, by resistance to his nominations, the right which he possesses under the Constitution to make such nominations, is a very pertinent one, and it is reflected quite often in the statements of those who have spoken against him.

I only want to say, as one who has known the distinguished Senator from Alaska for a long time, and who has observed particularly his work as U.S. attorney and as a solicitor for the Department of the Interior, that what he says should carry great weight. It does with me, and I am sure it will with all those who have known him.

I thank the Senator for making this statement.

SENSIBLE USE OF OUR OPEN LAND

Mr. STEVENS. Mr. President, at a time when the Nation is faced with serious environmental deterioration from overpopulated cities, poor use of mineral resources, and irreparable damage to streams, lakes, and forest lands, S. 3389, introduced by the Senator from Washington (Mr. JACKSON), opens the way for careful protection and enhancement of recreation values for unimproved public domain land in the United States.

To fulfill the demand for recreational areas within the public domain, the Secretary is empowered under S. 3389 to plan and build the necessary access roads and facilities for recreational use. This will eliminate the present dangerous practice whereby hunters and outdoor enthusiasts reach wilderness areas by dozens of trails which they have cleared themselves. Today refuse clutters popular wilderness sites because proper disposal facilities are lacking.

Under S. 3389 the Secretary of the Interior is furnished with the tools to practice orderly and planned development of the American public domain. He is authorized to apply the multiple use concept to Federal lands to insure its highest and best use. In conjunction with multiple use the sustained yield principle allows regular utilization and harvest of renewable resources as long as there is no impairment of the land.

Nowhere is this bill more important than in my State of Alaska where over 273 million acres, or 75 percent of the total 375 million acres of the State, are included in the public domain administered by the Bureau of Land Management Division of the Department of the Interior. Presently Federal lands in Alaska have been withdrawn from homesteading, purchase, or other transfers until Congress acts on the native land claims, or until December 31, 1970. But when the land freeze in my State expires, planned development of the public domain is essential both in terms of conservation and sound economies.

This is particularly important since the State is undergoing tremendous growth. New residents and tourists lured by the wilderness of the last huge undeveloped region in the United States, or attracted by the economic prospects of the rich oil reserves on the north slope, are coming to the north country. The demand for land to buy or to homestead has nearly exhausted the available supply and pushed prices up. When the land freeze expires, the Secretary of the Interior must be equipped with a logical program for use of its public domain land. Therefore, it is vitally important that he has the flexibility provided under S. 3389 to design a land use program for Alaska and the rest of the United States that meets the resource needs of the present and the future of our Nation as a whole.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BYRD of Virginia. Mr. President, will the Senator yield?

Mr. ALLOTT. Mr. President, may I inquire of the distinguished Senator from Virginia how much time he wishes to take?

Mr. BYRD of Virginia. Three minutes.

Mr. ALLOTT. Mr. President, if I may, I will yield the floor to the distinguished Senator from Virginia, and ask that I be recognized at the end of his address.

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

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. BYRD of Virginia. Mr. President, I firmly and strongly oppose the Kennedy-Mansfield plan to lower the voting age in each State by a simple statute of Congress.

In my opinion, this is a distortion of the constitutional process and is clearly wrong.

many to reexamine their attitudes toward youth.

If a constitutional amendment was submitted to the states for ratification, it would provide the vehicle to present a balanced view of our youth on a much broader scale. All across our nation, communicative efforts to objectively appraise our young people would be encouraged.

III. A constitutional amendment might well have the effect of promoting co-operative effort in a time of desperate division.

In Oregon the campaign to lower the voting age has created a broad coalition that transcends racial, generational, and political barriers. Confidence in youth seems to be exhibited by at least some members of each denomination and profession. By working together toward this common goal, we are affording a preview of the type of coalition that must be directed against the crucial environmental and social issues that are already at hand. Similar results might be expected on a much broader scale were this issue submitted to the states for ratification of a constitutional amendment.

Our campaign in Oregon suggests two distinct benefits of the proposed constitutional amendment. First the manner in which the young people have conducted themselves during the 14 months of this campaign indicates that they would indeed be valuable additions to the electorate. Second, the process of enacting this amendment into law would be a valuable exercise in promoting better communication and understanding between diverse elements of our society.

The PRESIDING OFFICER (Mr. CRANSTON). All time on this amendment has now expired.

The question is on agreeing to the amendment of the Senator from Montana (Mr. MANSFIELD), as amended.

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. DOMINICK (when his name was called). On this vote, I have a pair with the Senator from Texas (Mr. TOWER). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withhold my vote.

Mr. GOLDWATER (when his name was called). On this vote, I have a pair with the Senator from Illinois (Mr. SMITH). If he were present and voting, he would vote "nay"; if I were at liberty to vote, I would vote "yea." I withhold my vote.

Mr. GRIFFIN (when his name was called). On this vote, I have a pair with the Senator from Alaska (Mr. STEVENS). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. TALMADGE (when his name was called). On this vote, I have a pair with the Senator from Maryland (Mr. TYDINGS). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withhold my vote.

The rollcall was concluded.

Mr. MANSFIELD (after having voted in the affirmative). On this vote, I have a pair with the Senator from Georgia (Mr. RUSSELL). If he were present and voting, he would vote "nay." If I were at liberty to vote, as I already have, I would vote "yea." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Virginia (Mr. BYRD), the Senator from Connecticut (Mr. DODD), the Senator from Minnesota (Mr. MCCARTHY), the Senator from Georgia (Mr. RUSSELL), and the Senator from Maryland (Mr. TYDINGS) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Hawaii (Mr. INOUYE), and the Senator from Arkansas (Mr. MCCLELLAN) are absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL) and the Senator from Minnesota (Mr. MCCARTHY) would each vote "yea."

On this vote, the Senator from Connecticut (Mr. DODD) is paired with the Senator from Virginia (Mr. BYRD). If present and voting, the Senator from Connecticut would vote "yea" and the Senator from Virginia would vote "nay."

Mr. GRIFFIN. I announce that 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 New York (Mr. GOODELL), the Senator from Illinois (Mr. SMITH), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

If present and voting, the Senator from New York (Mr. GOODELL) would vote "yea."

The Senator from Texas (Mr. TOWER) is detained on official business.

If present and voting, the Senator from South Dakota (Mr. MUNDT) and the Senator from Florida (Mr. GURNEY) would each vote "nay."

The respective pairs of the Senator from Illinois (Mr. SMITH), the Senator from Alaska (Mr. STEVENS), and that of the Senator from Texas (Mr. TOWER) have been previously announced.

The result was announced—yeas 64, nays 17, as follows:

[No. 98 Leg.]

YEAS—64

Aiken	Hansen	Packwood
Anderson	Harris	Pastore
Baker	Hart	Pearson
Bayh	Hartke	Pell
Bellmon	Hatfield	Percy
Bible	Hollings	Prouty
Boggs	Hughes	Proxmire
Brooke	Jackson	Randolph
Burdick	Javits	Ribicoff
Byrd, W. Va.	Jordan, Idaho	Saxbe
Cannon	Kennedy	Schweiker
Case	Magnuson	Scott
Church	Mathias	Smith, Maine
Cook	McGee	Spong
Cooper	McGovern	Symington
Cotton	McIntyre	Williams, N.J.
Cranston	Metcalf	Williams, Del.
Dole	Mondale	Yarborough
Eagleton	Montoya	Young, N. Dak.
Fong	Moss	Young, Ohio
Fulbright	Muskie	
Gore	Nelson	

NAYS—17

Allen	Ervin	Miller
Allott	Fannin	Murphy
Bennett	Holland	Sparkman
Curtis	Hruska	Stennis
Eastland	Jordan, N.C.	Thurmond
Ellender	Long	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—5

Dominick, for.
Goldwater, for.
Griffin, against.
Mansfield, for.
Talmadge, against.

NOT VOTING—14

Byrd, Va.	Inouye	Smith, Ill.
Dodd	McCarthy	Stevens
Goodell	McClellan	Tower
Gravel	Mundt	Tydings
Gurney	Russell	

So Mr. MANSFIELD's amendment No. 545, as amended, was agreed to.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOSS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD of Virginia subsequently said: Mr. President, I was unavoidably detained and unable to be in the Chamber when the vote was had on the Kennedy-Mansfield amendment. In my judgment, that amendment was a very bad way to handle the question of whether the voting age should be lowered.

Every State has had for almost 200 years the right to determine whether the voting age should be lowered. Four States have done so.

If we are going to get away from the States having the right to make that determination, clearly it should be done by constitutional amendment and not by a statute of Congress.

Had I been present and voting, I would have voted against the Kennedy-Mansfield amendment, and I would like the RECORD to so show.

The PRESIDING OFFICER (Mr. RANDOLPH). The Chair would state that the question now occurs on the Scott-Hart amendment, as amended, in the nature of a substitute for the bill.

Mr. CASE addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

STATEMENT BY SENATOR CASE IN OPPOSITION TO CONFIRMATION OF THE NOMINATION OF JUDGE CARSWELL

Mr. CASE. Mr. President, because I am not a member of the Judiciary Committee of the Senate and did not have the opportunity to sit in on the hearings on the nomination of Judge Carswell to the Supreme Court, I have reserved my decision until this time. Now, however, I have gone over the record of the hearings and the supplementary statements of others both in support and in opposition to the nomination.

I shall vote against confirmation.

I shall do so for several reasons.

They can be summarized in one sentence. On all the evidence, Judge Carswell does not measure up to the standard we have rightly come to expect of members of the Supreme Court. It is a standard exemplified by such men as Oliver Wendell Holmes, Charles Evans Hughes, William Howard Taft, Harlan Fiske Stone, Owen J. Roberts, Benjamin Cardozo, Earl Warren, John Marshall Harlan, William Brennan, and Potter Stewart—all of them nominated by Republican administrations in this century.

The PRESIDING OFFICER. The Chair requests that the Senate and those who are guests of the Senate give their attention to the Senator from New Jersey on a substantive matter. The Senator deserves our attention. The Senate will be in order.

Mr. CASE. Mr. President, from a legal point of view, Judge Carswell's qualifications have been seriously challenged by legal scholars and highly respected mem-

bers of the bar. Almost without exception, those who have examined his record as a judge characterized it as "undistinguished," "mediocre," "inadequate," "lacking in intellectual stature." Louis Pollak, dean of the Yale University Law School, stated to the Judiciary Committee that after a thorough examination of Judge Carswell's opinions in recent years:

> I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century.

A statistical analysis prepared by law students at the Columbia Law School shows that Judge Carswell holds a record for the repudiation of his decisions as a district court judge. During the period 1956 to 1969 when he sat on the U.S. district court, within the fifth circuit, nearly 59 percent of his printed opinions which were appealed were reversed by higher courts. This was, according to the study, nearly three times the national average for district judges. In the same period 24 percent of decisions from the fifth circuit district courts were reversed.

In other indexes used by the study to measure judicial performance of Judge Carswell and other Federal district judges, Judge Carswell scored significantly below the average of his peers. Specifically, his opinions were cited by other Federal and State judges only half as often on the average as Federal district judges both from the Nation as a whole and from his circuit. He documented his decision with case law authority less than half as frequently as the average of his peers.

And what of the quality of the justice dispensed by Judge Carswell in an area of most pressing concern to the Nation—equal protection of the law?

Here the reviews made of his record indicate a failure to demonstrate the impartiality, much less sensitivity, essential in one who serves on the Nation's Highest Bench.

It has been argued that Judge Carswell's pledge of undying adherence to the principle of white supremacy made during a political campaign 22 years ago should not be held against him. But his record on the bench as well as other nonjudicial activities give no evidence of any change of heart or mind since that time.

On the contrary, witnesses appeared to testify to the extreme and open hostility he has shown to lawyers and defendants in civil rights cases. Specifically, it was stated that in 1964 he expressed strong disapproval of northern lawyers representing civil rights workers engaged in a voter registration project—persons who, it should be noted, would otherwise have had no counsel. Judge Carswell has responded neither to that charge nor to the further charge that he arranged with a local sheriff to rejail workers he had been directed to free by the Fifth Circuit Court of Appeals.

Judge Carswell himself provided further damaging testimony concerning his insensitivity to human rights. I refer to his participation in the conversion of a municipally owned golf club into a private all-white membership club in 1956. His profession of ignorance of the purpose of the change is unconvincing, to say the least, for he admitted that he read the document he signed as an incorporator for the segregated club. Further, there is ample evidence that there was wide public discussion of the matter in the press and in the community. The incorporation was obviously a device designed to circumvent court decisions outlawing segregation on publicly owned recreational facilities. At that time, be it noted, Judge Carswell was a U.S. attorney sworn to uphold the Constitution.

A number of exhaustive analyses of Judge Carswell's decisions have been prepared and have been made part of the RECORD. In the light of them, the conclusion seems to me inescapable that, as Prof. William Van Alstyne of the Duke University Law School—who had testified in favor of Judge Haynsworth's nomination—stated:

> There is, in candor, nothing in the quality of the nominee's work to warrant any expectation whatever that he could serve with distinction on the Supreme Court of the United States.

Conversely, there is much in the record to suggest that elevation of Judge Carswell to the Supreme Court would be a disservice to the Court. For, as one writer recently pointed out to critics of the present Court:

> The tragedy is that the appointment of narrow men, men of limited capacity, will make things worse, not better. What that Court needs is not more war of doctrine, in which moderation is crushed. The Supreme Court today needs more reason, more understanding, more wisdom.

To me, my responsibility as a Member of the Senate is clear: I must, and I shall, vote against confirmation.

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. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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.

TRIBUTE TO SENATOR RANDOLPH

Mr. BYRD of West Virginia. Mr. President, I think it was most appropriate that my distinguished senior colleague from West Virginia (Mr. RANDOLPH) was presiding over the Senate at the time of the adoption of the Mansfield amendment lowering the age for those eligible to vote from 21 to 18, especially in view of the fact that my senior colleague has been so active over the years, beginning with his service in the other body, with respect to lowering the voting age to 18.

It was my colleague who, in the other body, in 1942, offered a resolution to bring about an amendment to the Constitution to lower the voting age. Through the years he has never wavered in his support of that proposition. Here in the Senate, as we all know, he has been very, very active in lining up cosponsors for a constitutional amendment to lower the age, and as a result of his dedication and diligent efforts, 71 cosponsors have joined with him in proposing this constitutional amendment.

So I was happy to see my colleague presiding over the Senate at the time the Senate reached its decision on the Mansfield amendment. I joined my colleague in supporting that amendment, as I have joined my colleague in cosponsoring the constitutional amendment which he is proposing.

I feel that eventually the age for voting may be lowered to 18, whether it be by the constitutional amendment route or by statute. I personally favor the constitutional amendment process. I think that is the only way it can constitutionally be done. But, in any event, my colleague has, by his diligent efforts, helped to pave the way for success when the time for it comes. So, again, may I say that it was especially fitting that he be presiding when the vote occurred on the Mansfield amendment.

The PRESIDING OFFICER (Mr. RANDOLPH). The present occupant of the chair expresses his very genuine appreciation to his colleague from West Virginia. I am grateful to him.

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

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. I send to the desk an amendment, and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk proceeded to read the amendment.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. Without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 1, of the bill, between lines 4 and 5, insert the following new section:

SEC. 2. The Voting Rights Act of 1965 (79 Stat. 437; 42 U.S.C. 1973 et seq. is amended by—

(1) inserting therein immediately after the first section thereof the following title caption: "TITLE I—VOTING RIGHTS"; and

(2) striking out the word "Act" wherever it appears in sections 2 through 19 and inserting in lieu thereof the word "title".

On page 1, line 5, strike out "Sec. 2." and insert in lieu thereof "Sec. 3.".

On page 3, line 11, strike out "Sec. 3." and insert in lieu thereof "Sec. 4.".

On page 4, line 4, strike out "SEC. 4" and insert in lieu thereof "SEC. 5".

On page 4, line 11, strike out "SEC. 5" and insert in lieu thereof "SEC. 6".

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

AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. MANSFIELD. Mr. President, in executive session, I ask unanimous consent that the Senate proceed to the consideration of the nomination on the Executive Calendar under new report.

The ACTING PRESIDENT pro tempore. The nomination on the Executive Calendar will be stated.

The assistant legislative clerk read the name of Robert Harry Nooter, of Missouri, to be an Assistant Administrator of the Agency for International Development.

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

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

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

ORDER OF BUSINESS

Mr. SYMINGTON. Mr. President, I ask unanimous consent that I may proceed for 5 minutes.

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

THE NOMINATION OF JUDGE GEORGE HARROLD CARSWELL

Mr. SYMINGTON. Mr. President, an appointment to the Supreme Court should be one that would heal, rather than further fragment, the restless mood currentiy characteristic of America.

Such an appointee could well come from the many distinguished and outstanding lawyers or jurists in any section of the country—North, South, East, and West; and because an otherwise qualified preeminent southern jurist or lawyer could serve to enhance the esteem of and confidence in the Court, such an appointee would have my support.

Judge George Harrold Carswell of the U.S. Court of Appeals for the Fifth Circuit has been nominated by the President and approved by a majority of the Senate Judiciary Committee. We are now called upon to assess the merits of this nomination.

In the dry statistics of the matter, Judge Carswell's career may be briefly summarized as follows: After graduation from Duke University in 1942, he served as a lieutenant in the Navy in World War II. He ran for public office once—for the State Legislature of Georgia—and during the course of that campaign made a speech with which all are now familiar. Upon passing the bar in Georgia in 1948, and in Florida in 1949, he practiced law for 4 years. In 1953, he became a U.S. attorney for the northern district of Florida.

After 5 years' service in that post, Judge Carswell became a U.S. district judge in 1958 and served for 11 years until last year, when he was named to the appellate bench of the fifth circuit.

As one reads the testimony before the Judiciary Committee, it is clear that the service of Judge Carswell as a district judge has been without any discernible distinction. His performance as a district judge offers no seeds of promise that he has the much larger and much greater wisdom that will be needed as one of nine men who, when necessary, determine the constitutionality of the Nation's proceedings.

A dean of one of the Nation's outstanding law schools, Louis H. Pollak, Yale Law School, who canvassed a wide range of Judge Carswell's district court opinions stated:

> There is nothing in these opinions that suggests more than at very best a level of modest competence, no more than that, and I am talking now about the general run of contract, of tort, of Federal jurisdiction, of tax cases, the run of cases which a District Judge has before him.

And in regard to civil rights cases, he found a propensity to dispose of cases through techniques that avoided hearings. As a result, litigants could have been deprived of a day in court. Dean Pollak concluded that—

> The nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century.

Perhaps, however, the most disturbing testimony before the committee was that of a former litigant in civil rights matters who appeared before Judge Carswell's court and who presently is an associate professor of law. Leroy D. Clark, associate professor of law, New York University Law School, who was representing the National Conference of Black Lawyers, discussed the long period of delay and dilatory tactics which he found characteristic of Judge Carswell's rulings. He also told the committee:

> 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. . . . 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. . . . Judge Carswell was the most hostile Federal District Court Judge I have ever appeared before with respect to civil right matters.

There was similar testimony from other attorneys.

We know that a trial judge's job is not an easy one. He is human. He will at times appear gruff and arbitrary. The testimony is nevertheless disturbing and my feeling about it was not relieved by Judge Carswell's general reply as to his belief that a judge should be courteous to counsel.

The Supreme Court is a high and independent branch of Government, which deserves the best talent that America has to offer. Particularly now when our country is torn by rifts and doubts, those who are to serve this Nation on that High Court should be capable of commencing that service in the knowledge that they can and do inspire confidence and unity.

We may hold a jurist in high honor even though we disagree with his decisions. In light of all the circumstances, the kind of stature that brings the respect of all Americans does not appear to be present in the professional credentials and attainments of Judge Carswell. For these reasons, I shall vote against confirmation.

VETERANS EDUCATION AND TRAINING AMENDMENTS ACT OF 1970—CONFERENCE REPORT

Mr. CRANSTON. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 11959) to amend chapters 31, 34, and 35 of title 38, United States Code, in order to increase the rates of vocational rehabilitation, educational assistance, and special training allowance paid to eligible veterans and persons under such chapters. I ask unanimous consent for the present consideration of the report.

The ACTING PRESIDENT pro tempore. The report will be read for the information of the Senate.

The assistant legislative clerk read the report.

(For conference report, see House proceedings of March 18, 1970, pp. H1891-H1894, CONGRESSIONAL RECORD.)

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

There being no objection, the Senate proceeded to consider the report.

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

Mr. CRANSTON. I yield.

Mr. SCOTT. I am happy to say that I know of no objection on this side to the immediate consideration of the conference report.

I congratulate the Senator from California for bringing it up at this time. I am in favor of it.

Mr. CRANSTON. Mr. President, I express my thanks to the distinguished minority leader.

There has been a bipartisan approach in the Senate, and I am delighted that this has been true, all the way through to final action.

Mr. President, today is a momentous day for all Vietnam veterans as this most comprehensive piece of veterans education and training legislation reaches the culmination of a long process that began well over a year ago. Final congressional action on this landmark bill is surely an appropriate event to mark the first legislative day of a new season—a season of growth and life just as the GI bill has meant so much growth and advancement for more than 8 million veterans since World War II.

It has been a great privilege for me over the past year to serve as chairman of the Veterans' Affairs Subcommittee of the Labor and Public Welfare Committee, following in the footsteps of the illustrious leadership provided by three former chairmen and present fellow members of that committee who have been of such great assistance in passing this measure. So I wish to pay especial tribute and express my deep appreciation today to these three colleagues: the full committee chairman (Mr. YARBOROUGH), my immediate predecessor as subcommittee chairman (Mr. KENNEDY), and the

No specific aircraft or aircrews are reserved solely for this program. Air Force regulations require that invitees pay for their own meals, incidental expenses and billets.

The hours flown in support of this program are included in and justified to Congress as part of the overall Air Force allocation of aircrew proficiency flying and training time, and are not in addition thereto. The aircraft operating costs reflected above are not, therefore, additive to aircrew proficiency training costs.

We trust that this information is responsive to your inquiry.

Sincerely,

JOHN R. MURPHY,
Major General, USAF, Director, Legislative Liaison.

THE SECRETARY OF THE NAVY,
Washington, D.C., February 10, 1970.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR BILL: This is in further reply to your recent letter in which you requested certain information concerning the Navy flights carrying representatives of community businesses and organization to Navy installations for the purpose of briefing them on the work of the Navy.

The following information is provided in response to your questions:

In calendar year 1969, how many such flights were flown by the Navy? Answer: 30.

How many civilian passengers were flown? Answer: 1,075.

How many military passengers were flown? Answer: 86.

How many planes were used for this purpose? Answer: 21 different aircraft of 3 different types.

How many members of air crews were involved? Answer: Average of 3.3 crew members per air lift.

How many flying hours were flown for such purposes? Answer: 312.3 flying hours.

What was the average cost per flying hour and the total cost of these flights? Answer: Average cost per flying hour is $275.32, and the total cost of the flights is $35,942.30.

In addition to the flights in which you are interested, certain specific groups of educators have been transported to the U.S. Naval Academy in advisory capacities.

I hope this information will be helpful to you.

Sincerely yours,

JOHN H. CHAFEE.

JANUARY 27, 1970.

Hon. WILLIAM PROXMIRE,
U.S. Senate.

DEAR SENATOR PROXMIRE: This is in reply to your inquiry concerning air transportation for community leaders to visit Army installations in conjunction with community relations projects.

During Calendar Year 1969, the Army world-wide sponsored 51 groups in which 812 civilian and 160 military passengers, including escorts were flown in 66 aircraft to various locations for the purpose of touring military installations. A total of 262 air crewmen logged 853 flying hours at an average cost of $215 per flying hour in support of these tours to include personnel per diem costs. The total cost of these flights was $184,030.

These tours are conducted by Army Commands to provide information on the Army's state of readiness and how it trains and takes care of its soldiers. This does not include the educator tour program of the U.S. Military Academy which provides information to civilian educators to permit them to counsel youths on opportunities at the academy.

Aircraft are provided primarily by the U.S. Air Force with no aircraft or air crews specifically allocated to these programs. The hours flown are part of authorized allocations for normal aircrew proficiency flying time and are not an additional allocation. Cost for meals, incidental expenses and billets are borne by the participants.

I trust the above information will be of assistance to you.

Sincerely,

RAYMOND T. REID,
Colonel, GS, Office, Chief of Legislative Liaison.

PRIDE OF THE NATION'S PRESS UNANIMOUSLY OPPOSES CARSWELL

Mr. PROXMIRE. Mr. President, yesterday and today three newspapers that I receive and read daily, and for which I have the greatest respect, editorialized in a telling fashion against the nomination of G. Harrold Carswell to the Supreme Court. Two of the papers probably are read by the vast majority of my Senate colleagues on a regular basis—the New York Times and the Washington Post. The third is the pride of the Midwest and at the top of the scale of national competence—the Milwaukee Journal.

Both the Journal and the Times make short shrift of some remarks made on this floor last week to the effect that those Americans of modest scholastic attainments should have their representative on the Court. The Journal states it this way:

> Since many Americans are mediocre, as the case is put, they should have one of themselves on the court! To state the premise is to demolish it.

The Times calls the application of such a principle to the Senate "bad enough; to extend it to the Highest Court is intolerable."

The Times goes on to cite certain misleading tactics used by Judge Carswell's supporters. For instance:

> It has now become known that Elbert F. Tuttle, the retired Chief Judge of the United States Court of Appeals for the Fifth Circuit in the South, who originally backed the nomination, subsequently decided to withdraw his endorsement. But Judge Carswell's supporters let the impression of Judge Tuttle's approval be used as continuing support for him.

In another instance Attorney General Mitchell transformed a lukewarm American Bar Association endorsement of Carswell as "qualified" into a misleading "highly recommended" label.

The Post and the Journal come down hard on Carswell's civil rights record—the Journal pointing to Carswell's 15 unanimous reversals in civil rights cases, and the Post calling for his rejection as a signal to all races that the Senate will not permit the executive branch to pursue a southern strategy that exacerbates relations between black and white for political gain.

The Times characterizes Carswell's record as "mediocre" and demonstrating "questionable attitudes toward social justice." The Journal terms him "lacking the professional competence demanded by the position." The Post calls him "a decidedly second rate judge."

These are the very reasons I am voting against the Carswell nomination—the reasons the dean's of the Nation's finest law schools are opposing the nomination and the reasons why the Senate should not hesitate to send the nomination back to the White House stamped "unacceptable."

I ask unanimous consent that the three editorials I have referred to be printed in the RECORD.

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

[From the Milwaukee Journal, Mar. 22, 1970]

SENATE SHOULDN'T CONSENT TO CARSWELL NOMINATION

Some supporters of the nomination of Judge Carswell for the U.S. Supreme Court, finding nothing else to extol in the man, are now driven to extol his mediocrity. Since many Americans are mediocre, as the case is put, they should have one of themselves on the court!

To state the premise is to demolish it. Resort to it depicts the poverty of any argument for Carswell's confirmation, and the desperation of his supporters as they contemplate the tide of conviction spreading across the land (outside the South) that he simply won't do.

Carswell's notorious white supremacy speech of 1948 has turned out to be inexcusable as a mere aberration of youth, conforming to the rules of southern white politics at the time. For he did not repudiate it by word or deed throughout his later career; in fact, he gave it life by many actions right down to the present. He now says himself that it was "a matter of convenience"—which only now has become convenient to repudiate.

Even if racial bias were deemed tolerable in a Supreme Court justice, however, lacking the professional competence demanded by the position cannot be. Neither can lack of "sensitivity to injustice"—a lack in Carswell to which many legal scholars have attested after studying his record as a U.S. prosecutor and trial judge.

Law Dean Louis Pollak of Yale has concluded that Carswell's credentials are "more slender than those of any other nominee for the Supreme Court in this century." His "level of competence," says Dean Derek Bok of Harvard, is "well below the high standards that one would presumably consider appropriate and necessary for service in the court."

Prof. Gary Oldfield of Princeton: ". . . an obscure judge who has made no visible contribution to the development of the law. His chief qualification appears to be an abiding unwillingness to protect constitutional rights of black Americans." ". . . A judge who would rather risk bad law and repeated reversals than offend the feelings of local segregationists."

Carswell's record of foot dragging in civil rights includes 15 unanimous reversals by courts of appeal, in which he had persistently gone opposite to the guidance of higher courts in parallel cases. This shows him not to be even a conscientious judicial workman.

Danger that such a man may be confirmed stems from an inclination by most of the Republican senators who had blocked President Nixon in the Haynsworth case to feel that they should let him win this one. That puts political etiquette above the country's need for great jurists on the Supreme Court, which Nixon once acknowledged but now denies in practice.

Making Nixon a winner with Carswell would make the court and the country losers. If the role of the Senate to "advise and consent" means anything, it means that a Senate filling the role will not permit this to happen.

[Fom the Washington Post, Mar. 22, 1970]

JUDGE CARSWELL: THE WRONG SIGNAL

It is a longish leap from the fun and games at the Gridiron Club last weekend to the Senate debate on Judge Carswell. But bear with us because there is a logical connection here between the appointment of a decidedly second-rate judge to the Supreme Court and the ease with which President Nixon and Vice President Agnew stole the Gridiron show. As you may have read, the two men joined in a piano duet, with the President playing a medley of the favorite tunes of his predecessors and the Vice President interrupting him by playing "Dixie." Doubtless you had to be there to get it into the right context, to hear the rough but good-natured jibes at the Administration on race issues that preceded the surprise finale, and thus to appreciate the joke. Almost everyhody agreed it was a *tour de force* gracefully done and quite in keeping with the spirit of an affair at which the tensions and antagonisms of the real world are supposed to be set aside.

So it is with no intent to disparage the performance of the President and the Vice President that we take note of this event. Still, at the risk of sounding stuffy, it strikes us as a small piece of a bad scence, and a significant measure of how great is the power of the Presidency to influence a public attitude. All of a sudden, it is all right to joke about something that responsible people in high office used to handle with care and compassion and deadly seriousness.

In theory, a sense of humor is supposed to be a saving grace. So why not make sport of a Southern Strategy? The answer, of course, is that Southern Strategy *is* a euphemism for something that isn't funny. On its face it is no more than a cynical political tactic designed to innoculate the South against George Wallace for the sake of winning it for the Republicans, the better to secure a second term for President Nixon in 1972. As a political objective, this is fair enough—some people even see in it an admirable toughmindedness. But there *is* nothing admirable about the logical consequences of this strategy, for to bring it off it becomes necessary for the Administration to cultivate indifference, not to say hostility, toward the fundamental principle of human rights in general, and the equality of education available to black children in particular. Putting it another way, and bluntly, Southern Strategy means a form of racism, tacit or explicit, by people in high places, because there can be no successful effort to undercut George Wallace in the South that does not play the segregation game.

It is important to be clear in our minds about the issue here. We are well aware that the White House will be publishing next week what has been billed as the most complete, the most comprehensive, the most closely argued legal brief ever composed on school desegregation and it is not our purpose here to judge it in advance. For this is not what this is all about. We are not talking just about schools, or doubts held by responsible people about busing or other methods for dealing with the *de facto* segregation which occurs as a result of natural, geographic imbalances. We are talking about what a President or an Administration can do, or not do, to create an atmosphere that is conductive, not to miracles, but to continuing progress against racial discrimination all along the line. And this, in turn, is what is so troubling about the ease with which we now laugh at jokes about a Southern Strategy. It is what links the hijinks at the Gridiron with the nomination of Judge Carswell and a lot of other things—the abrupt removal of a Leon Panneta from HEW because he tried too hard; the effort to subvert Negro voting rights; the insensitivity, in tone and phrase, to black pride; the country club mentality.

Mr. Harry Dent, a presidential assistant, receives a written offer of campaign funds from a Georgia Republican leader in exchange for the restoration of Federal school aid in a Georgia school district. He casually passes it along to HEW—and nobody seems to mind. The Vice President brushes off the idea of quotas for black students by asking the crude question: "Do you wish to be attended hy a physician who entered medical school to fill a quota . . .?" Mr. Jerris Leonard, the Justice Department's civil rights enforcer, thinks it clever, or something, to say that one reason blacks just out of law school are not attracted to Justice Department jobs is that they haven't yet bought their first cashmere coat. Confronted with a question about Judge Carswell's involvement with segregated clubs, the President thinks it an adequate defense to say, in effect, that everybody's doing it: ". . . if everybody in government service who has belonged or does belong to restricted golf clubs were to leave the service, this city would have the highest rate of unemployment of any city in the country."

And so it goes, right down to the vote on Judge Carswell, with the Administration's men telling Republicans who opposed Judge Haynsworth—in almost every respect a much superior choice—that they can't rebuff their President twice running. They can, of course, and they should, because this is nothing so narrow as a test of party loyalty. It is a test of policy and principle—a kind of Tonkin Resolution on race, if you accept the theory recently advanced in Life Magazine by Hugh Sidey that the race issue could be for President Nixon the disaster that Vietnam was for President Johnson.

The Tonkin Resolution on Vietnam was a fraud, and while that became clearer later, it might have been clearer at the time if the right questions had been pressed, if Congress had not closed its eyes out of misplaced deference to the President and waved him down a wrong road. Therein lies the analogy. Judge Carswell is a bad choice, and the Senate should reject him out of its obligation to safeguard the paramount interests of our highest court. In the process of refusing his confirmation, the Senate has an opportunity, not just to say *No*, but also to say *Enough*—of insensitivity and indifference, of legislative retrogression and of catering to racist tendencies for political gain, of talking about blacks as if there were no blacks in the room. The Senate, in this fashion, could broadcast from at least one seat of government a signal to all races—a signal which at this stage can no longer be broadcast, in a way that would be believable, by anybody else.

[From the New York Times, Mar. 23, 1970]

RATING JUDGE CARSWELL

The Senate, in its desultory debate over whether to confirm the nomination of Judge G. Harrold Carswell to the Supreme Court, is giving an uninspiring demonstration of its sense of responsibility on an issue of grave national concern.

President Nixon, in his weekend press conference, urged Senators to weigh, not the mail, but the evidence. It is precisely on the evidence that Judge Carswell emerges with a mediocre judicial record and with questionable attitudes toward social justice.

Senator Roman L. Hruska, Republican of Nebraska, in apparent contempt for excellence in American institutions, championed the right of all who are mediocre to be represented by mediocrity on the Supreme Court. Application of this view to the Senate is bad enough; to extend it to the highest court is intolerable. Yet, this appears to be the intent of those who deliberately spurn all honest assessment of evidence unfavorable to Judge Carswell.

For example, it has now become known that Elbert F. Tuttle, the retired Chief Judge of the United States Court of Appeals for the Fifth Circuit in the South, who originally backed the nomination, subsequently decided to withdraw his endorsement. But Judge Carswell's supporters let the impression of Judge Tuttle's approval be used as continuing support for him.

A group of distinguished lawyers, including Francis T. P. Plimpton, president of the New York Bar Association, as well as the deans of leading law schools, have charged that the "qualified" rating, given Judge Carswell by the Federal Judiciary Committee of the American Bar Association, is seriously misleading. They consider the issue sufficiently grave to demand that the committee reopen the case and provide a more explicit rating, as it does in the case of other Federal judges.

Judge Carswell's supporters have used the A.B.A. rating as a judgment of high merit, when it is little more than an evasive rubber stamp. Attorney General Mitchell, who undoubtedly knows the real meaning of the A.B.A.'s faint praise, has stated publicly that his nominee comes "highly recommended" by the association.

These misleading tactics amply justify the demand for a more enlightening reappraisal. An explicit rating would do much to help the Senators when they ultimately cast their vote on the dictates of both fact and conscience. The legal profession surely has a responsibility to offer credible guidance and, at the very least, make sure that its testimony cannot be abused in ways that might demean the Supreme Court.

SUPREME COURT OF THE UNITED STATES

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

Mr. GURNEY. Mr. President, I have had several communications over the last few days during the debate on the nomination of Judge Carswell, many of which I put in the RECORD, others of which I wish to put in the RECORD now.

One of them is of particular interest, and I wish to bring it to the attention of the Senate. It is written by a woman lawyer, a member of a large law firm in Tallahassee, Fla.

KEEN, O'KELLEY & SPITZ,
Tallahassee, Fla., March 20, 1970.

Hon. EDWARD J. GURNEY,
Senator for the State of Florida,
U.S. Senate Office Building,
Washington, D.C.

DEAR SENATOR: I hope that I am not being presumptious in feeling that you might be interested in my views concerning the nomination of Judge Carswell since my background is not that of the typical Tallahassee lawyer now practicing before him. I was born and educated in Minnesota and have been exposed to judges in such diverse places as Minnesota, the District of Columbia, Arkansas and Florida. I also have taught in a law school: the University of Arkansas Law School. And I am a woman lawyer.

I graduated from the Law School of the University of Minnesota, class of 1941 and was a member of the editorial board of the Law Review and elected to Order of the Coif. I present this background to convince you that I have some basis for evaluating a judge.

I have been engaged in practicing law in Tallahassee, Florida, for the past four years and have had a fairly extensive practice in the District Court before Judge Carswell. He has always been eminently fair and courteous to all parties, he has displayed a deep learning in the law and his opinions have a clarity that is sadly lacking in many that

saw a boy hurrying down the hall, and intercepted him.

The boy was upset.

"He doubled up his fists," Mrs. Roberts recalled. "He was as big as I, and it frightened me. But I didn't dare flinch. A few long seconds passed. His hands went slowly down to his sides and the crisis was over."

It turned out that the boy had troubles the teacher hadn't suspected. Soon they were friends, and years later the boy returned to thank her for being kind to him.

Mrs. Roberts has long been a champion of individualization, and did research work in cooperation with the Rocky Mountain Educational Laboratory in developing a program of individualized science teaching.

She is also a keen observer of student behavior.

Once her school got new desks, and had to dispose of the old ones. So the faculty decided to let the pupils tear them up in the schoolyard.

"It was interesting that the youngsters who went at their work with the most enthusiasm were the one who caused the most disturbances," she said.

Mrs. Roberts has some definite ideas on the outlook of children, too. She said:

"Children's sophistication demands that we 'tell it like it is' and I am not borrowing the modern cliche to make a point. Children can tell fact from fancy and they'll reject both the fabrication and the person who tries to enforce it. They want reasons based on logic.

"Their actions also are indicative of their freedom to choose an alternate behavior. We are seeing this clearly in the adult youth, but in the elementary schools, too, the change in attitude is evident."

The Teacher of the Year comes from a family of teachers. Three of her sisters are teachers and so are four sisters-in-law.

Mrs. Roberts taught both her children at Sutherland Elementary School, and both—Barrett H. Roberts and Mrs. Calvin Kunz—became teachers.

Professional activity has also kept Mrs. Roberts busy. She once served on the UEA Salary Committee, as president of Millard County Teachers Association, a member of the Legislative Council of the DCT, and is currently president of her association's credit union.

When she was teaching principal of Sutherland Elementary School, she was president and secretary of Millard Principals Association.

The classroom, she said, has changed considerably since she started teaching in 1935.

"I just had a chalkboard then," she said. "Now in my classroom I have a piano, a TV, phonograph, tape recorder, overhead projector, film strips and slides, movie projector and a huge supply of films."

Salaries have increased somewhat, she said. A starting teacher received $660 a year then—ten checks for $66.

"And Iron County had one of the higher paying districts then," Mrs. Roberts recalled.

SENATE—*Tuesday, March 24, 1970*

The Senate, in executive session, met at 10 o'clock a.m. and was called to order by the Acting President pro tempore (Mr. METCALF).

The Reverend Dr. Berthold Jacksteit, minister, Central Schwenkfelder Church, Worcester, Pa., offered the following prayer:

Father of us all, we who have so much pray for a compassion which will reach out in helpfulness to all who have so little; we who are so strong pray for a generosity of spirit which will respect and value all who are so weak and seek to reassure and strengthen them; we who wield such power pray for a humility which will temper this power with mercy so that it may heal and bless and not destroy; we who have the responsibility of making such awesome decisions pray for a wisdom which will keep the weight of our influence at the forefront of everything that blesses mankind and furthers the cause of justice and righteousness, of peace and brotherhood throughout the earth. For Thy mercy's sake we pray. Amen.

ORDER OF BUSINESS

Mr. HOLLINGS obtained the floor.

Mr. SCHWEIKER. Mr. President, will the Senator from South Carolina yield?

Mr. HOLLINGS. I yield.

THE PRAYER

Mr. SCHWEIKER. Mr. President, I was very much pleased this morning to have the opportunity to hear the minister from my church of Worcester, Pa., give the opening invocation.

I want to say, since I come from a rather small denomination, that this is probably the first time a member of my faith has had the opportunity to present the opening prayer in either the House or Senate.

I deeply extend my appreciation to the Senate's Chaplain for his kind courtesy in bringing about this honor and thank the Senator from South Carolina for yielding to me.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

The ACTING PRESIDENT pro tempore (Mr. METCALF) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations received today, see the end of Senate proceedings.)

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. HOLLINGS. Mr. President, I ask unanimous consent, notwithstanding the previous order, that the Senate, as in legislative session, conduct routine morning business.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. HOLLINGS. Mr. President, I ask unanimous consent to limit statements to 3 minutes in relation to routine morning business.

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

THE JOURNAL

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, March 23, 1970, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

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

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

CARSWELL AND MEDIOCRITY

Mr. EAGLETON. Mr. President, I will vote not to confirm the nomination of Judge Carswell to the Supreme Court of the United States.

My opposition to Judge Carswell is not derived from the fact that he is classified as a "judicial conservative." Chief Justice Burger was widely hailed as a "judicial conservative" and I voted in favor of his nomination.

I oppose Judge Carswell because a very careful examination of his record as a Federal trial and appellate judge indicates that he is a jurist of the most pedestrian and distressingly mediocre talents and with a remarkable proclivity for being reversed by higher courts.

About the best that could be furnished in affirmative support of Judge Carswell's judicial and intellectual capacity was the testimony of one law professor who thought Judge Carswell had "growth potential."

Numerous individuals and groups—including some of the most prestigious legal scholars of the country—have voiced opposition to Judge Carswell because of his obviously meager judicial record.

Here are some of their observations:

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.—Louis Pollak, dean, Yale Law School.

A level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the court.—Derek Bok, dean, Harvard Law School.

That he is an undistinguished member of his profession, lacking claim to intellectual

stature.—Twenty members of the University of Pennsylvania Law School faculty.

. . . 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. Presidents, past and present, Bar Association of the City of New York.

His record is totally devoid of any special attributes of learning, experience, or statesmanship, which should be the hallmarks of a Supreme Court Justice. Chicago Council of Lawyers.

Judge Carswell does not have the legal or mental qualifications essential for service on the Supreme Court. 350 lawyers and law professors in the United States.

Perhaps the most interesting statement in opposition to Judge Carswell came from Prof. William Van Alstyne of Duke University Law School, one of the most respected legal scholars in the South. Professor Van Alstyne, it will be remembered, testified in support of Judge Haynsworth's nomination. He strongly opposes the Carswell nomination and states as follows:

There is, in candor, nothing in the quality of the nominee's work to warrant any expectation whatever that he could serve with distinction on the Supreme Court of the United States. Judge Carswell's decisions reflect a lack of reasoning, care, or judicial sensitivity overall.

I must conclude that Judge Carswell, considered in the most favorable light, is a man of remarkably mediocre attainment for a position in which mediocrity can be ill afforded.

Senator ROMAN L. HRUSKA, of Nebraska, the principal advocate of Judge Carswell, had this to say on the subject of mediocrity as it relates to Judge Carswell:

Even if he were mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance. We can't have all Brandeises and Frankfurters and Cardozos and stuff like that there.

I disagree.

The Supreme Court of the United States, consisting of only nine members who serve for life, is a vital institution.

I realize that men of limited capacity have served on the Court in the past. For every Louis Brandeis, one can cite a James C. McReynolds. For every Oliver Wendell Holmes, we can dredge up an Edward T. Sanford. For every Benjamin N. Cardozo, one can point to a Pierce Butler. Of course, we can never predict with absolute certainty the future performance of a judicial nominee.

However, the significant difference between Judge Carswell and other judicial also-rans is that Judge Carswell's woefully meager capacity is apparent now, while his nomination is under consideration by the Senate, whereas the shortcomings of these others became obvious only after they had served on the Court.

For this reason—Judge Carswell's obvious mediocrity—I oppose his nomination.

(At this point Mr. ALLEN took the chair as presiding officer.)

CORRECTION OF ANNOUNCEMENT ON VOTE

Mr. METCALF. Mr. President, on Thursday, in the vote on March 5, on Senator HRUSKA's motion to table the modified amendment in the nature of a substitute offered by Senator SCOTT to the voting rights bill, the proceedings in the CONGRESSIONAL RECORD on page 6169 incorrectly state that if I were present and voting I would vote "Yea."

Had I been present and voting, I would have voted "Nay."

I ask unanimous consent that the permanent RECORD be corrected.

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

ORDER OF BUSINESS

Mr. HOLLAND. Mr. President, I understand that, under the previous order, I am now allowed to proceed for 15 minutes; is that not correct?

The PRESIDING OFFICER. That is correct.

NOMINATION OF JUDGE G. HARROLD CARSWELL

Mr. HOLLAND. Mr. President, I regret very much to hear the statement just made by the distinguished Senator from Missouri (Mr. EAGLETON). The Senator does not know Judge Carswell as I do, and have for some years. I hope that he will check the record of the expressions of the leading judges in the courts of Florida.

Mr. President, on March 16, I placed in the RECORD a resolution adopted by the Governor and cabinet of the State of Florida commending the appointment of Judge Carswell to the Supreme Court. I also placed in the RECORD a telegram from Mr. Pat Thomas, chairman of the Democratic Executive Committee of the State of Florida, and telegrams signed by 17 of the judges in Florida, all strongly supporting the nomination of Judge Carswell, namely, John T. Wigginton, Donald K. Carroll, Dewey M. Johnson, John S. Rawls, and Sam Spector, judges of the District Court of Appeals, First District; and Tom Barkdull of the District Court of Appeals, Third District; W. May Walker, Ben C. Willis, Guyte P. McCord, Jr., and Hugh M. Taylor, all circuit judges of the Second Judicial Circuit; John A. Murphree, George L. Patten, and John J. Crews, circuit judges of the Eighth Judicial Circuit; B. C. Muszynski of the Ninth Judicial Circuit; Roger F. Dykes of the 18th Judicial Circuit; and D. C. Smith and Wallace Sample of the 19th Judicial Circuit.

At this time, Mr. President, I ask unanimous consent to have printed in the RECORD a telegram received from the Honorable Richard W. Ervin, chief justice, Florida Supreme Court, speaking for that entire court, as well as a telegram from the Honorable Fred O. Dickinson, Jr., comptroller of Florida, who was elected statewide in our State.

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

TALLAHASSEE, FLA., *March 16, 1970.*

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

I am authorized by the members of the Florida supreme court to advise we strongly endorse the nomination of Judge G. Harrold Carswell as associate justice of the U.S. Supreme Court. We know him to be a good citizen, fairminded, and judicially and temperamentally suited to render great service as a Justice in the Nation's highest court.

We believe him to be eminently qualified as a learned jurist for service in the Supreme Court and that he will make an outstanding record in keeping with the highest traditions of the American judiciary.

We discount totally criticism that he will allow prejudice or racial bias to sully his service on the Court. On the contrary, we believe his record of service on the court in the area of human rights will prove noble and worthy of an enlightened civilization.

For the Court:

RICHARD W. ERVIN,
Chief Justice.

TALLAHASSEE, FLA., *March 17, 1970.*

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

The cabinet of Florida, representing the executive branch of Florida government proudly reiterates its support of and recommends confirmation of the Honorable G. Harrold Carswell to the Supreme Court of the United States.

The cabinet officially endorsed Judge Carswell on January 27, 1970.

We hope you will bring this to the attention of your colleagues.

FRED O. DICKINSON, Jr.,
Comptroller of Florida.

Mr. HOLLAND. Mr. President, I now ask unanimous consent to insert communications from other circuit judges of the State; namely: Woodrow M. Melvin, presiding judge of the First Judicial Circuit; Martin Sack, Gerald B. Tjoflat, Lamar Wingeart, Jr., Charles A. Luckie, Albert W. Graessle, Jr., Henry F. Martin, Jr., Marion W. Gooding, and Thomas A. Larkin, circuit judges of the Fourth Judicial Circuit; W. Troy Hall, Jr. and John W. Booth, circuit judges of the Fifth Judicial Circuit; Ben F. Overton, Mark R. McGarry, Jr., Robert O. Beach, and Charles R. Holley, circuit judges of the Sixth Judicial Circuit; Parker Lee McDonald, and Claude R. Edwards, circuit judges of the Ninth Judicial Circuit; James Lawrence King, David Popper, and Thomas E. Lee, Jr., circuit judges of the 11th Judicial Circuit; John D. Justice, Lynn N. Silvertooth, Robert E. Willis, and Robert E. Hensley, circuit judges of the 12th Judicial Circuit; H. John Moore II, O. Edgar Williams, L. Clayton Nance, and Stewart F. LaMotte, Jr., circuit judges of the 17th Judicial Circuit; and Lynn Gerald and Archie M. Odom, circuit judges of the 20th Judicial Circuit.

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

MILTON, FLA.,
March 18, 1970.

Senator SPESSARD HOLLAND,
Senate Building,
Washington, D.C.:

We circuit judges of the First Judicial Circuit of Fla. have had the pleasure of knowing Judge G. Harrold Carswell as a lawyer and as a judge. It is a pleasure to vouch for him and urge his confirmation. Best wishes.

WOODROW M. MELVIN,
Presiding Judge.

JACKSONVILLE, FLA.,
March 17, 1970.

Senator SPESSARD HOLLAND,
Washington, D.C.:

You have our unqualified endorsement in urging the confirmation of Judge Carswell.

Judges Martin Sack, Gerald Tjoflat, Lamar Wingeart, Charles Luckie, Albert Graessle, Henry Martin, Marion Gooding, Thomas Larkin, 4th Judicial Circuit of Florida.

TAVARES, FLA.,
March 17, 1970.

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

I respectfully recommend Judge Carswell for your favorable consideration and urge you support his nomination by President Nixon as an Associate Justice of the United States Supreme Court.

Sincerely submitted.

W. TROY HALL, JR.,
Circuit Judge, Leesburg, Fla.

STATE OF FLORIDA, JUDICIAL DEPARTMENT, FIFTH JUDICIAL CIRCUIT,
March 17, 1970.

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

DEAR SENATOR HOLLAND: The appointment of a conservative man such as Judge G. Harrold Carswell to the United States Supreme Court is long overdue, and now that we have the opportunity of securing such an appointment, I sincerely and earnestly urge that you, as our Senator, give your unqualified support to this appointment.

I am sure that the opposition will continue to raise smoke screens and attempt to defeat this selection by our President. The people of Citrus, Hernando and Sumter Counties, where I serve as presiding judge are, in my opinion, solidly behind Judge Carswell and your part in assisting in his confirmation by the Senate would be well received.

Yours very truly,

JOHN W. BOOTH,
Circuit Judge.

ST. PETERSBURG, FLA.,
March 18, 1970.

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

I personally support the Senate's confirmation of Judge Harrold Carswell as a Justice of the United States Supreme Court.

BEN F. OVERTON,
Circut Judge, Sixth Judicial Circuit.

ST. PETERSBURG, FLA,
March 20, 1970.

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

I wish to record my wholehearted endorsement of Judge Carswell for elevation to the Supreme Court.

MARK R. MCGARRY, JR.,
Circuit Judge.

ST. PETERSBURG, FLA.,
March 23, 1970.

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

I urge your vote for approval of Judge Carswell nomination to the United States Supreme Court.

ROBERT O. BEACH,
Circuit Judge, Sixth Judicial Circuit, State of Florida.

BELLEAIR, FLA.
March 18, 1970.

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

I urge the confirmation of Judge Carswell.

CHARLES R. HOLLY,
Circuit Judge,
Clearwater Fla.

ORLANDO, FLA.,
March 18, 1970.

Honorable SPESSARD HOLLAND,
United State Senator,
Washington, D.C.:

The Judicial Administration Committee of the Florida Bar considers Judge Harrold Carswell to be eminently qualified, competent and learned to serve as Supreme Court Justice. We urge his confirmation without further delay. I also personally recommend this action.

PARKER LEE MCDONALD,
Circuit Judge and
Chairman of Committee.

ORLANDO, FLA.,
March 23, 1970.

Honorable SPESSARD HOLLAND,
U.S. Senate,
Washington, D.C.:

Respectfully urge you to continue pressing for Judge Carswell's appointment.

Best regards,

CLAUDE R. EDWARDS,
Circuit Judge.

MIAMI, FLA.,
March 17, 1970.

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

DEAR SENATOR HOLLAND: I respectfully urge that the Senate confirm the appointment of G. Harrold Carswell of Tallahassee to the United States Supreme Court. While I do not know Judge Carswell personally, I have, upon many occasions, reviewed opinions cited to me in which Judge Carswell has participated either as a district or appellate judge. These decisions reflect a sound and thorough grasp of the law. In addition, through conversation with my colleagues and general observations of Judge Carswell I believe that he is possessed of the proper judicial requirements and temperament to fill this vacancy.

The selection of any person to the United States Supreme Court is, as you might imagine, a subject of keen interest to lawyers and judges throughout the land. Although I do not proport to speak for the twenty-two Circuit Judges of the Eleventh Judicial Circuit, I can state with considerable accuracy that the judges of my Circuit unanimously believe that the appointment of Judge Carswell to this position is an excellent choice. We feel that the selection of a person to the Supreme Court should be based upon ability and judicial temperament rather than partisan political considerations. I respectfully invite your attention to the fact that twenty-one of our twenty-two judges are, like myself, registered democrats.

Cordially,

JAMES LAWRENCE KING.

MIAMI, FLA.,
March 20, 1970.

Hon. SPESSARD HOLLAND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HOLLAND: We strongly support confirmation of Judge Carswell to U.S. Supreme Court.

DAVID POPPER,
Circuit Judge, Dade County Courthouse.

MIAMI, FLA.,
March 20, 1970.

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

I urge your support for confirmation of Judge Carswell.

THOMAS E. LEE,
Circuit Judge.

SARASOTA, FLA.,
March 16, 1970.

Senator SPESSARD HOLLAND,
Washington, D.C.:

We the undersigned circuit judges of Twelfth Judicial Circuit, Florida join with many other good Floridians urging confirmation of Honorable Harrold Carswell to Supreme Court Bench.

JOHN D. JUSTICE,
LYNN N. SILVERTOOTH,
ROBERT E. WILLIS,
ROBERT E. HENSLEY,

FORT LAUDERDALE, FLA.,
March 17, 1970.

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

I urgently and respectfully request your favorable consideration and affirmation vote for confirmation of Judge Carswell's nomination.

H. JOHN MOORE,
Circuit Judge.

FT. LAUDERDALE, FLA.,
March 17, 1970.

Sen. SPESSARD L. HOLLAND,
Senate Office Building,
Washington, D.C.:

Recommend nomination of Judge Harrold Carswell be approved.

O. EDGAR WILLIAMS,
Circuit Judge.

FT. LAUDERDALE, FLA.,
March 18, 1970.

Sen. SPESSARD L. HOLLAND,
New Senate Office Building,
Washington, D.C.:

I urge confirmation of Judge Carswell on nonpartisan basis.

L. CLAYTON NANCE,
Circuit Judge.

FT. LAUDERDALE, FLA.,
March 20, 1970.

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

Petty politics should be set aside and Judge Carswell should be seated because of his qualifications.

STEWART F. LAMOTTE, JR.,
Circuit Judge.

FORT MYERS, FLA.,
March 16, 1970.

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

We sincerely endorse Judge G. Harrold Carswell for Associate Justice of the United States Supreme Court.

LYNN GERALD,
Circuit Judge,
ARCHIE M. ODOM,
Circuit Judge.

Mr. HOLLAND. Mr. President, I also ask, at this time, unanimous consent to place in the RECORD communications from the following county judges: Joe Dan Trotman, of Walton County; Kenneth E. Cooksey, of Jefferson County; Monroe E. Treiman, of Hernando County; R. R. Brown, of Jackson County; and James W. West, of Sumter County.

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

DEFUNIAK SPRINGS, FLA.,
March 19, 1970.

Senator SPESSARD HOLLAND,
U.S. Senate,
Washington, D.C.

SIRS: I have been a county judge in Walton County Florida for 21 years. I wish to

say that the Hon. Harrold Carswell is qualified in every respect. I give him my unqualified support. All my friends also feel this way.

JOE DAN TROTMAN.

MONTICELLO, FLA.,
March 19, 1970.

Hon. SPESSARD L. HOLLAND,
U.S. Senator,
U.S. Congress, Washington, D.C.

DEAR SENATOR HOLLAND: I have known Judge Harrold Carswell since he became U.S. District Attorney. I have practiced before his court when he was district judge. He is most eminently qualified to sit on the U.S. Supreme Court especially when viewed from the standpoint of the qualification of some present and former justice. I sincerely believe he will interpret the law rather than legislate. I urge that the verification and the defamation spawned by Senators Bayh et al. cease, and the Senate get on with immediate confirmation, respectfully.

KENNETH E. COOKSEY,
County Judge, Monticello, Fla.

BROOKSVILLE, FLA.,
March 17, 1970.

Senator SPESSARD HOLLAND,
Washington, D.C.

DEAR SENATOR: Your support for Judge Carswell as Justice of the Supreme Court sincerely appreciated by the Judiciary of Florida. Carswell is a qualified jurist.

MONROE W. TREIMAN,
County Judge, Hernando County.

MARIANNA, FLA.,
March 19, 1970.

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

Sincerely believe circus has lasted long enough. For sake of a strong court system commanding respect of all, urge your efforts to enforce involving Judge Carswell and press for immediate confirmation.

R. ROBERT BROWN,
County Judge, Juvenile Court Judge.

BUSHNELL, FLA.,
March 18, 1970.

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

DEAR SENATOR: Please continue to do everything in your power to get a good man on the Supreme Court. Please keep pushing for Judge Carswell.

Respectfully,

JAMES W. WEST,
County Judge, Sumter County.

Mr. HOLLAND. I ask unanimous consent, also, Mr. President, to insert in the RECORD at this point telegrams from Robert W. Rust, U.S. attorney for the southern district of Florida and from Robert Eagan, State attorney for the ninth judicial circuit.

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

MIAMI, FLA.,
March 21, 1970.

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

I wish to thank you for your support for Judge Carswell. He is highly qualified to serve on the U.S. Supreme Court. I am proud that President Nixon has nominated him and that you will vote to confirm a southern jurist who is gifted with common sense and practical experience as well as intellectual capability.

ROBERT W. RUST,
U.S. Attorney.

ORLANDO, FLA.,
March 16, 1970.

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

Urge your confirmation of Justice Carswell.

Very truly yours,

ROBERT EAGAN,
State Attorney
Ninth Circuit, Orlando, Fla.

Mr. HOLLAND. I ask unanimous consent, Mr. President, to insert in the RECORD at this point telegrams which I have received from a number of professors at the State universities who have endorsed Judge Carswell; namely, J. M. Morse III, dean, College of Law, Florida State University; Dexter Delony, professor of law, University of Florida; and Norman A. Faulkner, associate professor of law and director of law placement, University of Florida.

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

TALLAHASSEE, FLA.,
March 19, 1970.

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

I support the nomination of G. Harrold Carswell for Associate Justice of the Supreme Court of the United States. In my opinion he is qualified by training, experience, and temperament for the position. Dean Mason Ladd joins me in support of Judge Carswell.

J. M. MORSE III,
Dean, College of Law,
Florida State University.

GAINESVILLE, FLA.,
March 19, 1970.

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

I vigorously urge confirmation of Judge Harrold Carswell.

DEXTER DELONY,
Professor of Law, University of Florida.

GAINESVILLE, FLA.,
March 19, 1970.

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

Please add my name to those that strongly support and urge the immediate confirmation of Judge G. Harrold Carswell to the United States Supreme Court.

NORMAN A. FAULKNER,
Associate Professor of Law and Director of Law Placement, Spessard L. Holland Law Center, University of Fla.

Mr. HOLLAND. I mention in closing, Mr. President, that the CONGRESSIONAL RECORD of March 17 shows the following communications in support of Judge Carswell's nomination: letters from Mason Ladd, visiting professor and former dean, Florida State University, dean emeritus of Iowa; William Vandercreek, law professor of Southern Methodist University; and Frank E. Maloney, dean of the University of Florida Law School.

Mr. President, I have previously inserted into the RECORD telegrams and letters from most reputable judiciary and legal professional personages, all of whom have knowledge of Judge Carswell's ability. I now ask unanimous consent to insert into the RECORD the following letters or portions thereof from men of the judiciary and of the legal profession whom I regard most highly and on whom I would prefer to rely as to the ability, integrity, and qualifications of Judge Carswell than would rely on persons of the profession, totally unfamiliar with Judge Carswell or who I believe have not taken the time to analyze the man and his character but yet are willing to demean him by signing petitions against his appointment. These letters are all relative to Judge Carswell's appointment to the circuit court of appeals but reflect the true expressions of persons well qualified to judge the ability of the man now nominated for the Supreme Court.

First, I ask unanimous consent to have a letter which I received from Campbell Thornal, chief justice, Supreme Court of Florida, printed in the RECORD at this point.

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

TALLAHASSEE, FLA.,
April 14, 1966.

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

DEAR SENATOR: I am told that there is a possibility that District Judge Harrold Carswell may be considered for one of the several vacancies to be filled on the Court of Appeals, Fifth Circuit.

I am sure that you know Judge Carswell quite well. It is my impression that he has rendered an excellent service as a Federal District Judge. He enjoys the confidence of the Bar, is diligent in dispatching the business of the Court and has an excellent reputation among the judges who know him here in Florida. Additionally, we in the state judiciary have appreciated the very cordial and congenial relationship with Judge Carswell as one of our Federal Trial Judges. I certainly have no reluctance to commending him to your favorable consideration in the event that he is among those considered for the Court of Appeals appointment.

With warmest regards, I remain,

Sincerely,

CAMPBELL THORNAL.

Mr. HOLLAND. Second, I ask unanimous consent to have a letter which I received from Elwyn Thomas, justice of the Supreme Court of Florida, printed in the RECORD at this point.

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

STATE OF FLORIDA,
Tallahassee, April 4, 1966.

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

DEAR SPESSARD: There has been some discussion hereabouts with reference to the appointment of Judge Harrold Carswell to the Circuit Court of Appeals in which case we would have two Federal District Judges in North Florida as well as a Tallahassee Judge on the Circuit Court. This seems to me a wise solution of the present situation and, certainly, Harrold is abundantly qualified by training, character and experience to perform the duties of the higher court.

I am not too familiar with the efforts that are being made to secure these places but it occurs to me that this would be a very sensible move.

Please forgive me for the liberty I take in addressing you on the subject but if there is any possibility that this arrangement could be made, I should like to be counted as favoring it enthusiastically.

With warm personal regards, I am

Sincerely yours,

ELWYN THOMAS.

Mr. HOLLAND. Third, I ask unanimous consent to have a letter which I received from Ben C. Willis, circuit judge, Second Judicial Circuit of Florida, printed in the RECORD at this point.

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

SECOND JUDICIAL CIRCUIT,
Tallahassee, Fla., April 4, 1966.

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

DEAR SENATOR: I have heard rumors that United States District Judge Harrold Carswell is being considered for appointment to the United States Court of Appeals for the Fifth Circuit to replace Judge Jones, who is retiring. If he should be nominated and confirmed, I feel that he would serve ably and creditably and would be governed by sound legal judgments in the decisions he would reach. Of course, I have had no opportunity to observe him, but from the reports I receive from members of the bar and from other sources, he has been an excellent District Judge. I feel the nation would be well served by him on the appellate court and that his type of man is very much needed in such positions.

With kindest personal regards and all good wishes, I am,

Sincerely,

BEN C. WILLIS.

Mr. HOLLAND. Fourth, I wish to read a portion of a letter which I received from Stephen C. O'Connell, then justice of the Supreme Court of Florida, now President of the University of Florida:

Yesterday I was told that Judge Harrold Carswell is being considered for appointment to the Court of Appeals and I was asked to express my views to you on this. I endorsed Harrold's appointment to his present office and his record has made me proud that I did so. I believe he would make an excellent appellate judge.

Fifth, I wish to read a portion of a letter which I received from Millard F. Caldwell, then chief justice of the Supreme Court of Florida and former Governor of the State I have the honor to represent in part. In writing about the vacancy on the Fifth Circuit Court of Appeals, last year he said:

My best suggestion is the appointment of Harrold Carswell to one of the vacancies. His calm common sense approach to the tough problems of the day would be helpful, to say the least. I do not need to remind you that he has rendered splendid service to the Federal Bench, a service recognized by the Circuit and District Judges of the Fifth Circuit in electing him District Judge Representative to the United States Judicial Conference.

Sixth, I ask unanimous consent to have a letter and enclosed editorial which I received from Douglass B. Shivers, of the law firm of Cotton, Shivers, Gwynn & Daniel, Tallahassee, Fla., printed in the RECORD at this point.

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

COTTEN, SHIVERS, GWYNN & DANIEL,
Tallahassee, Fla., January 24, 1969.

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

DEAR SENATOR HOLLAND: Enclosed is an editorial which appeared in the Pensacola Journal on January 22, 1969, endorsing our mutual good friend and able United States District Judge Honorable Harrold Carswell for appointment to the United States Circuit Court of Appeals.

We enthusiastically endorse this editorial. Judge Carswell has done an outstanding job on the United States District Court bench and he would make an excellent Judge for the United States Circuit Court of Appeals.

Warm personal regards.

Respectfully yours,

DOUGLASS B. SHIVERS.

[From the Pensacola (Fla.) Journal, Jan. 22, 1969]

MAN FOR THE JOB

We hope reports of the proposed appointment of Federal Judge G. Harrold Carswell of Tallahassee to the position of judge of the U.S. Circuit Court of Appeals are correct, and the appointment is speedily confirmed.

We can think of no man better suited for the job.

When Judge Carswell, at age 38, was appointed to the judgeship of this federal court district, there were complaints as to his "limited" experience in the practice of law and his "total lack" of judicial experience.

There can be no such complaints now, however. Judge Carswell has served as district judge in this area for more than 10 years, and served for several years prior to that time as U.S. Attorney in the same district. He finished law school in 1948, giving him more than 20 years of law experience in all.

Furthermore, in his years of service on the district court bench, despite a tremendous work load, Judge Carswell has done what we believe has been an outstanding job.

Now, approaching 50, he has the maturity and experience needed and yet is still young enough and active enough to offer many years of service to this nation in this high level position on the appeals court, embracing Florida, Georgia, Alabama, Mississippi, Louisiana, and Texas.

To be practical about it, Judge Carswell is a Republican, as is the new President of the United States and the new U.S. Senator for the State of Florida.

Two new judges are to be named for the Appeals Court, making a total of 13, and at present only one state, Texas, has sent three men to this bench. Florida should be in line now for one such appointment, as the fastest growing of the states involved, and—again being practical—as the adopted state of President Nixon.

We have long contended that judges should be appointed not from the standpoint of political cronyism, but from the standpoint of experience and demonstrated ability.

Judge Carswell, without question, has both, as well as the political credentials which have always been necessary in the past.

We hope the job will be his.

Mr. HOLLAND. Seventh, I ask unanimous consent to have a letter which I received from Joseph C. Jacobs of the law firm of Ervin, Pennington, Varn & Jacobs, Tallahassee, Fla., printed in the RECORD at this point.

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

ERVIN, PENNINGTON, VARN & JACOBS,
Tallahassee, Fla., June 18, 1969.

Re Hon G. Harrold Carswell, U.S. district judge.

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

DEAR SENATOR HOLLAND: I have noted newspaper accounts to the effect that Judge Carswell's record in the field of civil rights has been attacked by some individuals.

I believe that I am uniquely qualified to attest to Judge Carswell's judicial temperament and his performance in civil rights cases. For 10 years, I was Assistant Attorney General here in Tallahassee, and for two years was Chief Trial Counsel in the Attorney General's office; therefore, I either personally handled or had supervisory responsibility for all civil rights cases in which the state was a party. I certainly did not agree with all of Judge Carswell's decisions and, in fact, vehemently disagreed with many of them; but he was always fair, courteous, and exhibited the judicial temperament of a good judge—many times under trying circumstances.

In the past five years, I have been in the private practice of law, actively engaged in trial work with a very active firm requiring the handling of similar cases and cases generally before the Federal District Court here and throughout the State of Florida. Viewing Judge Carswell's activities from the vantage point of the other side of these cases. I can again report that he is fair and exhibited the same judicial temperament which I had observed in my representation of the state in his court and the other federal courts in the state.

I have properly avoided—and respectfully suggest that it is inappropriate in the evaluation of any judge—to summarize the decisions which Judge Carswell has rendered in any particular area. A judge, like a lawsuit, must be judged on the basis of each individual decision and each individual set of circumstances as it develops through our court system. Any attempt to form a composite view of a judge's performance based on cases handled in one particular area would give a distorted view of the qualifications of the individual judge involved.

I have discussed this with other members of my firm and lawyers generally throughout Florida, and can assure you that the above opinion is shared by the vast majority of lawyers who practice in the District Court of the Northern District of Florida.

Sincerely,

JOSEPH C. JACOBS.

Mr. HOLLAND. Eighth, I also ask unanimous consent to have a letter which I received from Carl R. Pennington, Jr., of the law firm of Ervin, Pennington, Varn & Jacobs, Tallahassee, Fla., printed in the RECORD at this point.

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

ERVIN, PENNINGTON, VARN & JACOBS,
Tallahassee, Fla., November 26, 1968.

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

DEAR SENATOR HOLLAND: Although it may be somewhat presumptuous on my part, I would like to add my endorsement and support to Harrold Carswell in connection with his consideration for appointment to the Circuit Court of Appeals, Fifth Circuit. I am certain that you are more aware of Harrold's political philosophies than I am. Suffice it to say that we all hold to the same basic beliefs. I believe that it is equally apparent that Harrold possesses all of the requisite qualifications, and that it will be difficult to find anyone as well qualified for this judgeship. As a practicing attorney I believe that his appointment would add both to the stature and quality of the Court.

Very truly yours,

CARL R. PENNINGTON, JR.

Mr. HOLLAND. Ninth, I ask unanimous consent to have a letter which I received from Marion B. Knight of the law firm of Marion B. Knight and/or

Philip J. Knight Blountstown, Fla., to be printed in the RECORD at this point.

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

MARION B. KNIGHT AND/OR PHILIP J. KNIGHT,
Blountstown, Fla., December 9, 1969.
Hon. SPESSARD L. HOLLAND,
U.S. Senate
Attention Mr. Merrill Winslett,
Washington, D.C.

DEAR MERRILL: At the meeting of our Fourteenth Judicial Circuit Bar Association in Marianna, Saturday afternoon, I discussed the appointment of one of the Judges of the Circuit Court of Appeal for the Fifth Circuit, with some of our lawyers who are familiar with both Judges, and since I represented the Marianna Division of the U.S. District Court, Northern District of Florida in Gainesville, at the Enrobing of Judge Bud Arnow, and since I am the oldest acting practitioner in our circuit, I agreed to write this letter to you directly and request that you take the matter up on your confidential meeting with Senator Holland to be sure that it gets to his attention.

I have only been intimately acquainted with Judge Harrold Carswell, our Senior Judge since a short time before his appointment.

I have also known Judge McRae since Law School days in the early twenties, which of course is not quite as long as I have known you, but still longer than I have personally known Senator Holland.

It is my opinion, which is concurred in by the active lawyers in this Division, that we recommend Judge Carswell to be elevated to the Circuit Court of Appeals.

He is not only judicially qualified, but has not lost the practical ability to observe matters and persons in a qualified manner, and I sincerely recommend that he be appointed with the utmost confidence that he will lend dignity to the profession, reflect honor to Senator Holland and merit the confidence of the other members of the Court and reflect honor to himself.

With kindest personal regards to you and Senator Holland.

Yours sincerely,

MARION B. KNIGHT.

Mr. HOLLAND. Mr. President, I have received numerous letters attesting to the ability of Judge Carswell and strongly endorsing his nomination to the Supreme Court. These letters are from persons in all walks of life. In order not to enlarge the RECORD too greatly, I will not ask that all of them be placed in the RECORD. I do feel, however, that certain letters from members of the bar are most appropriate, and I ask unanimous consent to have these letters printed in the RECORD.

The first is a letter addressed to Senator EASTLAND, a copy of which was sent to me, from the Honorable Bryan Simpson, circuit judge, U.S. Court of Appeals, Fifth Judicial Circuit.

The second letter is one from the Honorable Ben F. Barnes of the firm of Barnes & Grant, Marianna, Fla.

The third is a letter from the Honorable Bryon B. Block of the firm of Glickstein, Crenshaw, Glickstein, Fay & Allen, Jacksonville, Fla.

The fourth is a letter addressed to Mr. Melvin L. Kodas, chairman, section on judicial administration law, American Trial Lawyers Association, Kansas City, Mo., from the Honorable Perry Nichols, a copy of which was forwarded to me.

The fifth is a letter from the Honorable Phillip W. Knight of the firm of Fowler, White, Humkey, Burnett, Hurley & Banick of Miami, Fla. The last paragraph of this letter is more of a personal nature regarding my pending retirement deleted this from the letter.

The sixth letter and enclosure which I ask unanimous consent to have printed in the RECORD is one I received from the Honorable Edward E. Hedstrom, president of the Putnam County Bar Association, Palatka, Fla., enclosing a resolution adopted by the Putnam County Bar Association endorsing the nomination and confirmation of Judge Carswell.

I ask unanimous consent that the letters and the resolution be printed in the RECORD.

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

U.S. COURT OF APPEALS,
FIFTH JUDICIAL CIRCUIT,
Jacksonville, Fla., January 22, 1970.
Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

MY DEAR SENATOR EASTLAND: The purpose of this letter is to attest to you and the members of your committee, for whatever value it may have, my personal judgment of the qualifications of U.S. Circuit Judge G. Harrold Carswell to become an Associate Justice of the United States Supreme Court.

I have been closely associated with Judge Carswell as a brother Florida federal judge since he became a District Judge in the spring of 1958. We worked closely together over the years. In recent months that association has continued on the Court of Appeals. I knew him slightly, but mainly by reputation, in the early Fifties when he was U.S. Attorney for the Northern District of Florida.

He possesses and uses well the requisite working tools of the judge's trade: industry, promptness, learning, attentiveness and writing skills. He is a competent and capable judicial craftsman, experienced in the diverse and complex areas of federal law as well as the almost limitless variety of cases coming to us under the diversity jurisdiction. In the six or seven months he has been a member of our Court and in extensive service thereon as a visiting judge over the prior years, he has shown a steady capacity for high productivity without the sacrifice of top quality in his work.

More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an open-minded disposition to hear, consider and decide important matters without preconceptions, predilections or prejudices. I have always found him to be completely objective and detached in his approach to his judicial duties.

In every sense, Judge Carswell measures up to the rigorous demands of the high position for which he has been nominated. I hope that the Judiciary Committee will act promptly and favorably upon his nomination. It is a privilege to recommend him to you without reservation.

With kind personal regards, I am.

Sincerely,

BRYAN SIMPSON.

BARNES & GRANT,
Marianna, Fla., January 19, 1970.
Hon. SPESSARD L. HOLLAND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I am advised that Judge Carswell was nominated by the President for appointment to the United States Supreme Court this afternoon.

Since Judge Carswell's appointment to the District Court, I have been before him on numerous occasions each year, in criminal matters, by virtue of appointment generally, and from time to time in civil matters. I have appreciated the manner and form in which he operated his Court; his ability to comprehend the issues immediately, even in complicated civil matters; and to make decisions, without hesitation, regardless of the parties.

I sincerely hope that you will do everything within your power to assure Judge Carswell's confirmation by the Senate.

With best personal regards, I am

Sincerely,

BEN F. BARNES.

GLICKSTEIN, CRENSHAW,
GLICKSTEIN, FAY & ALLEN,
Jacksonville, Fla., January 23, 1970.
Hon. HARROLD CARSWELL,
Federal Building,
Tallahassee, Fla.

DEAR JUDGE CARSWELL: It was with a great deal of pleasure that I read of your nomination to the Supreme Court of the United States. I am confident that the Senate of the United States will recognize your ability and integrity in promptly confirming President Nixon's most recent nomination to the highest Court in the land.

As a native Tallahasseean and Floridian I recognize the deep significance your appointment has for the Florida Bar and am confident that your tenure on the Supreme Court will be a continuation of your distinguished service in the District Court and Fifth Circuit Court of Appeals.

Again, let me extend my heartiest congratulations.

Respectfully,

BYRON BLOCK.

NICHOLS & NICHOLS,
Miami, Fla., January 27, 1970.
Re Judge G. Harrold Carswell, Nixon appointee to the U.S. Supreme Court.
Mr. MELVIN L. KODAS,
Chairman, Section on Judicial Administration Law, American Trial Lawyers Association, Kansas City, Mo.

DEAR SIR: I highly recommend the confirmation of Judge G. Harrold Carswell, recent appointee to the Supreme Court of the United States, and I am sending to each member of President Wolfstone's Judicial Committee a copy of this letter.

I have personally known Judge Carswell for about twenty years. He has an outstanding record as a fine trial lawyer, as an excellent prosecuting attorney, as a Federal District Trial Judge and on the 5th Circuit Court of Appeals. This is well recognized by all lawyers who have been before him and who know him in this territory.

In addition to the above, I have had the privilege of being on a number of annual deer hunting trips, on which there were about fifteen prominent lawyers, doctors, insurance men and other friends, where we spent several days on a deer hunt at Cumberland Island, off the lower coast of Georgia. On several occasions, Judge Carswell has been a guest in this group, and I have had the privilege and opportunity to visit with him man to man and under circumstances which were informal and you could talk "off the record," without embarrassment, and I can tell you that Judge Carswell is a moderate conservative. He likewise, however, is a fine judge and follows the law of the land and the Constitution and decisions of the Supreme Court of the United States. He has applied these without favoritism and without regard to race, color or creed.

Concerning Judge Carswell's remark about integration immediately after graduating from Mercer College, when he was running for the legislature, I call it to your attention that the Constitution of the State of Georgia required segregation at that time, and the United States Supreme Court decisions had

approved segregation. At that time he was following the Constitution of his state and the decisions of the Supreme Court of the United States. His views today are as liberal and as modern as the decisions of the United States Supreme Court.

Judge Carswell is a hard worker. He keeps his calendar in good up-to-date shape and tends to the Court's business with dispatch.

He has a fine family and a good, high moral personal reputation in this state and in his own community where they know him best.

Having been president of the American Trial Lawyers Association and the International Academy of Trial Lawyers, as well as serving on the Judicial Council of Florida for six years dealing with the judicial system, qualifications and appointments of judges in this area, I unhesitatingly recommend Judge G. Harrold Carswell for confirmation to this high office. I feel he will grace the Bench and serve with honor and distinction and, at the same time, reflect credit upon the office itself.

Yours very truly,

PERRY NICHOLS.

FOWLER, WHITE, HUMKEY, BURNETT, HURLEY & BANICK,
February 2, 1970.

Senator SPESSARD HOLLAND,
Washington, D.C.

DEAR SENATOR: Please excuse this belated opportunity to extend my congratulations to you for your excellent bipartisan efforts in assisting the President in his selecting Judge Carswell as nominee to the Supreme Court. Judge Carswell's appointment will strengthen the Supreme Court immeasurably.

Being a "strict constructionist" myself, I sincerely urge your continued efforts to secure the Senators' consent of his nomination. Such action will improve the stature of the Bar, the Judiciary, the State of Florida, and the nation as a whole.

Respectfully yours,

PHILLIP W. KNIGHT.

DOWDA, MILLER & HEDSTROM,
Palatka, Fla., January 29, 1970.

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

DEAR SIR: Enclosed is the Resolution adopted by the Putnam County Bar Association endorsing the nomination and confirmation of Judge G. Harrold Carswell as an Associate Justice of the United States Supreme Court.

We respectfully submit this Resolution as an expression of our confidence in Judge Carswell.

Very truly yours,

EDWARD E. HEDSTROM,
President, Putnam County Bar Association.

Enclosure.

RESOLUTION

Whereas, the Putnam County Bar Association, a corporation not for profit, of the State of Florida, desires to express its views concerning the nomination of the Honorable G. Harrold Carswell for the position of Associate Justice of the United States Supreme Court; and

Whereas, this Association is convinced that Judge Carswell is fully worthy of appointment to the United States Supreme Court, is a man with a distinguished record as a jurist, and should be confirmed as soon as possible;

Now, therefore, be it resolved by the Putnam County Bar Association of Putnam County, Florida, in special meeting assembled this 26th day of January, A.D. 1970, that this Association does hereby endorse and support the nomination of the Honorable G. Harrold Carswell for appointment as Associate Justice of the Supreme Court of the United States of America, and does urge the United States Senate to confirm his appointment at the earliest possible date; and,

Be it further resolved that copies of this Resolution be forwarded to the President of the United States, to the president of the United States Senate, to the United States Senators from the State of Florida, and to the Honorable G. Harrold Carswell.

Passed and adopted this 26th day of January, A.D. 1970.

PUTNAM COUNTY BAR ASSOCIATION,
EDWARD E. HEDSTROM, *President.*

Mr. HOLLAND. Mr. President, in addition, I have received 232 telegrams, which I shall not ask to have printed in the RECORD because that would unduly encumber the RECORD. All of these telegrams are from reputable members of the bar in my State. I think I know pretty well the members of the bar of my State, having practiced there since 1916 and being a native of my State. I do not know every one of them but I know by far the greater majority of them.

It would be inconceivable to me that all these judges of our State, Governors, and cabinet members of our State, regardless of party, and all these fine practicing attorneys would recommend Judge Carswell so strongly for confirmation unless he is vastly more than a mediocre judge.

As I have said, I had the pleasure to sit as a witness in the largest case ever tried during my lifetime in my State, when Judge Carswell was presiding. I have stated how thoroughly I was impressed with his character in presiding and his rulings. There were some 20 to 30 lawyers on the two sides. When the case was decided by the jury there was no appeal. There can be no stronger endorsement of a trial judge than that.

Mr. President, I close by asking that there be printed in the RECORD a telegram from the president, vice president, and treasurer of the Student Bar Association; the president of Phi Delta Phi legal fraternity; editor in chief, Law Review and others, of the Florida State University College of Law strongly endorsing Judge Carswell for this appointment.

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

TALLAHASSEE, FLA.,
March 19, 1970.

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

As students of Florida State University College of Law we urge the confirmation of Judge Harrold Carswell to the Supreme Court of the United States. We are in complete agreement with the mature judgment of Dean Joshua Morse, Dean Mason Ladd and Professor William Von der Creek in our complete support of Judge Carswell. We feel that his judicial record is outstanding, his character is impeccable and his judicial philosophy is sound.

Robert B. Cyrus, President, Student Bar Association; J. Michael Huey, Executive Vice President, Student Bar Association; Edwin A. Green, Vice President, Student Bar Association; Michael P. Casterton, Treasurer, Student Bar Association; William C. Martin III, President, Phi Delta Phi Legal Fraternity; Wendell J. Kiser, Editor in Chief, Law Review; Lee L. Willis, Paul M. Ruff, Zollie Maynard.

PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate, as in legislative session, will proceed to the consideration of routine morning business, with a 3-minute limitation for the remainder of the 15 minutes previously allotted for that purpose.

Is there further morning business?

ABORTION REFORM

Mr. PACKWOOD. Mr. President, several weeks ago I introduced a bill to eliminate restrictions on abortion in the District of Columbia. It is my feeling that a woman, as a matter of voluntary decision and private right, should have the decision left to her as to whether or not she wants to terminate the pregnancy.

Since that time the State of Hawaii has passed a law making it a private decision between the woman and her physician whether she wants to terminate a pregnancy. The State of Washington has referred a similar law to the electorate, to be decided by them at the general election this fall. One house of the New York Legislature and one house of the Maryland Legislature have passed laws which would, in essence, do the same thing; that is, give the woman the private right to determine whether she wants to abort a pregnancy.

Courts in several States, including the California Supreme Court, and the Federal districts courts in Wisconsin and the District of Columbia have held abortion laws of those States to be unconstitutional.

Recently both the New York Times and the Wall Street Journal editorialized in favor of these changes. I will now read from the editorial published in the New York Times:

While fully recognizing the depth and sincerity of feeling of those who believe that abortion is an immoral act, we have come to the conclusion tbat it is not a matter for the state to decide but that each woman, in consultation with her physician, should have the right to determine whether to continue a pregnancy or not, just as she should have the right to decide whether to begin one or not.

The editorial in the Wall Street Journal states:

In addition, the question of how many children should be up to the discretion of the woman or the husband and wife as the case may be. Generally speaking they have that right now—they do not have to have any children if they do not want to—and the right, it seems to us, should include the possibility of terminating an unwanted pregnancy.

To put it another way, this is an area where government has no necessary or appropriate function.

Mr. President, considering the stature of the New York Times and the Wall Street Journal, I ask unanimous consent that the full text of these two editorials be printed in the RECORD.

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

agua. This country will be represented by its ambassador, Kennedy M. Crockett.

The treaty was signed originally at Washington in the summer of 1914 and went into force two years later. In May, 1939, then president Anastasio Somoza came to the United States and exhorted Congress to build the canal. It is the son of the former dictator-president, who bears his names, Anastasio Somoza, who will be involved in the treaty's end.

Nicaragua's answer to the U.S. note was to accept invitations to talk the matter over "with the traditional feeling of friendship that has existed between the two nations, and in view of the aspirations of the people of Nicaragua."

MANAGUA HAD ACTED

Two days earlier, on March 2, at Managua the Nicaraguan Senate had unanimously voted in favor of abrogating the treaty that had granted rights to the U.S. in perpetuity.

Senator Rodolfo Abaunza said that, since the U.S. was about to end the treaty anyhow, that Nicaragua should act first.

He noted that the U.S. had received five reports from the commission that was appointed to review which would be the best route for the inter-oceanic canal but had done nothing. It did spend a total of $24 million "without spending one cent of the money in Nicaragua." He proposed that Managua act before Washington moved.

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

Mr. PELL. Mr. President, if no Senator wishes to speak on the subject at hand, I will make a statement on another subject.

In connection with the filling of the vacancy on our Supreme Court, I would expect that the President nominate a southerner and a strict constructionist. I think, too, this is what the country expects and the majority of our Nation wish. However, I had hoped that the President's nominee would be of higher caliber and less insensitive to the trends of our times than is Judge Carswell and so oppose his nomination. I found this decision a difficult one and reached it only after considerable perusal of the opposing opinions within the Judiciary Committee and of the material that has been made available in the course of discussions and debate on this nomination.

My first thought was that mediocrity alone was not sufficient grounds for voting against Judge Carswell, particularly when we have already thrice voted to confirm him for lesser jobs. But, the more I looked at the record, the more shaken I became in the thought.

Then, too, when it comes to persuading the blacks and the young to work within our system, rather than seeking to overthrow it, they must be persuaded of the eventual views and lack of bias of those who set the rules for the system. And, the one group of men most responsible for setting these rules is our Supreme Court. In this connection, breadth of view and lack of bias are hardly characteristics that could be used to describe Judge Carswell. In fact he appears insensitive to the trends of the times.

Also, as I considered the nomination I came to the conclusion that our Supreme Court simply should not have men of mediocre ability serving on it, but that a man nominated to it should be of marked merit and superior ability enjoying the respect of his colleagues on the bench. This is obviously not the case when it comes to Judge Carswell.

Judge Carswell's adherence to the law seems lacking, too, as indicated by the unusually high proportion of reversals of his decisions.

I also believe that nominations to our third branch of government, the judiciary, fall into a different category than do nominations to the executive branch of Government. Once a nominee has been confirmed in the judiciary, the President is no longer in a position to exercise the Executive power of supervision or removal. For this reason, we in the Senate must be more stringent in our examination and setting of standards of excellence for appointment to the judiciary, particularly to the Supreme Court with its heavy responsibilities and lifetime tenure. This argument was effectively advanced by the senior Senator from Idaho (Mr. CHURCH) in yesterday's debate.

In opposing this nomination, however, I shall not participate in a filibuster against Judge Carswell. I think the President is entitled to an early vote on his nominee and, unless the circumstances are extraordinary, I do not like filibusters or think they should be used, no matter what the end.

Mr. BAYH. Mr. President, I rise to discuss one of the most troubling aspects of the nomination of G. Harrold Carswell to the Supreme Court of the United States.

As you know, many of us were shocked by Judge Carswell's remark in 1948 supporting racial segregation as "the only practical and correct way of life in our states," and saying.

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.

When this speech became public knowledge, Judge Carswell promptly repudiated it, and suggested that his public record of 17 years belies any racist sentiments. Although I find Judge Carswell unsuitable for the Supreme Court on a number of grounds, I have continued to hope that the record would bear out his recent statement disavowing his 1948 statement. I have continued to hope that Judge Carswell's private and public conduct would show him to be a man, if not committed to equality, at least aware of the racial crisis in our Nation and the crying need for racial justice.

In my view, however, the record does not support my hope. Of the serious incidents we have previously discussed, one of the most troubling is Judge Carswell's role in the incorporation of a private golf course in 1956. The change in the status of the golf course was part of a thinly veiled scheme to avoid Supreme Court decisions requiring integration of public facilities.

On November 7, 1955, the U.S. Supreme Court ruled that the city of Atlanta's refusal to permit Negroes to use municipal golf facilities was in direct violation of the 14th amendment's guarantee of equal protection and ordered the city to desegregate the golf course by making it available to Negroes. *Holmes* v. *City of Atlanta*, 350 U.S. 879 (per curiam). By Christmas of 1955, Negroes were playing golf on Atlanta's municipal course and a series of suits, throughout the South, were instituted to desegregate municipal recreational facilities. One such suit was Augustus against City of Pensacola, filed in the northern district of Florida—the same district in which Judge Carswell was then serving as U.S. attorney. Ingenious local Tallahassee officials were seeking to avoid the necessary desegregation of municipal facilities and obviously thought that by turning over such facilities to private groups they would be removed from the purview of the 14th amendment's guarantee of equal protection. In December 1955, for example, at a meeting of the Tallahassee City Commission the question was raised—and hotly debated—about leasing the municipal golf course to the Tallahassee Country Club, a private corporation. A front-page story in the Tallahassee Democrat of February 15, 1956, at the time the transfer was finally approved by the city commissioners, pointed out that:

The action came after a two-month cooling off period following the proposal's first introduction. At that time former City Commissioner H. G. Easterwood, now a county commissioner, blasted the lease agreement.

He said racial factors were hinted as the reason for the move.

In view of the Atlanta decision by the Supreme Court only a few months earlier and as reported by the only daily newspaper in Tallahassee, it should be obvious that the purpose of transferring the golf course—which was to circumvent the Supreme Court's ruling—was public knowledge. In a sworn affidavit to the Judiciary Committee, one of Tallahassee's most prominent citizens, Mrs. Clifton Van Brunt Lewis, confirmed the racial implications of the proposed transfer. According to the affidavit, Mr. and Mrs. Lewis were invited to join the country club but:

We refused the invitation because we wanted no part in converting public property to private use without just compensation to the public—and because of the obvious racial subterfuge which was evident to the general public.

On April 24, 1956, the Capital City Country Club was formed for the specific purpose of acquiring the municipal facilities and operating a golf club on the premises. The certificate of incorporation lists G. Harrold Carswell, who admittedly is not a golfer, as an original subscriber and as a director of the Capital City Country Club. As the U.S. attorney for northern Florida, Judge Carswell surely knew of the litigation pending throughout the South in the wake of Holmes against Atlanta and of the efforts to avoid complying with the Supreme Court's ruling by converting public facilities into private property.

Indeed, on page 69 of the hearing record, Judge Carswell said that he was "certainly" aware of such problems and of "cases all over the country at that time, everywhere."

Senator BAYH. You weren't aware of other cases in Florida——

Judge CARSWELL. Oh, certainly, certainly. There were cases all over the country at that time, everywhere. Certainly I was aware of the problems, yes. But I am telling you that I had no discussion about it. It was never mentioned to me in this context, and the $100 I put in for that was not for any purpose of taking property for racial purposes or discriminatory purposes.

Senator BAYH. You were aware that the Supreme Court had previously, sometime before that, come down with an order prohibiting this type of thing

Judge CARSWELL. Yes, sir; I am aware of the decision of the Supreme Court.

Could the transfer of the Tallahassee municipal golf course to the Capital City Country Club, following immediately upon Holmes against Atlanta, and in view of the successful suit in nearby Pensacola to open that city's golf course, have been anything but a thinly disguised attempt to avoid desegregating? I think not.

Yet Judge Carswell, a prominent citizen of Tallahassee and a subscriber, incorporator, and director of the corporation formed for the purpose of operating this club on a racially segregated basis, repeatedly denied having any knowledge of the purposes of this organization. He lent his name to this corporation; he served this corporation as director and incorporator, and he subscribed to its stock. Yet he consistently maintained that he had never discussed, and that he had never even thought about, the question of whether the golf course would be operated on a racially segregated basis.

Julian Smith, one of the original incorporators and the man with whom Judge Carswell dealt on this matter, has said that pressure to desegregate the public course "was in the back of our minds at the time the transfer was contemplated. I know I had it in my mind." Affidavits and other evidence has been presented to demonstrate the likelihood that Judge Carswell must have known of these racially discriminatory purposes.

And now we have some additional evidence along the same lines. I would like to read into the RECORD at this time a telegram from a distinguished Miami attorney, Mr. Neal P. Rutledge. Mr. Rutledge is not a fly-by-night citizen. He is not a northern knee-jerk liberal. Mr. Rutledge is a distinguished southern lawyer, with an active commercial practice. He is himself the son of a former U.S. Supreme Court Justice, Justice Wiley Rutledge. And he is also a former clerk to Supreme Court Justice Hugo Black. Mr. Rutledge was a visitor in Tallahassee in late 1955 and early 1956 because of a major trial in which he was participating was being conducted there. Mr. Rutledge's wire reads as follows:

Senator BIRCH BAYH,
Old Senate Office Building,
Washington, D.C.

During late 1955 and early 1956, I lived a great part of the time in Tallahassee, Florida, in connection with the trial of *Seaboard Machinery Corp.* v. *Bethlehem Steel Co.* in the U.S. District Court there. It was common knowledge in the community there at that time, and especially among the members of the Bar, that the dominant motive for transferring the operation of the Tallahassee Golf Club from public to private club auspices was to prevent racial integration of the facilities. The overwhelming sentiment of the white Tallahassee community at that time was to prevent Jim Crow racial segregation as a way of life, particularly in hotels, restaurants, places of social gatherings, and the like. It is impossible for me to believe that any prominent member of the Tallahassee community at that time, such as then United States Attorney General Carswell, was not fully aware of both this general, almost universal sentiment prevailing among the white citizens of Tallahassee in 1956 and the specific dominant motive for leasing the Municipal Golf Club by a private group.

Sincerely,

NEAL RUTLEDGE.

MIAMI, FLA.

And so we have added to the other voices we have heard, the statement of this solid Florida citizen that it is "impossible" for him to believe that Judge Carswell was not "fully aware" of "the specific dominant motive for leasing the municipal golf club to a private group." This motive, incidentally, has so far been successful—from 1956 to this day, the Capital City Country Club has been operated on a racially segregated basis, although I understand that the first nonwhite guest in the club's history was allowed on the premises within the past 3 months.

Mr. President, we had all hoped that Judge Carswell would have a record befitting a Supreme Court Justice. We had all hoped, as I have said earlier, that this nomination could be speedily and favorably passed upon by the Senate. But this golf course incident is just one of a series of incidents of how insensitive Judge Carswell has been to the need for insuring equal rights for all Americans. We have a right to expect more of our U.S. attorneys than participation in such a shabby scheme. We certainly have a right to expect more of nominees to the Supreme Court of the United States.

EXTENSION OF PROGRAMS OF ASSISTANCE FOR ELEMENTARY AND SECONDARY EDUCATION—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 514) to extend programs of assistance for elementary and secondary education, and for other purposes.

Mr. GRIFFIN. Mr. President, earlier today I had printed in the RECORD the complete text of President Nixon's historic statement concerning elementary and secondary school desegregation.

This statement of the President is very much a part of, is very relevant to, the debate on this conference report, particularly the debate as to whether the so-called Stennis amendment, or the substitute language proposed by the conferees, should be adopted.

When the Stennis amendment was proposed and adopted earlier by this body, there was more uncertainty than there is today concerning the administration's policies with respect to school desegregation.

The President's statement today, however, raises a question whether we are now debating an issue that is essentially moot.

I call attention to the fact that neither the Stennis amendment nor the substitute proposed by the conferees is in the form of operative law. Both are phrased as sense-of-the-Congress statements declaring policy with respect to desegregation which the administration may or may not follow even if adopted.

I believe it is also accurate to point out that the statement made by the President today does not conflict directly with the essential purpose of either amendment. In his statement, the President recognizes that applicable guidelines must be uniformly applied, whether in the North, South, East, or West. At the same time, the President has recognized a point he could not fail to recognize in light of court decisions that there is a distinction between de jure and de facto segregation.

Mr. President, because I think it would be helpful to this debate to focus the attention of the Senate on the policies announced today by the President, I wish to read some very pertinent portions of his statement.

POLICIES OF THIS ADMINISTRATION

It will be the purpose of this Administration to carry out the law fully and fairly. And where problems exist that are beyond the mandate of legal requirements, it will be our purpose to seek solutions that are both realistic and appropriate.

I have instructed the Attorney General, the Secretary of Health, Education and Welfare, and other appropriate officials of the Government to be guided by these basic principles and policies:

PRINCIPLES OF ENFORCEMENT

First. Deliberate racial segregation of pupils by official action is unlawful, wherever it exists. In the words of the Supreme Court, it must be eliminated "root and branch"—and it must be eliminated at once.

Second. Segregation of teachers must be eliminated. To this end, each school system in this nation, North and South, East and West, must move immediately, as the Supreme Court has ruled, toward a goal under which "in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system."

Third. With respect to school facilities, school administrators throughout the Nation, North and South, East and West, must move immediately, also in conformance with the Court's ruling, to assure that schools within individual school districts do not discriminate with respect to the quality of facilities or the quality of education delivered to the children within the district.

Fourth. In devising local compliance plans, primary weight should be given to the considered judgment of local school boards—provided they act in good faith, and within Constitutional limits.

Fifth. The neighborhood school will be deemed the most appropriate base for such a system.

Sixth. Transportation of pupils beyond normal geographic school zones for the purpose of achieving racial balance will not be required.

Seventh. Federal advice and assistance will

scientifically educated America to find the cause and cure of cancer.

Under the authority of the resolution which I am today introducing, I plan the establishment of a Committee of Consultants on the Conquest of Cancer to make a study and report their findings and recommendations to the Committee on Labor and Public Welfare. I can assure the Senate that this Committee will be composed of some of the Nation's most distinguished scientists and lay leaders who have dedicated their lives to the eventual conquest of cancer. Over the past few months, I have been discussing this mission with some of these outstanding Americans, and their response has been overwhelmingly and enthusiastically favorable.

As I see it and as they see it, the Committee of Consultants would have two primary tasks: First, to examine the adequacy and effectiveness of the present level of both governmental and nongovernmental support of cancer research, and second, to recommend to Congress and to the American people what must be done to achieve cures for the major forms of cancer by 1976—the 200th anniversary of the founding of this great Republic. It should be free to make recommendations in the fields of research, training, financing, and administration, with particular attention directed toward the creation of a new administrative agency which would guarantee that the conquest of cancer becomes a highly visible national goal.

There is a strong precedent for this kind of advisory committee in the work of my predecessor as chairman of this committee, Senator Lister Hill. In 1959 he proposed, and the full Committee on Appropriations unanimously agreed, that is should establish a Committee of Consultants on Medical Research "to determine whether the funds provided by the Government for research in dread diseases are sufficient and efficiently spent in the best interests of the research for which they are designated."

The chairman of the Committee of Consultants was Mr. Boisfeuillet Jones, a distinguished lawyer who was then vice president for health services at Emory University. Its 12 members included a number of distinguished scientists, but it also included several industrialists of the caliber of Gen. David Sarnoff, the chairman of the board of the Radio Corp. of America. Its report, made to the Senate Appropriations Committee in formal hearings in May of 1960, has had an enormous positive impact on the structure and progress of the general research effort conducted by the National Institutes of Health.

It is my deep-seated conviction that the time is long overdue for the setting up of a comparable nongovernmental committee in the complex field of cancer. I think all of us in the Senate need, and would benefit tremendously from, the considered judgments of such a group. Individually, we do not have the time to look into these intricate issues, but this is no excuse for postponing action.

Every 2 minutes, the clock ticks and every 2 minutes an American dies of cancer. We are a great and powerful nation and we have it within our power to end this slaughter.

Let us get on with the job.

Mr. President, I yield the floor.

The resolution (S. Res. 376), which reads as follows, was referred to the Committee on Labor and Public Welfare:

S. RES. 376

Resolved, That the Committee on Labor and Public Welfare, or any duly authorized subcommittee thereof, is authorized under sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, and in accordance with its jurisdiction specified by rule XXV of the Standing Rules of the Senate, to examine, investigate, and make a complete study of any and all matters pertaining to (1) the present status and extent of scientific research conducted by governmental and nongovernmental agencies to ascertain the causes and develop means for the treatment, cure, and elimination of cancer, (2) the prospect for success in such endeavors, and (3) means and measures necessary or desirable to facilitate success in such endeavors at the earliest possible time.

SEC. 2. For the purposes of this resolution, the committee, from February 1, 1970, to January 31, 1971, inclusive, is authorized (1) to make such expenditures as it deems advisable; (2) to employ, upon a temporary basis, technical, clerical, and other assistants and consultants: *Provided*, That the minority is authorized to select one person for appointment, and the person so selected shall be appointed and his compensation shall be so fixed that his gross rate shall not be less by more than $2,700 than the highest gross rate paid to any other employee; (3) with the prior consent of the heads of the departments or agencies concerned, and the Committee on Rules and Administration, to utilize the reimbursable services, information, facilities, and personnel of any of the departments or agencies of the Government; and (4) establish and defray the expenses of such advisory committees as it deems advisable.

SEC. 3. The committee shall report its findings, together with its recommendations for such legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than January 31, 1971.

SEC. 4. Expenses of the committee under this resolution, which shall not exceed $250,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

Mr. JACKSON. Mr. President, I have joined as a cosponsor of the resolution introduced today by Senator YARBOROUGH, authorizing the Committee on Labor and Public Welfare to study research activities conducted to ascertain the causes and develop cures to eliminate cancer.

I have been a longtime supporter of appropriations for cancer research and I believe that we must do all we can to combat this viscious killer.

Cancer continues to be the second major cause of death in this country and it is estimated that there will be 625,000 new cases during 1970.

Tremendous progress has been made in the treatment of cancer as a result of research conducted and supported by the National Cancer Institute. One such program has been the cancer chemotherapy program. Treatment with chemotherapeutic agents has lengthened the survival of acute leukemic patients. The number of acute leukemic patients who have been free of evidence of disease for 5 or more years has now risen to well over 200 identified cases. No such cases were known only two decades ago.

The importance of this research is underlined by a letter which I received recently from Patrick Baumgardner, a 19-year-old from Tacoma, Wash. Patrick is a courageous young man who is suffering from leukemia. I ask unanimous consent that his letter be printed in the RECORD as a part of my remarks.

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

MARCH 5, 1970.

DEAR SENATOR JACKSON: I am 19 years old and have recently contacted the cancer of the blood known as Leukemia. God has been good to me, and I am now in a remission stage. I pray every day a cure will be found for my disease and all forms of cancer.

Oh, please do all you can do to influence your fellow congressmen to *PUSH* the cancer program and it's appropriations in Congress. You just can't understand the agony of cancer until you come in contact with this killer personally. Mr. Jackson, I love life—help me hold on to it as long as I can. Please! Who knows—you may be next. Remember, "One in every four of us will develop cancer!"

Sincerely yours,

PATRICK BAUMGARDNER.

Mr. JACKSON. Although the Senate voted to increase the appropriations for the National Cancer Institute, the institute is funded at less than $200 million for fiscal 1970. The resolution which has been introduced today will establish a Committee of Consultants to examine the adequacy and effectiveness of this support of cancer research and make recommendations as to what must be done in the future.

I believe that we must conquer cancer and we must do it now. It is my hope that we can, through an increasing research effort, provide the answers to the many questions that still exist about cancer and its cures. And I hope that we can do this soon, to help those like Patrick Baumgardner who have already been stricken.

NOMINATION OF JUDGE CARSWELL TO THE SUPREME COURT

Mr. JACKSON. Mr. President, I intend to vote against the nomination of Judge Carswell to the Supreme Court. There is much at stake in the Senate's decision on this matter and I wish the record to be clear as to my position.

Mr. President, let me comment first about the standards that apply when the Senate considers nominations to the Supreme Court. Last year, when the Senate was debating a controversial Cabinet nomination, I argued that the President was entitled to wide latitude in the selection of his Cabinet. I took the position that the President, not the Senate, sets the standards of competence and qualification for his Cabinet. These are the President's men and, barring some extraordinary deficiency, he is entitled to exercise the Executive responsibility with men of his own choosing. If the voters

are unhappy with his selection, their voice will be heard at the next election.

This deference to Presidential choice is not, however, the standard to be applied when the Senate is asked to advise and consent to Supreme Court nominations for life tenure. These are not men who serve at the President's pleasure or execute his programs. They are members of a powerful tribunal, wielding influence far beyond the reach of any President. Their power stems from the Constitution, not from the Office of the Chief Executive.

Mr. President, it is not enough in this day and age that a nominee to the Supreme Court simply meet certain minimum standards. This is the only Supreme Court we have. If there was ever any doubt, the past two decades have shown what a dramatic and decisive role it plays in our life. Case after case presents the Court with critical issues. Decision after decision has far-reaching implications and enormous impact on every facet of our society.

The intellectual demands on the nine Justices of the Supreme Court are staggering. No army of law clerks, no array of legal treatises will substitute if a man is not equipped to meet this challenge. The standards to be applied to prospective members of this Court must be set with these facts in mind. They must be set high, and the burden is on the proponents of a nomination to show that the nominee in question is eminently qualified to serve on the highest court of the land.

This burden has not been met in the case of Judge Carswell's nomination. My colleagues on the Judiciary Committee have amply demonstrated his lack of qualification, and I need not belabor the points they have already made. The fact is that Judge Carswell's record nowhere reflects the professional competence, the openmindedness, the ability to make the difficult decisions, that we have a right to expect from a nominee to the Supreme Court. I think it is quite clear that he has been unable to separate his personal views on the matter of race from his obligation to uphold the Constitution and law of the land embodied in the decisions of its highest courts.

Tempting as it must have been to argue, no Senator—even among Judge Carswell's ardent supporters—has placed on record the view that he is brilliant or exceptional. The expressed hope of some Senators that he will rise to the occasion on his appointment to the Supreme Court leaves little doubt about the level he presently occupies.

We are told that the President wants to nominate a southerner and a so-called strict constructionist to the Supreme Court. Whether or not this description fits Judge Carswell is open to question. But there are others, both southern and conservative in their approach to the judicial function, whose qualifications to serve on this Court are beyond doubt. The issue is not philosophy—the issue is competence. And in stressing competence, I include in that term the ability to decide cases irrespective of personal preference.

Mr. President, I have voted for the Supreme Court nominees of the last four Presidents, starting with Chief Justice Warren in 1953 and continuing up to Chief Justice Burger in 1969. These men have come before the Senate with distinguished records at the bar, on the bench, or in high public office. They have been liberals and conservatives, activists, and strict constructionists. They were presented to the Senate as men of proven ability and intellectual capacity who, regardless of their personal philosophies, would contribute to the effective functioning of the Supreme Court. This last point is not without significance. We have an obligation to nominate those who are equal to the challenge of the work and equipped to share the burdens with their colleagues.

People all over America look to the Supreme Court as the protector of our civil and constitutional rights and liberties. Many of our citizens are strengthened in their resolve to seek peacefully the civil rights and liberties guaranteed to all Americans by the determination of the Supreme Court to hear their case, and to respond with decisions reflecting the justice and humanity of the Constitution. The Court has demonstrated that justice can be obtained by law rather than lawlessness; by judicial decision rather than destruction; by reason rather than revolution; by tribunals and not by terror.

The Supreme Court is the central instrument for the protection of the few—be it one man or many millions. I cannot vote to confirm as Justice a man who does not inspire my full confidence that he is a detached, unprejudiced, and judicious judge.

Mr. President, I have reviewed with care the hearings, the reports, and the comments of many Senators and others qualified to have a view on this matter. It is clear to me that the case for Judge Carswell is weak. His qualifications for the Court are meager and the nomination should not be confirmed.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. METCALF):

A resolution adopted by the city council of Philadelphia, Pa., praying for action relative to ending the war in Vietnam; to the Committee on Foreign Relations.

A resolution adopted by the Laguna Hills Republican Club, of Laguna Hills, Calif., extending its condolences on the death of Hon. James B. Utt, late a Representative from the State of California; ordered to lie on the table.

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. TYDINGS, from the Committee on the District of Columbia, with an amendment:

S. 3313. A bill to exempt Federal Housing Administration and Veterans' Administration mortgages and loans from the interest and usury laws of the District of Columbia, and for other purposes (Rept. No. 91-750).

AMENDMENT OF COMMUNICATIONS ACT OF 1934 RELATING TO EQUAL-TIME REQUIREMENTS FOR CANDIDATES FOR PUBLIC OFFICE—REPORT OF A COMMITTEE (S. REPT. NO. 91-751)

Mr. PASTORE, from the Committee on Commerce, reported an original bill (S. 3637) to amend section 315 of the Communications Act of 1934 with respect to equal-time requirements for candidates for public office, and for other purposes, and submitted a report thereon, which bill was placed on the calendar and the report was ordered to be printed.

BILLS AND JOINT RESOLUTIONS INTRODUCED

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

By Mr. PACKWOOD:

S. 3632. A bill to amend the Internal Revenue Code of 1954 to limit the number of personal exemptions allowable for children of a taxpayer who are born after 1972; to the Committee on Finance.

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

By Mr. PROUTY:

S. 3633. A bill for the relief of Yosef Pincu; to the Committee on the Judiciary.

By Mr. PELL:

S. 3634. A bill to amend the Public Health Service Act to provide for the conduct of a systems analysis of alternative national health care plans, and for other purposes; to the Committee on Labor and Public Welfare.

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

By Mr. PASTORE (by request):

S. 3635. A bill to amend the Communications Act of 1934 to provide for the regulation of community antenna television systems; to the Committee on Commerce.

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

By Mr. JAVITS (for himself and Mr. DOMINICK):

S. 3636. A bill to extend and amend the Higher Education Act of 1965, and for other purposes; 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. PASTORE:

S. 3637. A bill to amend section 315 of the Communications Act of 1934 with respect to equal-time requirements for candidates for public office, and for other purposes; placed on the calendar.

By Mr. FONG:

S. 3638. A bill for the relief of Elpidio D. Ybarzabal, Jr.; to the Committee on the Judiciary.

By Mr. SPARKMAN (for himself and Mr. BENNETT):

S. 3639. A bill to increase the supply of decent housing and to consolidate, extend and improve laws relating to housing and urban renewal and development; to the Committee on Banking and Currency.

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

By Mr. SPARKMAN (for himself and Mr. MUSKIE):

S. 3640. A bill to provide for the development of a national urban growth policy, and

Mr. President, as Americans join with Byelorussian descendants in acknowledging their Independence Day, we honor and pay tribute to the aspirations of all free men.

DR. JAMES EARL RUDDER

Mr. TOWER. Mr. President, I was saddened to learn of the passing of a great Texan and distinguished educator, Dr. James Earl Rudder. Dr. Rudder was the president of the Texas A. and M. University and system. He was born in 1910 in Eden, Tex. His career of public service began in 1933 when he was a teacher and football coach at Brady High School in Brady, Tex. From 1938 to 1941 he taught at Tarleton Agricultural College, at Stephenville, Tex.

In 1941, Earl Rudder heeded his country's call. He served with great distinction in the U.S. Army and rose from first lieutenant to colonel in 5 years. He emerged from the service richly decorated, having received the Distinguished Service Cross, the Silver Star Medal, the Legion of Merit, the Bronze Star Medal with oak leaf cluster, and other awards for valor and service.

When he returned to Texas after the war, he became mayor of Brady and served in that office until 1952. He subsequently became commissioner of the general land office of Texas, chairman of the veterans' land board, and in 1958, vice president of Texas A. and M. University. The following year, Dr. Rudder was made president of the university and served in that office until his death.

Mr. President, Texas A. and M. University has enjoyed more than a decade of growth and advancement in educational quality under the leadership of Dr. Rudder. He will be sorely missed.

NOMINATION OF GEORGE HARROLD CARSWELL TO THE SUPREME COURT

Mr. GURNEY. Mr. President, I wish to add to the RECORD several additional telegrams which have come to my office expressing support for Judge Carswell. As I have said before, I dislike this numbers game, and I think endorsements of this sort add little real substance to our proceedings. But now that the game is in progress I cannot very well withdraw, lest by doing so, we create the erroneous impression that the naysayers have carried the field. For this reason, I ask unanimous consent to have printed in the RECORD several telegrams from judges and lawyers from Florida and Indiana.

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

ST. PETERSBURG, FLA.,
March 23, 1970.

Senator EDWARD GURNEY,
U.S. Senate,
Washington, D.C.:

I urge your vote for approval of Judge Carswell nomination to the United States Supreme Court.

ROBERT E. BEACH,
Circuit Judge, 6th Judicial Circuit, State of Florida.

LAKELAND, FLA.,
March 23, 1970.

Hon. EDWARD J. GURNEY,
New Senate Office Building,
Washington, D.C.:

Having served in U.S. Attorneys Office, Southern District of Florida, when Judge Carswell was U.S. Attorney in Northern District, I know from liaison between us that Judge Carswell was astute, knowledgeable in the law, honest, fair to all and conscientious. It is inconceivable that more could be expected of a nominee to any judgeship in the land. Particularly to that on U.S. Supreme Court. Urge prompt vote and confirmation of Judge Carswell's nomination.

JOSEPH P. MCNULTY,
Judge, Court of Appeal, Second District of Florida.

MIAMI, FLA.,
March 23, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senator,
Senate Office Building,
Washington, D.C.:

DEAR SENATOR: I believe Judge G. Harrold Carswell is well qualified by reason of his judicial background, experience and temperament to serve as Justice of the Supreme Court of the United States I respectfully urge his appointment.

JAMES LAWRENCE KING,
Circuit Judge, Dade County Courthouse.

PETERSBURG, IND.,
March 23, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

I recommend the immediate confirmation of Judge Carswell as a Justice of the Supreme Court of the United States. The overwhelming evidence establishes his qualifications. Only a red herring is being dragged across the trail. For purposes of identification only I am a former president of the Indiana Bar Association, former chairman of the house of delegates, former chairman of the Trial Lawyers Section and have been practicing law for almost 50 years.

CARL M. GRAY.

INDIANAPOLIS, IND.,
March 24, 1970.

Hon. EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.:

Am happy to add my endorsement of Judge Carswell and urge his affirmation.

FLOYD W. BURNS,
Past President, Indiana State Bar Association.

COLUMBUS, IND.,
March 24, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

As a past president of the Indiana State Bar Association, I find among members of the legal profession in Indiana, strong support for the appointment of Judge Carswell to the U.S. Supreme Court. I recommend that Judge Carswell's appointment to the U.S. Supreme Court be confirmed without delay for the good of the country.

THOMAS C. BIGLEY,
Charpnack, Biley & Jurgemeyer.

ORLANDO, FLA.,
March 24, 1970.

Hon. EDWARD J. GURNEY, Jr.
U.S. Senator,
Senate Office Building,
Washington, D.C.:

Strongly urge active support Judge Carswell. I have known Judge Carswell for many years as a man, lawyer, and judge and am familiar with his service as United States Attorney and United States District Judge both from the viewpoint of an interested citizen, practicing attorney and one active in the affairs of the bar. Judge Carswell in my opinion is most eminently qualified to be a Justice of the Supreme Court of the United States by virtue of his legal ability, humaneness, and judicial temperament.

O. B. MCEWAN,
President Florida Bar 1958–1959.

MARION, IND.,
March 25, 1970.

Hon. EDWARD J. GURNEY,
Senate of the United States,
Washington, D.C.:

I believe the substantial majority of Indiana attorneys regret the controversy over Judge Carswell's confirmation and fear the effect it might have on the prestige of both the Senate and the Supreme Court. This personal opinion is based on my experience as past president and incumbent House of Delegates chairman, Indiana State Bar Association. I consider Judge Carswell eminently qualified in all respects.

ROBERT A. GEMMILL.

ANNIVERSARY OF GREEK INDEPENDENCE DAY

Mr. WILLIAMS of New Jersey. Mr. President, 149 years ago, Greek loyalists started the groundwork for a revolution that eventually led to an independent state.

Under the leadership of Alexandros Ypsilantis, the first of a series of revolts against the Turks started on March 25, 1821, the accepted birthdate of Greek Independence. The Turkish empire did not accept the government of the Greeks and the subsequent fighting is comparable to that of the American colonists after our own Declaration of Independence. As in our case, it was several years and many battles before the final official acceptance of Greece as a free and independent nation occurred on October 20, 1827.

The Greeks were convinced this would be a permanent freedom, and they received protection from three world powers, Great Britain, France, and Russia. Because their earlier intervention aided in the Greek revolution, those powers collectively selected a ruler for Greece. However, a nationalistic overthrow in 1843 provided Greece with not only a democratic-oriented national assembly, but also a constitution based on democratic principles.

However, from that year until the present, Greece has been continually confronted with change in government control. But despite the turmoil, the Greek loyalists have shown to the world their enthusiastic determination to remain free.

Mr. President, in acknowledging March 25 as a day Americans should pay tribute to Greek descendants in their fight to remain a free nation, we should remember their deep influence on our way of life. Our democratic principles and beliefs are derived directly from ancient Greece. Much of our culture, including literature, the arts, and athletics, has been derived from noted Greeks. And the contributions of Greek-Americans to

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

Mr. ERVIN. I also ask unanimous consent that I may be permitted to yield to the distinguished Senator from Rhode Island and the distinguished Senator from Virginia for a colloquy relating to the conference report, without losing my right to the floor.

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

Mr. SPONG. I thank the Senator from North Carolina for his courtesy.

Mr. President, for the purpose of legislative history, I would like to ask the manager of the bill, the distinguished Senator from Rhode Island (Mr. PELL) several questions.

It is my understanding that present law authorizes advance or forward funding of all programs administered by the Commissioner of Education. Is that correct?

Mr. PELL. That is correct. It should also be noted that the Senate bill and the conference report reiterate congressional support for forward funding.

Mr. SPONG. I believe it is also correct that Congress has voted advance funding four times. In 1967 we voted to permit advance funding of all programs contained in the Elementary and Secondary Education Act. In 1968 we voted to permit advance funding of higher education programs. The same year, in the vocational education legislation, we voted to permit advance funding of all programs which the Commissioner of Education administers. This year, during initial consideration of this bill we again approved the concept of advance funding for all education programs.

Mr. PELL. The record will bear out those facts.

Mr. SPONG. Is it not true, however, that the advance funding procedure has been used only once—in fiscal 1969—and for only one program—title I of the Elementary and Secondary Education Act? Furthermore, I believe the only request for advance funding in this year's budget is for title I.

Mr. PELL. Unfortunately, this is also correct.

Mr. SPONG. On February 4, during initial Senate consideration of the bill, the Senate adopted my amendment to create a Commission to study ways of implementing the advance funding procedure. The amendment passed by voice vote after discussion of the possibility of combining the Commission provided by my amendment with the National Commission on School Finance provided by the committee bill.

Later, I voiced some concern about the possibility of combining the two studies. I feel that my study is of some urgency As written the two studies appear to deal with different aspects of funding: the National Commission seems to be concerned with where the money is coming from, while my Commission would be concerned with when the money is disbursed.

Another concern is that the National Commission on School Finance is appointed by the Commissioner of Education and no provision is made for congressional participation, although implementation of advance funding will require action by both the legislative and executive branches. I think it is obvious from past votes that Congress favors advance funding for education programs but there is no assurance whatsoever that the congressional view will be represented on that Commission.

That concern becomes secondary, however, in view of the fact that the conference bill contains neither my amendment nor any directions for the National Commission on School Finance to study advance or forward funding, although, I was pleased to note that you mentioned in your statement printed in yesterday's RECORD that the Commission on School Finance could study the question of advance funding. I certainly hope that this Commission will study advance funding and that it will do so expeditiously. There is an immediate need here. We simply cannot ask our schools, year after year, to go through Federal funding experiences such as they did this year.

Mr. PELL. I would support the Senator in that hope, for advance funding is not only a needed mechanism but one whose ramifications should be fully understood. Such a study would bring to the specific attention of the Congress the urgent necessity to act on this matter.

Mr. SPONG. I thank the Senator very much. I also thank the Senator from North Carolina for yielding to me.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, will the distinguished Senator from North Carolina yield to me, retaining his right to the floor, so that I may propose a unanimous-consent request?

Mr. ERVIN. Mr. President, I am delighted to yield under those circumstances.

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

The Senator from Montana is recognized.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, I have been conferring with various parties interested in the conference report which, of course, is a privileged matter under the rules of the Senate and is the pending business. I would like at this time with the concurrence of the Senate to offer a unanimous-consent request which I believe has been cleared with all principle interests.

Mr. President, I ask unanimous consent that the vote on the conference report on H.R. 514, the education measure—either on its merits or on a motion to recommit—occur at 2 o'clock on Wednesday afternoon next, and that there be a 4-hour time limitation, the time commencing at 10 a.m. that day to be equally divided between the distinguished Senator from Rhode Island (Mr. PELL) and the distinguished Senator from Mississippi (Mr. STENNIS).

Mr. ALLEN. Mr. President, reserving the right to object, may I inquire of the distinguished majority leader if his request also carries with it a request with respect to the confirmation of Judge Carswell's nomination, which was the pending business before it was displaced by the present pending business.

Mr. MANSFIELD. I wish I could answer in the affirmative. Unfortunately, I cannot. I have asked some of the Senators interested in the Carswell nomination to come to the Chamber so that I may discuss the matter with them. But I believe that if we could get this unanimous-consent agreement it would be helpful; and we ought to strike while the iron is hot, so to speak.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. Mr. President, I note, and as far as I am able to ascertain, there is no Senator present who has announced his opposition to the confirmation of the nomination of Judge Carswell. I note that the Senator from Rhode Island (Mr. PELL) is present. Perhaps he could give us some guidance on this matter, and perhaps not.

Mr. PELL. I cannot, because as I said yesterday, I feel squeezed between two filibusters. Personally, I am against Judge Carswell, but I think we ought to vote.

Mr. SCOTT. I commend the Senator for his statement. I would hope we could come to some agreement on the confirmation as well. I also am seeking information as to whether a vote on the confirmation will come on a direct up or down vote or whether it will come, as I have heard discussed, on a motion to recommit.

I take it the Senator from Rhode Island cannot enlighten us on that matter.

Mr. PELL. I cannot.

Mr. SCOTT. Could the distinguished majority leader enlighten us on whether the vote on the confirmation will come on a straight up and down vote or on a motion to recommit?

Mr. MANSFIELD. Mr. President, I have heard rumors and rumblings about a motion to recommit the Carswell nomination to the committee.

I read the RECORD, of course, as all Senators do, and I note that the distinguished Senator from Oklahoma (Mr. HARRIS) raised that possibility. So I am assuming that when a vote comes on the Carswell nomination it could well be on a motion to recommit. However, I cannot state definitely, because I do not know.

The PRESIDING OFFICER. The Chair would advise the Senator that any Senator at any time he may wish to do so may move to recommit the nomination, and a Senator could move to lay that motion on the table. A motion to lay on the table is not debatable.

Several Senators addressed the Chair.

Mr. ALLEN. Mr. President, reserving the right to object—and I have not released that reservation—I would like to state to the distinguished majority leader that some while ago we were engaged in a

debate on the Voting Rights Act. And that matter was concluded in order that we could get to the Carswell nomination.

We were in the midst of an extended discussion on the Carswell nomination when that pending business was displaced by the consideration of the conference report on the elementary and secondary education amendments.

It would occur to the junior Senator from Alabama that if there is to be any agreement made on a limitation of time, we ought to turn first to the matter that was first under consideration and not the matter that was second under consideration.

For that reason, and until there is an agreement with respect to the Carswell nomination, a final vote on that matter, the junior Senator from Alabama would just as soon be discussing the pending business as the other pending business, having in mind that the opponents of the Carswell nomination would have the opportunity at any time to bring the debate on the pending question to a close by their agreement to set a time for the vote on the Carswell nomination. So it would be the opponents of the Carswell nomination that would be holding up the vote on the two matters.

Mr. SCOTT. Mr. President, will the Senator yield to me for a clarification?

Mr. MANSFIELD. I yield.

Mr. SCOTT. I take it that the concern of the junior Senator from Alabama is not that these votes shall take place necessarily at roughly the same moment in time, but that he is seeking to find out whether or not a vote can be taken at some agreed time on the Carswell nomination.

Mr. ALLEN. That is right.

Mr. SCOTT. As well as the conference report.

Mr. ALLEN. It does not matter to the junior Senator from Alabama which comes first so long as they came in fairly rapid succession.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Mr. President, reserving the right to object——

Mr. GRIFFIN. Mr. President, reserving the right to object——

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

Mr. MANSFIELD. I yield.

Mr. STENNIS. I wish to ask one question about the vote on the conference report. The request is for a limitation of time. We do not know yet just what the precise issue might be—the possibility of a motion to recommit, or the possibility of just a straight up and down vote.

I suppose the Senator's request would include the idea that once there was an agreement and voting started, then any vote that failed to dispose of the matter would be under controlled time, such as another motion to table.

Mr. MANSFIELD. Of course.

Mr. STENNIS. I thank the Senator.

Mr. MANSFIELD. Mr. President, I can well understand the Senator from Alabama reserving his right to object, if he has not objected already. May I say to him that no one is more anxious to vote on the Carswell nomination than is the Senator from Montana. How we get to that juncture is something we have to approach on a graduated basis, as I see it.

If we could get an agreement to vote on Wednesday next on the conference report, I think that would enhance the chances of getting an agreement sometime around that time, hopefully, for a vote on the Carswell nomination. I have no choice, speaking personally, as to what comes first. All I am interested in is the conduct of the affairs of the Senate and facing these issues and disposing of them one way or another.

Mr. GRIFFIN. Mr. President, will the Senator yield for a question?

Mr. MANSFIELD. I yield.

Mr. GRIFFIN. For the purpose of information and clarification I wonder, if there were an agreement to vote on Wednesday next on the pending business, if it would be the intention of the majority leader to devote all time between now and then on the conference report, or would it just be to have some agreement that we could go back to the so-called filibuster on the Carswell nomination and let those who wish to speak on the Carswell nomination speak so we would be in a better position to get to a vote on the Carswell nomination shortly after the vote on the pending business?

Mr. MANSFIELD. Yes. May I say in reply to the distinguished Senator from Michigan that what I had in mind was that if this were agreed to, we would return to the Carswell nomination and not again proceed to the privileged conference report until the 4 hours preceding the vote on Wednesday. In the interim, those who still have remarks on the Carswell nomination could make them. It would be my hope if we could get an agreement of this sort it would speed up the Carswell nomination.

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

Mr. MANSFIELD. I yield.

Mr. ERVIN. Mr. President, I would like to make an observation. I was in the middle of a speech on the conference report. I would like about 15 minutes more to place matters in the RECORD so that the RECORD may be complete before that subject is laid aside.

Mr. MANSFIELD. That is a reasonable request, and it will be granted.

Mr. SCOTT. Mr. President, will the distinguished majority leader yield further?

Mr. MANSFIELD. I yield.

Mr. SCOTT. I would like to make a point. This suggestion does not come from me but I have heard at least one Senator and maybe others who have discussed the possibility of cloture proceedings with respect to the nomination before us.

I would hope we could get to an agreement but I think it is proper to surface at this time that there is some such talk going around. I hope we could come to some agreement on the nomination so that the work of the Senate can go forward. We have appropriation bills almost ready.

Mr. MANSFIELD. There are 16 stockpile bills on the calendar. They are ready to be debated.

Mr. SCOTT. We have stockpile bills, and, of course, the Supreme Court is being very seriously affected by this delay. I know the Court is holding up a number of matters because it does not think they should be decided by an eight-judge Court. Therefore, there is a matter of public interest involved in getting all of these matters disposed of as soon as we can with all due respect to the fact that every Senator has the right to discuss them until——

Mr. MANSFIELD. Doomsday.

Mr. SCOTT. Doomsday. This is a sacred privilege we have, and we do not want to lose it; yet I do not want to see it abused here.

Mr. MANSFIELD. Mr. President, if the Senator will allow me, I would like to make a brief statement at this time which I think will indicate to the Senate as a whole just how effective and efficient it has been in slightly more than 2 months.

The PRESIDING OFFICER (Mr. LONG). Is there objection?

Mr. GRIFFIN. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Chair did not put the unanimous-consent request objected to by the Senator from Alabama. The Chair asked if there is objection to the majority leader making a statement.

Mr. MANSFIELD. The statement sets out what the joint leadership has been trying to do.

THE 100TH ROLLCALL VOTE OF THE SECOND SESSION

Mr. President, when the Senate approved yesterday the conference report on the Water Quality Improvement Act of 1970 by a vote of 80 to 0, that action was representative of the 100th rollcall vote of the second session of the 91st Congress.

In passing, it might be noted that last year the Senate's 100th rollcall vote took place on October 9, some 9 months after the convening of the first session on January 3. By contrast, the second session has been under way only since January 19 of this year.

I believe the casting of the 100th Senate roll call vote of the second session yesterday speaks well for the record of the Senate and for its entire membership. A number of the significant legislative measures approved in 1970 have been the result of long and arduous scrutiny and efforts undertaken during 1969 and prior years. However, the Members of the Senate during the past 2 months have applied themselves diligently and dutifully to their tasks and have tended to the business of the American people they represent and in trying to translate the people's needs into tangible and meaningful legislative results.

May I express, too, my opinion that it was quite fitting that the 100th vote be on an important measure relating to water pollution control. The protection and preservation of our resources and the enhancement of the overall quality of our environment are assuredly among the Nation's most urgent priorities.

Mr. President, I make this statement at this time—and I consider it germane to the subject under discussion—only to indicate that the Senate has been working at a very rapid and, at the same time,

effective pace this year. It has been putting in long hours. There has been little or no grumbling. I hope we will continue on this basis so that the goal which the joint leadership has set of adjournment by Labor Day can be achieved.

I must point out that all the leadership can do is to propose, and it is up to the Senate to dispose. I would like to see this matter brought to a head soon. I want to repeat again, as I did to the Senator from Alabama, there is no one in this Chamber who is more anxious to get a vote on the Carswell nomination than is the Senator from Montana. I can say the same thing with respect to the conference report on the elementary-secondary education bill—the privileged matter which is now pending and which has been pending since last Tuesday.

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. First, I want to join with what the distinguished majority leader has said. He and I began this parallel with last year's session sometime back. From time to time one or the other of us do mention the number of votes, the fact that we have worked not only harder but more effectively and efficiently this year, and that we are 9 months ahead of last year. That is a good record in any league. I am delighted that we are.

We have temporarily run into a couple of hurdles, but Senators have had a good deal of high hurdling experience over the years.

I have heard it said that there is a very real possibility that we can have an agreement to vote on the nomination pending before us on April 7. I bring this up for the purpose of indicating to the distinguished majority leader, with whom I share the desire to get all these matters disposed of, that possibly, if he would be willing, as he always is, to explore further with his colleagues the possibility of an agreement to have a vote on the nomination on April 7 and a vote next Wednesday on the conference report, we might find some goodwill now prevalent on both of those matters.

Mr. MANSFIELD. That is putting it off an awfully long time.

Mr. SCOTT. I agree. I cannot do any better.

Mr. MANSFIELD. We were going to have a vote on it this week. Now we want to go beyond next week. I think the Senate should face up to its responsibility a little more efficiently.

Mr. SCOTT. I would rather vote sooner.

Mr. MANSFIELD. We ought to recognize that the people's business comes first, and I see no reason why we should wait until April 7. We have important legislation pending. I do not think much more can be said on the Carswell nomination. Frankly, I would hope we could come to a decision earlier than that, preferably next Wednesday or Thursday soon after a vote on the pending proposal.

Mr. SCOTT. I would agree to vote now. I was willing to agree to the seventh for fear that it might be the ninth if not then.

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

Mr. MANSFIELD. I yield.

Mr. JAVITS. Knowing the realities that we face, that Senators can talk, and there are enough Senators opposed to the Carswell nomination so that the time could be filled in easily, I have a suggestion to make to the majority leader. I have not seen it done, but I do not see why it is not possible in the same unanimous-consent agreement to agree that the consideration of the nomination may, for certain bills, be set aside. Then the majority leader could deal next week with a whole group of legislation, even including appropriation bills. No time would be lost which could have been filled up with talk which the majority leader might consider unnecessary but which the opponents of the Carswell nomination consider necessary discussions, and therefore days certain could be fixed for votes, so we would not be delaying anything. I do this as a constructive suggestion to the majority leader.

Mr. MANSFIELD. I can read the handwriting on the wall as well as the next Senator. As I said, the leadership can only propose; it is up to the Senate to dispose, and there are many means, many avenues, which can be utilized in lengthening the debate, in discussing various kinds of subjects, eating up time, and delaying the business of the Senate.

Would the distinguished minority leader——

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

Mr. MANSFIELD. If I may finish this thought first.

Would the Senator agree to vote on April 6, rather than April 7, which is a Tuesday. Waiting until a week from next Tuesday is too long to wait. Preferably the Senate could vote next week.

Mr. SCOTT. Yes, I would agree to April 6. I would agree to vote now.

I would point out to all parties participant here that there is a way to have a vote here today or tomorrow, and that would be for a Senator who favored the nomination—the majority leader is familiar with this precedent, and I have seen my predecessor, the late great Senator from Illinois, use this very device—move, today or tomorrow, to recommit, with the announcement that he was going to vote against it, and immediately have a motion to table, and the issue would be before us. We can do that if we cannot have an agreement. So I am politely saying something to the Senator from Montana which I hope others will hear.

Mr. MANSFIELD. Yes; I join the distinguished Republican leader and the distinguished Senator from Louisiana (Mr. LONG) in their proposals. I hope some Senator will make a motion so we can face up to this matter.

I yield now to the Senator from Indiana.

Mr. BAYH. Mr. President, first let me suggest to the Senator from Pennsylvania that I was listening.

Mr. SCOTT. That was the purpose of the exercise.

Mr. BAYH. I feel flattered.

Just as one Member of the Senate who is very much opposed to the Carswell nomination, let me repeat what I said in the colloquy with our distinguished colleague from Delaware yesterday. As far as the Senator from Indiana is concerned, we are not involved in a filibuster. As I see it now, I have no intention of getting involved in a filibuster, but as I suggested in conversation with the leader this morning, I am willing to agree to a day certain. I am only one Member of the Senate.

I think it is only fair to point out, with all due respect to the analysis of our leader, that I do not share his opinion that everything has been said that legitimately can be said. Just this morning we made available for public scrutiny the result of the entire caseload of appealed cases that has been rendered by the fifth circuit from 1959 to 1969. We related Judge Carswell's record with all 66 other judges in the circuit.

It seems to me this type of information is relevant to the debate. It does not fall in the category of filibuster. It goes to the qualifications of Judge Carswell.

At the time any member of the opposition resorts to purely delaying tactics, then I think we can be subject to criticism as being in the area of filibuster. I hope we will never get to that particular place. As the Senator from Rhode Island suggested so eloquently yesterday almost in one breath, he was opposed to the nomination of Judge Carswell but equally opposed to anything which might delay until doomsday, to quote our distinguished majority leader, getting to a vote.

So I am perfectly willing to follow up the suggestion of the leadership after consultation with other Senators. I can speak only for one Member, but I am quite willing to get it to a vote.

Mr. MANSFIELD. Would the Senator be in favor of voting the sixth?

Mr. BAYH. The Senator from Indiana would be in favor of a unanimous-consent agreement for a motion to recommit being set for no later than high noon, or 1 o'clock, or 2 o'clock, on the sixth. Out of courtesy to some other Members of the opposition, I feel I should take the next 15 or 20 minutes to consult with them. But my personal opinion is that that would be a good reconciliation. I am not saying I am not prepared to vote sooner than that, but that I am willing to accept that, and I can speak only for myself.

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

Mr. BAYH. I yield.

Mr. ALLEN. Assuming the motion to recommit was rejected, would the Senator be willing to have a vote then on the confirmation of the nomination itself?

Mr. BAYH. I would have to discuss that with other Members of the opposition.

Mr. ALLEN. I see.

Mr. WILLIAMS of Delaware. Mr. President, will the Senator yield, since the Senator mentioned my name?

Mr. MANSFIELD. I yield.

Mr. WILLIAMS of Delaware. We had a

colloquy on this matter last night, in trying to expedite a way to get to a vote. Since referring to the lengthy debate on the Carswell nomination as a filibuster was somewhat embarrassing to some liberal Members of the Senate, I made an agreement that I would not refer to this filibuster as a filibuster any longer, but would refer to it as an extended talkathon which means an unnecessary waste of time. I shall from now on continue to refer to this filibuster as an extended talkathon rather than what it actually is.

Mr. MANSFIELD. Mr. President, there are various ways and means of getting a point across, and, as I have said, I can read the writing on the wall as well as the next Senator.

CALL OF THE ROLL

Mr. MANSFIELD. Mr. President, with the permission of the distinguished Senator from North Carolina, I suggest the absence of a quorum, and this may well be a live quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

[No. 109 Leg.]

Aiken	Hansen	Proxmire
Allen	Hart	Saxbe
Bayh	Hatfield	Schweiker
Byrd, Va.	Javits	Scott
Byrd, W. Va.	Long	Smith, Ill.
Cranston	Mansfield	Sparkman
Ellender	McCarthy	Stennis
Ervin	Pell	Talmadge
Griffin	Prouty	Williams, Del.

Mr. BYRD of West Virginia. I announce that the Senator from New Mexico (Mr. ANDERSON), the Senator from Nevada (Mr. BIBLE), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Georgia (Mr. RUSSELL) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Maryland (Mr. MATHIAS), the Senator from California (Mr. MURPHY), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

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

The PRESIDING OFFICER. A quorum is not present.

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

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Montana.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

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

Allott	Fulbright	Miller
Bellmon	Goldwater	Mondale
Bennett	Goodell	Muskie
Boggs	Gore	Nelson
Brooke	Gravel	Packwood
Burdick	Gurney	Pastore
Cannon	Harris	Pearson
Case	Hartke	Randolph
Church	Holland	Smith, Maine
Cook	Hruska	Spong
Cooper	Hughes	Stevens
Cotton	Inouye	Symington
Curtis	Jackson	Thurmond
Dodd	Jordan, N.C.	Tower
Dole	Jordan, Idaho	Tydings
Dominick	McClellan	Williams, N.J.
Eagleton	McGee	Yarborough
Eastland	McGovern	Young, N. Dak.
Fannin	McIntyre	Young, Ohio
Fong	Metcalf	

The PRESIDING OFFICER. A quorum is present.

UNANIMOUS-CONSENT REQUEST

Mr. MANSFIELD. Mr. President, again, with the permission of the distinguished Senator from North Carolina, I have nothing definite to add at this time because negotiations are still underway to see if there is not some way we can bring about a consent agreement affecting the Carswell nomination and the privileged conference report on the elementary and secondary education amendments.

I think some progress is being made. But only time will tell whether the efforts now underway are sufficiently successful.

So, I would suggest that Senators stay near the Chamber for the next 15 or 20 minutes, or not to exceed one-half hour, and that in the meantime we allow the distinguished Senator from North Carolina to proceed.

Hopefully, within that period of time, it will be possible to propose some kind of unanimous-consent request which may be granted if the Senator is willing. But until then, I can give no further information.

EXTENSION OF PROGRAMS OF ASSISTANCE FOR ELEMENTARY AND SECONDARY EDUCATION—CONFERENCE REPORT

The Senate continued with the consideration of the report of the committee of conference on disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 514) to extend programs of assistance for elementary and secondary education, and for other purposes.

The PRESIDING OFFICER (Mr. MONDALE). The Chair recognizes the Senator from North Carolina.

Mr. ERVIN. Mr. President, yesterday I was discussing the strange judicial decisions which have been handed down to implement the demands of certain pressure groups and the demands of certain very sincere citizens that the public schools should be forcibly integrated regardless of the wishes of the parents and the schoolchildren attending the schools.

Yesterday I pointed out that in the Jefferson County School Board case, two of the three sitting Federal judges ignored the plain words of an act of Congress. This means the Federal judges in that case ignored the majority vote of 100 Senators and the majority vote of 435 Representatives and held that Congress did not mean what it said when it prohibited the assignment of children to schools to overcome racial imbalance and the busing of children to achieve racial balance. Former Senator Hubert Humphrey, the floor manager of the bill, in the Senate debate on the 1964 Civil Rights Act made the intent of Congress very plain in this area when he alluded to a case which arose in Gary, Ind., and involved de facto segregation.

I mentioned yesterday that I wished to discuss the wrong decision of Judge Wright in the District of Columbia. This decision bears the title of Hobson against Hansen and appears in 200 Fed. Supp. at page 401 and the following pages.

In this opinion, Judge J. Skelly Wright clearly demonstrates that judges are not competent to tell how schools ought to be operated.

He took 118 pages to instruct the School Board of the District of Columbia how it should go about desegregating public schools of the District which are segregated because of the residential patterns of the District and to tell the School Board, school administrators, and teachers how they should instruct the children after they had achieved the desegregation of schools which were segregated because of residential patterns.

The District of Columbia had what was called the track system. The track system groups students according to their ability to learn. By so doing, it avoids the very deplorable situation in which bright students and dull students and diligent students and lazy students are assigned to the same classrooms, and in which the same quantity of intellectual food, regardless of their capacity to assimilate it, is attempted to be fed them.

Judge J. Skelly Wright, whose abilities as an educator are refuted in large measure by his opinions, handed down a strange decision: that under the Constitution of the United States, as it has been mangled in school desegregation cases, it is unconstitutional for any public school to undertake to teach a bright or a diligent student anything more than it attempts to teach to a dull or a lazy student. In other words, under this miraculous decision, according to Judge Wright, the Constitution of the United States now requires in the public schools of this Nation an equality of inferiority. That is the sort of adjudication made in Hobson against Hansen. I deny with all the emphasis at my command that the Constitution of my country requires any such fool thing as that.

I say that the public schools are designed, or ought to be designed, to do what a former Governor of my State, Charles Brantley Aycock, declared: To aid every student in an effort to become everything that God Almighty made it possible for him to become. Yet, in this case we have a solid adjudication that the Constitution of the United States as now applied to the public school system forbids a public school from undertaking to teach anything more to a bright or a

traffic controllers, who have pretty much tied up air traffic to New York and, indeed, in other areas across the land.

This is a most unfortunate development in the continuing controversy which has raged between the Professional Air Traffic Controllers Association, called PATCO and the FAA.

Clearly, the stoppage is illegal and cannot be condoned.

The controllers should return to work immediately.

Today's work stoppage is the culmination of many months of rigidity and bitterness and, indeed, some ineptitude in the handling of this dispute by both sides, PATCO and FAA.

Several weeks ago, on the eve of a threatened stoppage, at my suggestion, the parties agreed to call in a Federal mediator to help them resolve their differences.

Regrettably, both sides appear to have so limited the mediator's functions as to make it impossible for him to offer any meaningful help in resolving the controversy.

I believe that, in the public interest—bearing in mind that I first believe that the controllers must return to work—a full-scale inquiry into the conduct of all parties to this dispute and the grievances which have been expressed by the air traffic controllers themselves—many of which grievances are, in fact, justified—should be undertaken by the congressional committees concerned with our air transportation system.

Congress and the public are entitled to a full explanation of the circumstances which have led up to the crisis in the air transportation field which is now facing us.

I believe such an inquiry will show that the work stoppage today could have been avoided by reasonable measures had the parties to the dispute acted providently.

Mr. President, I also believe that this work stoppage and the postal strike, which still goes on in New York, indicates that there is something radically wrong with our system of dealing with Government employee grievances. A way must be found to achieve better communication between Government agencies and the representatives of their employees, as well as better bargaining techniques calculated to avoid rigidity on either side.

Continuance of the present policy can only lead to a tragic polarization of feeling between the Government and its employees and ultimately to the use of troops—which I understand was necessary but could have been avoided—or other drastic measures in public employee labor disputes such as prosecutions under the penal law, which would further embitter the situation.

No country can stand extensive labor disputes and work stoppages against the Government. We should be vigilant to prevent matters from getting to that pass.

I deeply believe our procedures are very archaic in this matter. I think the President is trying to improve them. But they do not begin to do the job.

I think the postal strike and the work stoppage by the air traffic controllers are of sufficient severity that Congress should get on top of them now. I hope that we will get to work on the matter.

I urge the air traffic controllers to come back to work. I think that is their best course, having made their point and having called attention in many respects to their grievances which, as I say, are quite justified.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HART. 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 CARSWELL NOMINATION

Mr. HART. Mr. President, the legislative voice of the city of Detroit is its common council. It has voiced its position with respect to the pending nomination to the Supreme Court of Judge Carswell.

It would be a mistake for me to attempt to elaborate on that expression. It speaks to the point and concludes that the nomination should be opposed.

I think this position of the common council reflects the feeling of the great majority of the people of the city of Detroit.

For the information of all Senators, and I hope with some persuasive effects, I ask unanimous consent that the resolution of the common council which was sent over the signature of George C. Edwards, its city clerk, be printed in the RECORD.

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

RESOLUTION OF THE CITY OF DETROIT
MARCH 12, 1970

(By Councilman Ravitz)

Whereas, In 1948, G. Harrold Carswell spoke in favor of racial segregation and thought so highly of his speech that he had it published in his weekly newspaper, and

Whereas, In 1956, Judge Carswell helped organize a group to buy the Tallahassee Municipal Golf Course to convert it to a private club that would bar black people, and

Whereas, In 1966 Judge Carswell participated in a land sale with a restrictive racial covenant in it, even though the Supreme Court had outlawed such covenants in 1954, and

Whereas, Countless distinguished attorneys have testified that Judge Carswell has exhibited his hostility to them and to the cause of civil rights for their advocacy of these rights, and

Whereas, Numerous legal scholars from all over the country have declared in writing that Judge Carswell's level of legal competence is far below the standards acceptable for the United States Supreme Court;

Now, Therefore, Be It Resolved, That the Common Council call upon U.S. Senators Hart and Griffin to vote against confirmation of the nomination of Judge Carswell when the matter is brought to the floor of the Senate, and

Be It Further Resolved, That copies of this resolution be sent promptly to the two Senators from Michigan and to the President of the United States.

Mr. HART. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate, I am about to propound a unanimous-consent request. I wish to do it personally, so that I will make sure that all the corners are covered, and if I am not doing so, I will be called to account.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that upon completion of the Senate's business on Tuesday next, the Senate recess in legislative session until 12 o'clock noon on Wednesday, April 1, 1970; and further, that immediately after the prayer, the conference report on H.R. 514 be placed before the Senate, and the debate thereon be limited to 4 hours, to be equally divided and controlled by the Senator from Rhode Island (Mr. PELL) and the Senator from Mississippi (Mr. STENNIS) or whomsoever they shall designate; and that the vote on the Stennis motion to recommit the conference report occur at 4 p.m.

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

Mr. MANSFIELD. I yield.

Mr. PELL. Did the Senator mean that there was to be a vote on the Stennis amendment at 4 p.m.?

Mr. MANSFIELD. On the Stennis motion; and that after that is disposed of, and not to exceed 1 hour later, there be a vote on the conference report.

The PRESIDING OFFICER (Mr. SCHWEIKER). The Chair would state that the conference report is not open to amendment, and no amendment could be voted on.

Mr. MANSFIELD. I was referring to the motion of the Senator from Mississippi to recommit; and that after that is disposed of, there be a vote on the conference report itself within 1 hour thereafter.

Mr. ALLEN. If it is still pending.

Mr. MANSFIELD. Yes, if it is still pending.

The PRESIDING OFFICER. The Chair would state—will the Senator finish his statement?

Mr. MANSFIELD. That is the statement. Up to that point, is it understood?

Mr. JAVITS. Mr. President, one other point if the Senator will yield. It is understood that the Stennis motion to recommit will be concerned with the so-called Stennis amendment?

Mr. STENNIS. That is correct, Mr. President. May I ask the majority leader a question at this point?

Mr. MANSFIELD. Yes.

Mr. STENNIS. If the Senator will yield to me.

Mr. MANSFIELD. Yes, indeed.

Mr. STENNIS. I just stated that the motion the Senator from Mississippi has in mind would be on the amendment referred to by the Senator from New York.

I have in mind, now, a general motion to recommit generally, without assigning all the reasons. There may be others who would want to be more specific.

It has been agreed, as I understand, that they would have a chance to offer that if there is either an amendment to my motion or another motion to recommit. Say, it refers to section (c). I want that clearly understood—that no one else is cut off and that some time be allowed.

Mr. JAVITS. Mr. President, the intention of the majority leader—and he will correct me if I am wrong—is that when the 1 hour debate has expired after the vote on the Stennis motion to recommit, concerned with the Stennis amendment—however he may phrase it—that during that hour if he or Senator PELL yields time, or even without time, another Member might make a motion to recommit. That will then be voted on immediately before the vote up or down on the conference report. Assuming that the conference report still survives, it will be voted on up or down within 1 hour after—that is, when the 1 hour expires—after the first vote on the Stennis motion.

Mr. MANSFIELD. I concur completely with the Senator from New York's explanation.

Mr. JAVITS. Is that all right with the Parliamentarian?

The PRESIDING OFFICER. The Chair would ask if the motion to recommit with instructions is solely limited to the Stennis amendment.

Mr. JAVITS. As I understand it, the parties on the other side, Senator STENNIS included, say that the first motion which we will face within 4 hours after 12 o'clock on Wednesday will be a motion to recommit, with instructions, or some motion regarding the Stennis amendment. The Senator then says that in the succeeding hour after that is voted on, assuming that the conference report is still before us, there may be other motions to recommit also regarding the Stennis amendment; whatever there is will then be voted on immediately before the vote up or down.

Mr. GRIFFIN. It need not be limited to the Stennis amendment.

Mr. JAVITS. It need not. I will accept that. Any other motion to recommit will then come between the time of voting on the Stennis amendment and 1 hour thereafter.

As I understand the parliamentary rule, it must be voted on after the time has expired—to wit, 1 hour—and immediately thereafter the unanimous-consent request calls for a vote, up or down, on the conference report, assuming that it is still before us.

Mr. MANSFIELD. That is correct.

The PRESIDING OFFICER. Is there objection?

Mr. STENNIS. Reserving the right to object, it seems to me that the time for debate on any of the motions to recommit, in addition to the general one I alluded to, should come before the beginning of this 1-hour debate on the conference report as a whole. It was a bill. So if some time will be allowed——

Mr. MANSFIELD. The time would be under the control of the Senator from Mississippi and the Senator from Rhode Island.

Mr. STENNIS. There are only 2 hours in all for each side. Suppose we might have—I do not know whether we will, but suppose we might have three or four proposals, motions to recommit, with a specific instruction. It would take more than the 2 hours for each side, perhaps.

Mr. MANSFIELD. How about 6 hours, and we will come in at 10 o'clock?

Mr. STENNIS. That would be all right, just so that there is enough time to argue them. I do not want to delay.

Mr. JAVITS. Six hours is fine.

Mr. MANSFIELD. I change the request so that the time to be divided before the vote at 4 o'clock will be 6 hours equally divided.

Mr. JAVITS. We will come in at 10 a.m. and vote at 4 p.m. on the Stennis amendment.

The PRESIDING OFFICER. Will the Senator from Montana restate the last point?

Mr. MANSFIELD. I just changed the hours to be allocated from 4 to 6 hours, the rest of the proposal to remain as is.

Mr. GRIFFIN. And to come in at 10 o'clock.

Mr. MANSFIELD. That is implied. We will get to that specific request later.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. ALLEN. Reserving the right to object, I think there is more to come, and I would like to hear the rest of it.

The PRESIDING OFFICER. The Senator will proceed.

Mr. HOLLAND. Mr. President, reserving the right to object—and I shall not object—unless I misunderstand the situation, I understood that the unanimous-consent agreement would also fix a time for the vote on the Carswell nomination.

Mr. MANSFIELD. I am getting to that.

The PRESIDING OFFICER. The Chair just stated that the Senator was to proceed with the whole package.

Mr. HOLLAND. I understand that the Presiding Officer was about to put the question on the package up to now.

The PRESIDING OFFICER. The Chair amended that.

Mr. HOLLAND. I thank the Presiding Officer.

Mr. MANSFIELD (continuing). That upon the completion of the Senate's business on Friday, April 3, 1970, the Senate recess, in executive session, until 10 a.m., Monday, April 6, 1970; that immediately after the prayer on Monday, April 6, the Chair will place before the Senate the nomination of G. Harrold Carswell. At that time, if such a motion has not previously been offered—that is, during the previous week—the Senator from Indiana (Mr. BAYH) or his designee will move that the nomination of G. Harrold Carswell be recommitted to the Judiciary Committee; that the debate on that motion on Monday, April 6, will be limited to 3 hours, to be equally divided between and controlled by the mover of the motion and the Senator from Nebraska (Mr. HRUSKA) or whomsoever they may designate.

Further, that the vote on the motion to recommit will occur at 1 p.m., Monday, April 6, 1970—the Senate convening that day at 10 o'clock—or as soon thereafter, as a motion to table the recommital motion is disposed of, if such a motion to table is made; that if the motion to recommit the nomination on Monday, April 6, 1970, at 1 p.m., does not prevail, or the motion to table the recommital motion does prevail then the vote on the confirmation of the nomination of G. Harrold Carswell will occur at 1 p.m. on Wednesday, April 8, 1970.

Mr. SCOTT. Following 3 hours of debate.

Mr. MANSFIELD. Following 3 hours of debate.

Mr. BROOKE. Mr. President, will the Senator yield for a question?

Mr. MANSFIELD. I yield.

Mr. BROOKE. Would there be an opportunity for a motion to table on Wednesday?

Mr. MANSFIELD. Yes, indeed.

Mr. BROOKE. Would that be written into the consent agreement, as well?

Mr. MANSFIELD. That motion, may I say, always is in order.

Mr. BROOKE. We have spelled it out on Monday, and I think we ought to be able to spell it out on Wednesday.

Mr. HRUSKA. Mr. President, it is not my information that a motion to table would always be in order if there is a unanimous-consent agreement to vote at a time specific, and I should like to have some information on that from the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is correct, that normally the situation would preclude a motion to table. But the way the question was stated, the agreement does include a motion to table as a possibility.

Mr. HRUSKA. And when would that motion to table be eligible?

The PRESIDING OFFICER. At 1 o'clock after debate.

Mr. HRUSKA. At the conclusion of the debate?

The PRESIDING OFFICER. That is correct.

Mr. HRUSKA. To be followed by a vote on the nomination proper, depending upon the outcome of the vote?

Mr. MANSFIELD. That is correct.

Mr. BROOKE. Mr. President, I am asking the majority leader if that will be written in the unanimous-consent agreement

Mr. MANSFIELD. We will be glad to write it in, to make sure, and I add it to the unanimous-consent request.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. Mr. President, I reserve the right to object.

Mr. ALLEN. Mr President, I reserve the right to object.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I want to

commend the distinguished majority leader for reconciling the irreconcilable and coming up with this request, which seems to meet with general approval. I would like to inquire as to what the pending business will be before the Senate if the agreement is made.

Mr. MANSFIELD. We will go back on the Carswell nomination. I daresay there will be little speaking on that, but the Senate will then proceed to the consideration of the stockpile bills, the extension of Hill-Burton, the rural telephone bill, and other measures. There is plenty to occupy the attention of the Senate.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

The unanimous-consent agreements, later reduced to writing, are as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, that effective after the prayer on Wednesday, April 1, 1970 (with the Senate convening in legislative session at 10 a.m.), further debate on the conference report on H.R. 514, primary and secondary education, be limited to six hours with the time to be equally divided and controlled by the Senator from Rhode Island (Mr. PELL) and the Senator from Mississippi (Mr. STENNIS), after which the Senate will immediately proceed to vote on the Stennis motion to recommit, with or without instructions. After the vote on the Stennis motion there will be an hour of debate on adoption of the report should the Stennis motion fail with the time to be equally divided and controlled by the Senator from Rhode Island (Mr. PELL) and the Senator from Mississippi (Mr. STENNIS), following which any other motions to recommit with or without instructions if offered will be voted on without further debate, to be followed by a vote on the adoption of the conference report if it has not otherwise been disposed of.

UNANIMOUS CONSENT AGREEMENT

Ordered, that effective on Monday, April 6, 1970, (with the Senate convening in executive session at 10 a.m.) further debate on the nomination of G. Harrold Carswell to be Associate Justice of the United States Supreme Court, with the pending question on the motion of the Senator from Indiana (Mr. Bayh), to recommit the nomination to the Committee on the Judiciary, be limited to three hours to be equally divided and controlled by the Senator from Indiana (Mr. Bayh) and the Senator from Nebraska (Mr. Hruska), or whomever they may designate, with the vote coming at 1 o'clock, or following a vote on a motion to table the motion to recommit if such a motion should first be offered. Following the above vote or votes the Senate will proceed to vote on the confirmation of the nomination at 1 o'clock on April 8, 1970, or following the vote on a motion to table the nomination should such motion be made, and if the nomination is still before the Senate.

ORDER FOR ADJOURNMENT FROM TUESDAY, MARCH 31, TO WEDNESDAY, APRIL 1, 1970, AT 10 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of business on Tuesday, March 31, 1970, the Senate stand in adjournment until 10 o'clock a.m. on Wednesday next, April 1, 1970.

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

ORDER FOR ADJOURNMENT FROM FRIDAY, APRIL 3, 1970, UNTIL 10 O'CLOCK A.M. THE FOLLOWING MONDAY, APRIL 6, 1970

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of business on Friday next, April 3, 1970, the Senate stand in adjournment until 10 o'clock a.m. the following Monday, April 6, 1970.

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

ORDER FOR ADJOURNMENT FROM TUESDAY, APRIL 7, 1970, UNTIL WEDNESDAY, APRIL 8, 1970, AT 10 A.M.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that at the conclusion of business on Tuesday, April 7, 1970, a week from this Tuesday, the Senate stand in adjournment until 10 o'clock the next morning, Wednesday, April 8, 1970.

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

Mr. BAYH. Mr. President, reserving the right to object—and I shall not object—I should like for the RECORD to show that I hope the majority leader's request for coming in at 10 a.m. tomorrow morning does not rely on the need to move to the second order of business alluded to in the last part of the unanimous-consent request.

Mr. MANSFIELD. Well, time and the Senate will tell.

All I can say is thanks.

ORDER FOR RECOGNITION OF SENATOR YOUNG OF OHIO TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senator from Missouri (Mr. EAGLETON) completes his remarks tomorrow, the Senator from Ohio (Mr. YOUNG) be recognized for not to exceed 15 minutes.

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

PROGRAM

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

Mr. MANSFIELD. I yield.

Mr. SCOTT. It is my understanding that no rollcall votes are planned for tomorrow, or for Tuesday next. Would that be the understanding of the majority leader?

Mr. MANSFIELD. Not necessarily, because there are a number of stockpile bills—16, I believe. There is also the question of the Hill-Burton extension, and the question of the rural telephone extension. If the appropriate Members are here, it is possible that there would be votes on these measures.

I see the distinguished Senator from Delaware (Mr. WILLIAMS) is in the Chamber. He has a vital interest in the stockpile bills and has served notice that he has an amendment to offer to each of those bills. If appropriate Senators are on the floor, we would like to take them up and get them out of the way.

Mr. WILLIAMS of Delaware. Let me say to the distinguished majority leader that there will be some votes on those bills.

Mr. MANSFIELD. It all depends, but it appears that there will be no postal legislation this week. The conferees are meeting, and the possibility that we would have had to remain in session over the two-day recess I think has been negated because of that fact.

Mr. SCOTT. I thank the majority leader.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President I ask unanimous consent that on tomorrow, following the two special orders previously alluded to, there be a brief period for the transaction of routine morning business.

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

ORDER FOR LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS ON TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that during the period for the transaction of routine morning business on tomorrow, statements therein be limited to 3 minutes.

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

ORDER OF BUSINESS

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. I ask unanimous consent that the order for the quorum call will be rescinded.

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

ORDER FOR RECOGNITION OF SENATOR AIKEN TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that on tomorrow, at the conclusion of the remarks by the able Senator from Ohio (Mr. YOUNG), the able senior Senator from Vermont (Mr. AIKEN) be recognized for not to exceed 30 minutes, prior to the period for the transaction of routine morning business.

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

ORDER OF BUSINESS

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

of the major problems in defense contracting and a cause of the present scandalous system is the Unk-Unks. Contractors can anticipate that in certain areas there will be unknowns. These are the known unknowns. But what really baffles them, according to Drake, are the unanticipated unknowns which pop up during key phases of defense weapon system production.

The article proposes a number of reforms, many of which have considerable merit. However, I must say that I am unable to comprehend very clearly one key paragraph from Drake's article which prescribes reform in the following terms:

What is really needed is reformed policy that includes viable estimating procedures and a procurement policy for major system acquisitions that is consistent with the technical development process and the evolution of a sound technical baseline on which to formulate realistic estimates of cost and schedule.

Perhaps that paragraph should be added to the Unk-Unk's.

While this is not the place to outline the reforms needed in defense procurement in detail, my own view is that we must prevent buy in bidding—deliberate low bidding to get a contract.

We should institute day-to-day supervision of contract costs—called ditch-digging in the trade—rather than relying on some new contract system—such as total package procurement or PERT or PEP or value engineering. Essentially, these are gimmicks and public relations measures rather than fundamental means of checking costs and waste.

We need more production of prototypes before major production begins. The way to meet the problem of both known unknowns, and Unk-Unk's, is to build a prototype first.

If it does not fly, if the wings crack, if it fails to meet specifications, if it is too far advanced for the state of the art, all that has been lost are the funds for development and the prototype. That might be high, but it is a great deal less than the huge overruns we are now experiencing on the C–5A, Poseidon, MBT–70, and, in fact, every major weapon in the weapons system arsenal.

Finally, I would say we need to simplify our weapons. We are in trouble because weapons are asked to do too much. The black boxes, the compasses and radars and gyroscopes, and the weight produced a generation of weapons which are far too costly, are almost never delivered on time, and which do not function according to their specifications.

I commend the article and the problem of the Unk-Unk's to the readers of the RECORD. I ask unanimous consent that the article be printed in the RECORD.

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

[From the Washington (D.C.) Star, Mar. 25, 1970]

UNK-UNKs MAR DEFENSE CONTRACTS

(By Orr Kelly)

Anyone who wants to know what to do about cost overruns, poor performance and all those bugaboos of the military weapons business should take a long look at Hudson B. Drake's UNK-UNK Chart.

Drake, director of the President's Commission on White House Fellows while on leave from North American Rockwell Corp., is the author of one of two recent articles in the Harvard Business Review that have received widespread attention in the defense industry.

Drake's article, in the January-February issue, is entitled "Major DOD (Department of Defense) Procurements at War with Reality." The other piece, "Anguish in the Defense Industry," appeared in the November-December issue and was written by Richard M. Anderson, director of H. R. Land & Co., a Los Angeles consulting firm.

Together, they give a broad picture of what is wrong with both the Defense Department and defense industry.

A large foldout chart showing how unknowns are gradually eliminated during the development of a new weapons system accompanies Drake's article.

There are two kinds of unknowns—known, or anticipated, unknowns, and unknown, or unanticipated, unknowns—referred to as UNK-UNKs.

The UNK-UNKs, obviously, can be more troublesome and more costly than anticipated problems simply because they are unexpected.

Such a problem has just occurred in the F-111 airplane. Even though the plane has been flying for several years, even in combat, the entire fleet, except for seven research planes, is now grounded because of a totally unanticipated problem with a new kind of steel used in the wing.

What Drake's chart shows is that, in the typical major development program, the UNK-UNKs normally don't rear their ugly little heads until well along in the program, when the system is being put together and tested. Most importantly, that is after the government and contractor have signed a contract agreeing on price and production schedule.

Drake thinks some of the things done under the Nixon administration are moves in the right direction—but he thinks much more needs to be done.

"What is really needed," he writes, "is reformed policy that includes viable estimating procedures and a procurement policy for major system acquisitions that is consistent with the technical development process and the evolution of a sound technical baseline on which to formulate realistic estimates of cost and schedule.

"Until this reform comes, a sense of emergency will permeate major-system work, and the public, conscious of this tension, will continue in its attitude of near panic."

While Drake's recommendations are directed primarily at the Pentagon, Anderson argues that the defense contractors had better shape up, too.

Some reforms instituted in the early 1960s by Robert S. McNamara were good, but he failed to bring the contractors along with him, Anderson feels. McNamara set up a "contract definition" program, for example, in which the goal was to work out on paper the broad outlines of a new program.

"More accustomed to constant fire fighting than thorough planning, the sizable contractor task forces assembled to accomplish this task often did not know how to go about their planning function," Anderson writes.

Because they did not do their planning well, he says, "it was a rare competition in which at least one of the contenders was not willing to revert to the habits of the old environment and bid whatever it took to win the award. . .

"In short, contractors often signed fixed-price, total-package contracts at prices below the expected costs, containing risks that were not thoroughly appraised, and for which they lacked the management discipline necessary to perform the work in an efficient manner.

"With hindsight, such bidding appears incredibly naive. But at the time many experienced defense-industry managers thought it naive to do anything else."

This, one must remember, was written well before the president of Lockheed asked the Defense Department for financial help on four contracts—two of them total-package programs on which Lockheed was the prime contractor.

The danger now is that demands for reform will center on the wrong things rather than the real problems, with the result that the real problems will remain unsloved and that the country will lose the full advantage of the advanced technology that landed a man on the moon.

The loss will not be only in military and space technology but in those areas such as pollution control and surface transportation where the skills of the military-industrial complex might help us to keep this a livable world.

NOMINATION OF GEORGE HARROLD CARSWELL TO THE SUPREME COURT

Mr. GURNEY. Mr. President, the real issue in the current dispute over the confirmation of the nomination of a Supreme Court Justice is whether President Nixon will have the right to change the direction of the Court by appointing a strict constructionist, as he promised the American people he would do before his election.

In an effort to prevent the President from fulfilling this pledge, attacks have been made on the character, ability, and philosophy of, first Judge Haynsworth and now, Judge Carswell. Yet these attacks are basically unfair, because they are made in an effort to conceal the real reason for the opposition to President Nixon's nominees.

An editorial published in the Washington Daily News of March 23 puts the issues in the Carswell nomination in their true perspective. I ask unanimous consent that the editorial be printed in the RECORD, and commend it to the attention of Senators.

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

THE CARSWELL CASE

What must be remembered about these Senate battles over Supreme Court nominations is that a struggle of epochal proportions is under way as President Nixon attempts to use every opportunity to shift the U.S. Supreme Court to the right—as he pledged repeatedly in his campaign to do.

The northern Democrats, civil rights leaders and other liberals who liked the liberal expansionist rulings of the Warren Court of the past 17 years and want no change are fighting with every device at their command to block the President's intentions.

It is our belief that, along with other things, the American people in their 1968 presidential vote did opt for a change in Supreme Court direction, particularly in such fields as pornography and police powers, and for more consideration for the rights of victims versus the rights of criminals and protestors.

If opponents should succeed in blocking the current nominee, Judge G. Harrold Carswell, it's 10-to-1 they will face another fight against "a strict constructionist of the

Constitution" nominee. They are correct in attaching great importance to each Supreme Court nominee since President Nixon probably will have enough appointment opportunities to set the court's philosophy for years to come.

In our opinion, unless someone has "anti" evidence of a stronger nature than has so far been revealed, the nomination of Judge Carswell should be confirmed.

We believe Judge Carswell's word that he long since has shelved any tendency to racial prejudices he once might have had.

The other chief weapon being used against him, the claim he is some sort of a legal pygmy, seems mighty strained and contrived to us.

Judge Carswell may not be the greatest legal mind sitting on a lower federal court today.

But, as even his opponents know, some of the greatest justices in history came to the court without great legal reputations. And twice since his nomination has been before the Senate, the American Bar Association's standing committee on the federal judiciary has unanimously concluded that Judge Carswell is qualified as to "integrity, judicial temperament and professional competence to sit on the Supreme Court."

He served four years as a district attorney, 10 years as a federal district judge in Northern Florida and in June, 1969, was confirmed unanimously by the Senate for elevation to the Fifth Circuit Court of Appeals.

It is passing strange that if Judge Carswell's judicial record was as low-grade as opponents now claim, no voices of protest were raised when he was nominated to the appeals court—the nation's second highest court.

Most damaging specific development against him in our opinion has been the unexplained decision by the respected retired chief judge of the Fifth Circuit Court of Appeals, Elbert P. Tuttle, of Atlanta, that he could not testify in support of Judge Carswell's nomination. This after Judge Tuttle had sent a letter to the Senate Judiciary Committee offering to testify "to express my great confidence in him as a person and a judge."

Fifth Circuit Judge John Minor Wisdom of New Orleans has made clear, too, he is not supporting the Carswell nomination but also says he is not opposing him. Three other of Judge Caswell's colleagues of the Fifth Circuit have written glowing letters stating he is qualified in every way for the highest bench, but still others have not come to his support.

It is worth noting that opponents who are making so much out of the lack of unanimous support for Judge Carswell from his circuit court colleagues were totally unimpressed by the unanimous support given by his cohorts of the Fourth Circuit Court of Appeals for Judge Clement F. Hainsworth when he was an unsuccessful Supreme Court nominee before Carswell.

It also is worth noting that practically every senator now opposing Carswell opposed the Haynsworth nomination.

The Supreme Court desperately needs to be at full strength. Unless someone like Judge Tuttle has some strong evidence—and is willing to speak up—the Senate should confirm Judge Carswell and let the court get on with its work.

ISRAEL MUST BE ALLOWED TO DEFEND ITSELF

Mr. HARTKE. Mr. President, Monday's announcement by Secretary of State Rogers of the administration's decision to withhold sale of jet aircraft to Israel can only serve to encourage Soviet and Arab intransigence in the Middle East. It is a further sign—if any more were needed—that this administration deludes itself into thinking that it can win some measure of Arab favor by vacillating and backtracking on its commitments to Israel.

There could hardly be a greater delusion. Arab leaders will settle for nothing less from the United States than a renunciation of our historic ties to Israel. That, of course, is unthinkable and, therefore, we can only be pursuing a will-o'-the-wisp in our pursuit of influence with Israel's mortal enemies.

At the same time, by causing Israel to question our constancy and determination, we run the grave risk of impelling that brave people to an act of desperation. We surely cannot expect them to watch unconcernedly as the Russians arm and rearm the Arabs with vast quantities of new weapons. Nor can we expect them to hazard their existence on our estimate of their needs. They must and will determine for themselves the risk to their very survival. And if, through our negligence, they decided that the arms imbalance appears to be growing too great in favor of the Arabs, we should not be surprised to see Israel launch another preemptive strike against their enemies.

And that would mean yet another renewal of full-scale war in an area that has known too much war during the last quarter century. I need hardly remind my colleagues how surpassingly dangerous to world peace would be that kind of outbreak, and how ruinous to the nations in the region.

Yet we are told that the precise purpose of America's policy in withholding arms from Israel is to prevent war, to stabilize the political situation. Mr. President, I can only characterize that view as fatuous. It completely ignores the psychology of the situation. It completely ignores the history of it. It concentrates instead on the kind of geopolitical abstractions that led German planners from one disaster to another during this century. It is a view so full of danger to our own vital interests in the Middle East that I find it hard to believe that it was formulated by American officials. But it was, of course, and that is the tragedy of it.

Mr. President, we had best stop deluding ourselves. We had best stop imagining that we can purchase the good will of those who revile us by playing games with the security of our one and only friend and ally in the region. We need, instead, to repeat over and over again—and back our words with actions—that we intend to continue to supply Israel with the tools of survival, so that neither the Arabs nor their Soviet manipulators will be able to suppose that time is on their side in the monstrous campaign to destroy Israel.

In the meantime, as a thoughtful constituent of mine, Mr. Barnett Labowitz, recently wrote me:

> The U.S. should continue to counsel Israel in its use of military power, to generosity and humanity in its relations with the Arabs who live in the occupied territories, its concern for Arab refugees. No friend of Israel would wish other advice to be given.

Military strength, generosity, and humanity—that is the formula for lasting peace in the Middle East. I strongly urge President Nixon and Secretary Rogers to do all in America's power to implement it.

DRUG ABUSE

Mr. SCHWEIKER. Mr. President, drug abuse and the related problems of physical and psychologcial damage caused by drugs is one of the most important problems confronting youth in our metropolitan areas. We in the Senate are especially fortunate that the distinguished Senator from Iowa (Mr. HUGHES) has given the problem his special attention. The Special Subcommittee on Alcoholism and Narcotics, chaired by Senator HUGHES, on which I am privileged to serve, is presently conducting hearings on this important problem, and the testimony provided by experts from all levels of Government and medical sciences has been invaluable.

Yet even as the hearings continue, and the problem gains increasing national attention, our treatment facilities for addicts are becoming overcrowded and frequently losing funds. The Surgeon General has certified only two States as having adequate treatment facillties: New York and California. My State of Pennsylvania has few treatment facilities adequately financed well enough to meet the growing needs among our youth.

Philadelphia's treatment facilities, for example, are constantly overcrowded. The March 15 edition of the Philadelphia Inquirer printed an excellent article about the growing problem of drug addiction among youth, and the difficulties of providing adequate treatment and care for them, and I request that this article be inserted at the completion of my statement.

The problem in Pittsburgh is equally bad. A study sent to me by Charles Cohen, a counselor at the Allegheny County Juvenile Detention Home in Pittsburgh, showed that 63 percent of children from 10 to 17 years old that he interviewed had experimented with drugs. These children are the victims of our inadequate facilities. For these children the future is not particularly bright, since they are awaiting disposition by the courts, and the courts have nowhere to send them for treatment if they have serious problems with narcotics.

It is my understanding, from discussions with officers of the court in Pittsburgh, that the problem among youth is becoming more acute rather than lessening. They are simply frustrated by the lack of treatment facillties for youth.

Pittsburgh is also an excellent example of the problem we face in the future. For whereas the city has inadequate treatment facilities, the television stations which usually reach the young have done an excellent job in exposing the problem. However, there is no single approach to this problem. We cannot have educational programs, without treatment facilities and expect to solve the problem. We must insure on-going treatment facilities to meet the problem.

Thus, it distresses me greatly that one of Pittsburgh's better facilities is in danger of being closed. The Hill House Rehabilitation Center which treats 700

we are doing injury to our national spirit that will be difficult to repair.

"Well, what to do? How do we get out of this mess?

"The way to stop the war is simply to stop fighting. Let us not worry about losing face in offering peace. France was in almost exactly the same position in Algeria some years ago, but finally decided that her effort was not only wrong, but futile. She got out. No one has reviled her for her action. Russia overplayed her hand in Cuba, and was forced to withdraw. No one calls Russia a paper tiger.

"Nations all over the earth have dreamed great dreams around the American Image. For their sake, but even more for ours, let us hope they will again."

ANALYSIS OF JUDGE CARSWELL'S RECORD

Mr. BAYH. Mr. President, the Ripon Society and the Law Students Concerned for the Courts yesterday released the most thorough analysis yet presented of Judge Harrold Carswell's judicial record.

A earlier study prepared by these groups had been criticized by the Justice Department as "unreliable" because it included only Judge Carswell's published opinions and excluded his unpublished ones. In response, these young lawyers conducted a survey of every appeal to the fifth circuit between the years 1959 and 1969—nearly 7,000 cases.

Mr. President, I believe that the results of this study cast grave doubt on the qualification of Judge Carswell for the High Court. Of the 122 cases—reported and unreported—decided by Judge Carswell over the 11-year period and appealed to the fifth circuit, over 40 percent were reversed. Of the 67 district court judges in the fifth circuit with 20 or more decisions appealed, Judge Carswell ranks 61st—that is, in the bottom 10 percent—in rate of affirmance.

But the most startling fact revealed by this study is that Judge Carswell's performance worsens as time goes on. Grouping his decisions chronologically, the judge was reversed on 25 percent of his first 30 appeals, 33 percent of the next 30 appeals, 48 percent on the next 31 appeals, and 53 percent of the last 31 appeals. This compares to an average rate of reversals for all fifth circuit district judges varying only slightly over the 11-year period from a high of approximately 30 percent to a low of 23 percent.

I do not believe the Senate should confirm for the Supreme Court the nomination of a man with such an undistinguished record. And I am deeply troubled at the concept of a Supreme Court Justice who is increasingly unable to follow existing precedent—increasingly determined to impose his own views of the law in the face of superior decisions to the contrary. I cannot believe that the Senate can support for the Supreme Court a judge who not only has a mediocre record, but who becomes less and less able the longer he serves on the bench.

I ask unanimous consent that the entire analysis by the Ripon Society and Law Students Concerned for the Court be printed in the RECORD.

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

ANALYSIS OF JUDGE CARSWELL'S RECORD

The following is a brief summary of the purpose, methods, and results of a study of the judicial record of Judge G. Harrold Carswell by the Law Students Concerned For the Court.

I. PURPOSE

The Law Students Concerned for the Court released a statistical study of the judicial record of Judge Carswell at a press conference in Washington, D.C. on March 5. The study used five objective criteria to compare the record of Judge Carswell with that of the other judges in the 5th Circuit District Courts and the District Judges of the country as a whole. Probably the most important criteria was the reversal rate of those decisions appealed from Judge Carswell's 84 opinions printed in F. Supp. Of these decisions, 17 were appealed and 10 were reversed—a rate of 58.8%—almost three times the national average. This result was disregarded by a Justice Department spokesman as unreliable since it represented only a small portion of Judge Carswell's total record. (Washington Post, 3/6, p. A–15.)

This response led the Law Students Concerned for the Court to issue a challenge to Attorney General John Mitchell. The challenge was a request that the Attorney General publicly set a minimum standard of ranking by reversal rate which a nominee to the Supreme Court ought to have. The challenge was issued in a letter to the Attorney General which was also released to the press on March 11. (See Attachment No. 1) In accordance with this challenge, the Law Students vowed to examine every 5th Circuit appellate decision for the last twelve years in order to record every single appeal from Judge Carswell's decisions as a District Judge thereby setting forth the complete record as apparently required by the Justice Department.

While no response to the challenge was received, the Law Students proceeded with their second study. The results, we think, add new substance to the record of Judge Carswell. While they are most consistent with the previous statistical study and with the statements of Dean Bok of Harvard, Dean Pollak of Yale, and Prof. Van Alstyne of Duke, among many who have registered their dissent to this nomination, this new study is revealing in its own right. The results strongly indicate that Judge Carswell most assuredly fails to present the credentials expected of a Supreme Court nominee—and in fact, is quite far removed from such credentials.

II. METHODS

This study includes an examination of every 5th Circuit appellate decision beginning with volume 252 of the Federal Reporter, Second Series, and continuing up to volume 419, the most recent one. Every 5th Circuit decision was recorded on a card, as was the name of the District judge who wrote the opinion from which the appeal was taken. Only those decision for which a District judge was named, which included almost all of them) were recorded. Appellate rulings on decisions by administrative agencies (eg NLRB) were disregarded.

The appellate rulings were tabulated in three categories: (1) affirmances, (2) reversals, and (3) those affirmed in part and reversed in part. Judgments vacated were treated as reversals. Whenever necessary the appellate decision was closely read in order to determine whether the decision below was essentially affirmed or reversed.

The study was basically looking to see if the ruling on a point of law by the District judge was allowed to stand by the Court of Appeals. Every effort was made to fairly place a decision in one of the above categories Judgments modified were not recorded as such, although if the modification was clearly a reversal then it was placed in that category.

Appellate decisions were all shepardized although only those rulings amounting to an affirmance or reversal or part thereof were counted. "Cert. Denied," "U.S. Appeal Pending" and "modified" (unless dispositive) were not recorded. Shepardizing being completed, the decisions were then sorted and tabulated by the judge using the three categories mentioned.

III. RESULTS

A. Reversal record

Judge Carswell had 122 decisions appealed to the Fifth Circuit or the Supreme Court. 70 of these were affirmed—46 were reversed—with 6 being affirmed in part/reversed in part. Judge Carswell's reversal rate was 40.2% applying our method of giving each reversal in part the value of one-half a full reversal (with the affirmed in part likewise counting for one-half.) This method of treating AIP/RIP results was judged to be most representative and a fair one. Judge Carswell's reversal rate is almost a full ten percent greater than the Fifth Circuit District Judge average as a whole of 30.0%.

B. Percentile rank of Judge Carswell by reversal rate

Looking at all Fifth Circuit District Judges with 20 or more decisions appealed, Judge Carswell ranked in the lowest 10% of reversal rates (i.e. having one of the highest rates). He stands 61 out of 67 judges in order of increasingly high reversal rates. Among those judges with 30 or more and 50 or more decisions appealed, Judge Carswell ranked in the lowest 15% of District judges in the Fifth Circuit. Among judges with 75 or more, and 100 or more decisions appealed, Judge Carswell ranked in the bottom quarter. He stands well below the median in all categories.

C. A chronological look at Judge Carswell's reversal rate

Judge Carswell's record shows an increasing number of reversals, the longer he sat on the District bench.

Among his first 61 opinions there were 42 affirmances, 18 reversals, and 1 AIP/RIP for a reversal rate of 30.0%. Among his next 62 opinions, there were 28 affirmances, 28 reversals, and 5 AIP/RIP which gave him a reversal trend of 50.0%.

Dividing Judge Carswell's opinions into fourths, the pattern becomes clearer. The number of his reversals increases steadily from 7 to 10 to 13 to 16 while the number of affirmances decreases. The reversal rate increases from 25% to 33% to 48% to 53% for the last thirty-one decisions appealed

* * * * *

LAW STUDENTS CONCERNED FOR THE COURT, COLUMBIA LAW SCHOOL,
New York, N.Y., March 11, 1970.

Hon. JOHN MITCHELL,
Justice Department,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: In response to the Justice Department's criticism that this group's statistical study of Judge Carswell judicial record is invalid because it considers only his printed decisions, this letter both defends the findings announced last Thursday and respectfully challenges you to agree to recommend withdrawing his name if his *total* record is found to fall below the percentile of judges—which you are hereby asked to designate in advance—who alone should be appropriately considered for elevation to the Supreme Court.

In order to avoid the slightest question regarding sampling, this group hereby commits itself to perform such a further study, certified under oath, by devoting whatever time and manpower is necessary to consider *every single decision*, published or unpublished, by Judge Carswell and every other district judge between 1958 and the present which was appealed in the Fifth Circuit Court of Appeals. We submit that you cannot in good faith continue to recommend that Judge Carswell

sit in judgment on the highest court if his record on the lowest federal court does not meet the level which you deem to be appropriate.

As you recall, our group found that Judge Carswell ranked far below the average of all other federal judges on each statistical criterion which was applied to all of his 84 printed decisions and to a sample of 400 printed decisions of other judges. The findings we released last Thursday at our press conference together with the Ripon Society at the New Senate Office Building showed:

1. Carswell was reversed on 58.8% of the appeals from all of his printed decisions, which is practically 3 times the 20.2% average for all federal district judges and 2½ times the 24.0% for district judges in the Fifth Circuit.

2. As a percentage of all his printed decisions, Carswell's rate of reversal was still twice as high as both the national and Fifth Circuit district judge average, 11.9% as against 5.3% and 6.0%, respectively.

3. Throughout the period he sat, Judge Carswell's decisions were accorded relatively little authoritative weight by other judges: each of his opinions was cited by all other U.S. judges less than half as often, on the average, as those of all district judges and Fifth Circuit district judges.

4. Carswell's opinions were about two-fifths as thoroughly documented with case authority, and less than one-third with secondary source authority, as the average of all district judges.

5. Carswell's average opinion was less than half as extensive as the average for all other district judges.

A spokesman for your Department questioned the reliability of our findings on Judge Carswell's performance because they were based only on his *printed* decisions. He said: "No affirmance-reversal statistics based on that small a portion of any judge's decisions are reliable, even assuming the raw figures to be accurate." As to that final little innuendo, incidentally, our work sheets were and remain open to the inspection of both the press and your office and we trust that if you seriously question the accuracy of our raw figures you will produce those you believe to be correct.

Printed decisions, as you are surely aware, constitute a judge's principal—and indeed his only visible—contribution to the law. Further, judges select for publication in Federal Supplement (and West Publishing Co. additionally requests) decisions of more than routine nature—those of some importance, interest or novelty. The overwhelming majority of cases which judges elect not to publish, West has told us, are ordinary judgments upon jury trials, orders and decisions turning on questions of fact rather than on serious questions of law.

In view of those circumstances, and in fact that the work of a Supreme Court Justice is deciding and explaining not ordinary questions of law and fact but important questions of law which are novel and unsettled, how can your Department maintain that Judge Carswell's entire printed record of 84 decisions is an unreliable basis for measuring his judicial performance? President Nixon asked the Senate to "look at his record . . . as a Federal judge," and Senator Ervin has said, "I think we can judge a man's judicial past on the basis of the opinions he has written." If we cannot depend on the entire printed record, what can we depend on? Moreover, on what basis have you recommended his nomination?

Although we have confidence in the accuracy of our earlier findings that Judge Carswell falls drastically below the average level of performance of federal judges, we respectful extend to you the challenge mentioned above: Tell us the percentile of federal judges—top 2%, top 10%, top 25%, whatever—which *you* think should alone be considered for possible elevation to the Supreme Court. We will examine every one of the ten or fifteen thousand Fifth Circuit and Supreme Court decisions on appeals from decisions, printed or unprinted, of district judges in Judge Carswell's Fifth Circuit. We will preserve a card record of each case and certify under oath as to our methods and results. Judge Carswell's complete record on appeals will be measured against the complete record of each other judge during the same period.

Let the total record be determinative. Commit yourself to recommend Judge Carswell's withdrawal if his record fails to meet that which you designate in advance as a minimum standard. As a Supreme Court Justice he would be called upon to decide wisely those most complicated questions with few clear guideposts and with strongly competing principles which constitute the Court's work. You must certainly agree that as a district judge, charged with the duty of finding and applying better demarcated law on more elementary issues, Judge Carswell must not have been found to have erred more consistently than that number of other judges which you deem appropriate.

We hope that you will accept our respectful challenge, and that we may have your early reply.

Respectfully yours,

ALAN C. ZETTERBERG,
(For the committee).

APPELLATE DECISIONS OF JUDGE CARSWELL'S DISTRICT COURT OPINIONS IN CHRONOLOGICAL ORDER (CITED FROM F.2D)

("A"=Affirmance; "R"=Reversal; "AIP/RIP"=Affirmed in part & Reversed in part)

266-792 A
267-834 R
268-422 A
269-83 A
272-574 R
274-68 R
274-685 A
276-203 A
276-919 A
276-924 A
279-19 A
279-561 A
281-789 A
282-942 R
283-4 R
283-244[2] A
283-245 A
286-697 AIP/RIP
287-701 A
288-620 A
291-422 R
292-153 A
295-370 A
296-37 A
296-50 R
296-898 A
297-339 A
302-307 A
303-278 A
303-576 A
304-160[1] A
304-459 A
304-878 A
306-182 R
306-433 A
306-862 R
308-728 A
306-807[2] A
313-783 A
316-189 A
318-713 A
322-576 V
324-178 A
324-804 A
325-162 R
327-549 R
330-337 A
333-307 A
333-630 R
334-243 A
335-592 A
338-62 A
338-53 A
341-351 A
341-535 A
341-914 A
344-958[1] V
345-795[2] R
346-433 R
349-873 V
351-311[1] R
351-950[2] A
354-1006[1] A
356-660 A
356-771 R
356-921 A
361-443 A
362-352 A
362-493 R
363-439 A
365-457 AIP/RIP
365-478 R
369-940 R
371-139 R
371-395 V
374-123 A
377-861 A
380-182 R
380-489 AIP/RIP
380-915 V
381-734 A
382-852 AIP/RIP
384-882 A
384-363 A
386-520 AIP/RIP
387-70 R
388-977 R
390-662 A
390-872 A
391-13 R
391-248 R
391-921 R
394-153 R
394-492 A
395-211 A
395-675 A
397-810[3] R
398-507 R
398-1011 R
399-142 R
399-417 R
399-478 R
400-264 A
400-548 R
401-769 A
402-63 R
402-755 A
405-1206 A
406-724 R
407-189 A
407-348 A
409-225 A
412-644 R
412-851 A
414-428 R
414-657 A
414-739 AIP/RIP
415-393 R
415-799 A
417-905 R
417-991 R
417-1041 A

Total, 122 Opinions.
First 33 Decisions: 7R, 1AIP/RIP.
Last 33 Decisions: 18R, 1AIP/RIP.
Among first 61 opinions:
42A 18R/V 1AIP/RIP
Among second 61 opinions:
28A 28R/V 5AIP/RIP
First half reversal rate: 30%.
Second half reversal rate: 50%.
Dividing opinions into fourths:

	1-30	31-60	61-91	92-122
A:	22	20	14	14
R:	7	10	13	16
AIP/RIP:	1	0	4	1
Rev. Rate:	25%	33%	48%	53%

Note increasing amount of reversals and increasingly high reversal rate.

("V" is counted as "R")

(An "AIP/RIP" is counted as one-half a reversal and one-half an affirmance in the above percentages.)

RANKING OF ALL 5TH CIRCUIT DISTRICT JUDGES BY REVERSAL RATE

[Every appeal from all decisions of every judge, 1958 69]

Rank—Minimum number of appeals					Percentile (on reversals) and judge	Number of appeals	Percent reversed
100	75	50	30	20			
					Above median:		
					1. Cassibry, Fred J	21	9.5
					2. Mitchell, Lansing L	24	10.4
		1	1		3. Ainsworth, Robert A	62	13.7
					4. Edenfeld, Newell	27	14.8
1	1	2	2		5. Sloan, William B	108	15.3
			3		6. Scott, Charles R	45	15.6
	2	3	4		7. Jones, Warren L	95	15.8
	3	4	5		8. Smith, S. O., Jr	78	16.7
					9. Eaton, Joe	29	17.2
2	4	5	6		10. Christenberry, Herbert	231	17.5
	5	6	7		11. Estes, Joe E	80	18.1
	6	7	8		12. Dyer, David W	90	18.4
					13. Thornberry, Homer	21	19.0
	7	8	9		14. Hunter, Edwin F	96	20.8
		9	10		15. Garza, Reynoldo G	67	22.4
					16. Taylor, William	29	22.4
3	8	10	11		17. Wright, J. Skelly	143	22.4
4	9	11	12		18. Hooper, Frank A	177	22.8
					19. Pittman, Virgil	28	23.2
	10	12	13		20. Brewster, Leo	90	23.3
	11	13	14		21. Hannay, Allen B	83	24.1
5	12	14	15		22. Morgan, Lewis	125	24.1
		15	16		23. Roberts, Jack	56	24.1
6	13	16	17		24. Bootle, William A	178	24.5
			18		25. Atkins, C. Clyde	46	25.0
7	14	17	19		26. Connally, Ben C	156	25.0
		18	20		27. Putman, Richard J	52	25.0
		19	21		28. Noel, James L	56	25.0
		20	22		29. Mehrtens, William O	73	26.0
					30. Krentzman, Ben	23	26.1
		21	23		31. Young, George C	73	26.1
8	15	22	24		32. Clayton, Claude F	137	26.2
9	16	23	25		33. Simpson, Byron	142	26.4
			26		34. Russell, Dan M., Jr	30	26.7
			27		Below median:		
		24	28		35. Crowe, Guthrie	30	26.8
			29		36. Guinn, Ernest	53	28.4
10	17	25	29		37. Fulton, Charles B	100	28.5
11	18	26	30		38. Grooms, Harlan Hobart	125	28.5
			31		39. Cabot, Ted	47	28.8
12	19	27	32		30. Ingraham, Joe M	216	29.9
		28	33		41. Dooley, Joe B	74	30.3
13	20	29	34		42. Hughes, Sarah	116	31.4
14	21	30	35		43. Lieb, Joe P	158	31.4
15	22	31	36		44. Dawkins, Benjamin C	126	31.7
16	23	32	37		45. Johnson, Frank M	191	32.6
		33	38		46. Spears, Adrian A	69	32.6
17	24	34	39		47. McRae, William A	150	32.7
18	25	35	40		48. Rice, Benjamin H	103	33.0
					49 Allred, James V	22	34.0
19	26	36	41		50. West, E. Gordon	160	34.0
					Bottom 25 percent:		
20	27	37	42		51. Choate, Emmett C	363	35.2
21	28	38	43		52. Fisher, Joe E	141	35.8
			44		53. Ellis. Frank B	49	36.3
22	29	39	45		54. Lynne, Seybourne	109	37.1
	30	40	46		55. Elliott, J. Robert	99	37.4
		41	47		56. Thomason, R. E	71	37.4
		42	48		57. Suttle, Dorwin W	53	37.8
					Bottom 15 percent:		
	31	43	49		58. Whitehurst, George W	78	37.8
			50		59. DeVane, Dozier A	38	38.1
	32	44	51		60. Allgood, Clarence W	86	39.0
					Bottom 10 percent:		
23	33	45	52		61. Carswell, G. Harrold	122	40.2
24	34	46	53		62. Cox, William H	196	40.6
25	35	47	54		63. Sheey, Joe W	109	41.7
26	36	48	55		64. Davidson, T. Whitfield	142	41.9
27	37	49	56		65. Mize, Sydney	106	43.8
28	38	50	57		66. Scarlett, Frank	224	45.7
29	39	51	58		67. Thomas, D. Holcombe	171	47.4

TABULATION OF DECISIONS ON EVERY APPEAL FROM EVERY DECISION OF EACH JUDGE IN THE DISTRICT COURTS OF THE FIFTH CIRCUIT—1958-69

Judge	Total number of decisions	Reversals	Affirmances	Affirmed in part, reversed in part	Reversal rate (percent)
Ainsworth, Robert A	62	8	53	1	13.7
Allgood, Clarence W	86	32	51	3	39.0
Allred, James V	22	7	14	1	34.0
Arnow, Winston E	13	4	9	0	30.8
Atkins, C. Clyde	46	10	33	3	25.0
Atwell, William H	18	9	8	1	52.8
Barker, William J	11	4	6	1	41.0
Battisti, Frank J	2	0	2	0	0
Bell	2	1	1	0	50.0
Blumenfeld	3	1	2	0	33.3
Boldt	2	0	2	0	0
Bowen	4	1	3	0	25.0
Bootle, William A	178	39	130	9	24.5
Boyle, Edward J	13	1	11	1	11.5
Brewster, Leo	90	17	65	8	23.3
Cabot, Ted	47	13	33	1	28.8
Carswell, G. Harrold	122	46	70	6	40.2
Cassibry, Fred J	21	2	19	0	9.5
Cecil	9	4	5	0	44.5
Christenberry, Herbert W	231	37	187	7	17.5
Choate, Emmet C	363	119	226	18	35.2
Clayton, Claude F	137	34	99	4	26.2
Comiskey, Janes A	10	1	8	1	15.0
Connally, Ben C	156	37	115	4	25.0
Cox, Allen	6	2	3	1	41.7
Cox, William H	196	75	112	9	40.6
Crave, Guthrie	30	8	22	0	26.8
Davidson, T. Whitfield	142	56	79	7	41.9
Davis, T. Hoyt	8	4	4	0	50.0
Dawkins, Benjamin C	126	38	84	4	31.7
DeVane, Dozier A	38	13	22	3	38.1
Dooley, Joe B	74	20	49	5	30.3
Doyle	2	0	2	0	0
Duncan	4	0	4	0	0
Dyer, David W	90	15	72	3	18.4
Eaton, Joe	29	5	24	0	17.2
Edenfield, Newell	27	4	23	0	14.8
Elliott, J. Robert	99	34	59	6	37.4
Ellis, Frank B	49	16	31	2	36.3
Estes, Joe E	80	12	63	5	18.1
Fisher, Joe J	141	47	87	7	35.8
Fulton, Charles B	100	26	69	5	28.5
Garza, Reynolds G	67	12	49	6	22.4
Grooms, Aalan Hobart	125	34	88	3	28.5
Graven, Henry N	18	4	14	0	22.2
Guinn, Ernest	53	14	37	2	28.4
Hannay, Allen B	83	18	61	4	24.1
Heebe, Frederick	15	3	12	0	20.0
Henderson, Albert J	4	2	2	0	50.0
Heoley	3	0	3	0	0
Hitchcson	2	1	1	0	50.0
Hoffman	5	0	5	0	0
Holland, John W	5	0	2	3	0
Hooper, Frank A	177	38	134	5	22.8
Hughes, Sarah T	116	33	76	7	31.4
Hunter, Edwin F	96	20	76	0	20.8
Ingraham, Joe M	216	63	150	3	29.9
Johnson, Frank M	191	61	127	3	32.6
Jones	95	13	78	4	15.8
Justice, William Wayne	2	2	0	0	100.0
Keady, William C	8	3	5	0	37.5
Kellam	2	1	1	0	50.0
Kennerly, Thomas M	2	1	1	0	50.0
Kerr	2	0	2	0	0
Krentzman, Ben	23	6	17	0	26.1
Lawrence, Alexander A	4	1	3	0	25.0
Lieb, Joseph P	158	47	106	5	31.4
Lynne, Seybourne H	109	37	65	7	37.1
Martin	14	8	5	1	60.7
Major	13	4	8	1	34.7
Mathes	11	2	8	1	22.7
McRae, William A	150	45	97	8	32.7
Mehrtens, William O	73	17	52	4	26.0
Mitchell, Lansing L	24	2	21	1	10.4
Mize, Sidney C	106	44	57	5	43.8
Morgan, Lewis	125	29	93	3	24.1
Nixon, Walter L	2	1	1	0	50.0
Noel, James L	56	13	41	2	25.0
Pittman, Virgil	28	6	21	1	23.2
Putnam, Richard J	52	13	39	0	25.0
Reeves, Albert L	17	4	9	4	35.3
Rice, Ben H., Jr	103	33	68	2	33.0
Rizley	3	0	1	2	33.3
Rives, Richard T	4	0	3	1	12.5
Roberts, Jack	56	13	42	1	24.1
Rubin, Alvin B	18	2	16	0	11.1
Russell, Dan M., Jr	30	8	22	0	26.7
Scarlett, Frank M	224	98	117	9	45.7
Scott, Charles R	45	5	36	4	15.6
Seals, Woodrow B	19	2	17	0	10.5
Simpson, Bryan	142	36	103	3	26.4
Singleton, John V., Jr	17	8	8	1	50.0
Sheehy, Joe W	109	43	61	5	41.7
Sloan, William B	108	14	89	5	15.3
Smith, Orma B	2	1	1	0	50.0
Smith, Sydney O., Jr	78	12	63	3	16.7
Soloman	3	0	3	0	0
Spears, Adrian A	69	20	44	5	32.6
Stephenson	2	1	0	1	75.0
Suttle, Dorwin W	53	20	33	0	37.8
Sweeney	4	2	2	0	50.0
Taylor, William M., Jr	29	5	21	3	22.4
Thomas, Daniel Holcombe	171	76	85	10	47.4
Thomason, R. E	71	25	43	3	37.4

TABULATION OF DECISIONS ON EVERY APPEAL FROM EVERY DECISION OF EACH JUDGE IN THE DISTRICT COURTS OF THE FIFTH CIRCUIT—1958-69—Continued

Judge	Total number of decisions	Reversals	Affirmances	Affirmed in part, reversed in part	Reversal rate (percent)
Thornberry, Homer	21	4	17	0	19.0
Tuttle	2	0	2	0	0
Underwood, E. Marvin					
Vaught	7	6	1	0	85.8
West, E. Gordon	160	51	102	7	34.0
Whitehurst, George W.	78	28	47	3	37.8
Whitfield	3	0	3	0	0
Woodward, Halbert O.	6	1	5	0	16.6
Wilkin	7	5	2	0	71.5
Wright, J. Skelly	143	29	108	6	22.4
Wyche	10	7	3	0	70.0
Young, George C.	73	19	54	0	26.1
All others	54	11	40	3	23.2
Page total	127	30	94	3	
Grand total	6,942	1,943	4,719	280	30.0
Carswell (repeated)	122	46	70	6	40.2

LOW CASELOAD, HIGH BACKLOG FURTHER EVIDENCE OF CARSWELL INADEQUACY

The "Reversal Trend" Graph [not printed in the RECORD] presents the most striking evidence of Judge Carswell's lack of legal accomplishment. The following facts illustrate that this reversal trend is no fluke.

1. Judge Carswell's rate of reversal on cases appealed dramatically increased during his tenure as Federal District Court Judge in the Fifth Circuit. In his first 30 appeals he was reversed on 25%. In his last 31 appeals, before his appointment to the Fifth Circuit Court of Appeals, he was reversed on 53.2%.

2. Simultaneously, his caseload decreased and his backlog increased. His rate of appeals per thousand cases terminated rose almost parallel with the national average, and slightly more strikingly than the other judges of the Fifth Circuit District Courts.

A. CASELOAD (BASED ON NUMBER OF CASES COMMENCED)

Judge Carswell began with a caseload of 353 when he was appointed to the bench of the Northern District of Florida in 1958. In terms of caseload, he was 11th of 16 districts in that circuit. In 1966, he was 17th of 17 districts in the same circuit, and remained so through 1968, despite the fact that Winston G. Arnow was appointed as a second Federal District Judge in the Northern District of Florida. (In light of the consistently light caseload, it is interesting that another judge was appointed at all.)

B. APPEALS PER THOUSAND CASES TERMINATED

Judge Carswell's high reversal rate, it would seem, cannot be explained by any supposition that only his wrong decisions were appealed from. In fact, Judge Carswell was appealed from slightly more often than the average rate for all Fifth Circuit Districts from 1958 to 1969, and on a parallel with the national average during the same time period. It might be thought that with such a light caseload and with more time therefore to work on opinions, Judge Carswell's decisions would have been less frequently appealed.

C. BACKLOG (CASES APPROPRIATE FOR TRIAL AND PENDING)

In 1958, Judge Carswell inherited a backlog of 126 cases. By 1966, his caseload (353 in 1958) had shrunk to 193 (17th of 17 districts in the Fifth Circuit), but his backlog had risen to 282. By June 19, 1969, the date to the Fifth Circuit Court of Appeals, with the appointment of a second judge in his Northern District of Florida, Judge Carswell's caseload was 160, but the backlog for the Northern District had dropped to 120. Furthermore, while the average caseload in Fifth Circuit District Courts was substantially higher than in Judge Carswell's court, the average backlog was lower. While the average caseload in Fifth Circuit District Courts increased, Judge Carswell's caseload decreased. While the average backlog in Fifth Circuit District Court decreased, Judge Carswell's backlog more than doubled.

CONCLUSION

In fiscal 1968, his last full year on the District Court, Judge Carswell handled 38% fewer cases than the average Federal District judge and 45% fewer cases than the average Federal District judges in his own Fifth Circuit. Nonetheless, Judge Carswell's civil cases, taking the median, were 75% more delayed in reaching trial than the United States average, and 133% more delayed than civil cases in the Fifth Circuit District Courts. Examining the most serious cases (those 10% delayed the longest), Judge Carswell's docket averaged 21% more delay than the national average and 42% more delay than the other Fifth Circuit District Court cases.

In light of these statistics, the assessment of mediocre is perhaps a charitable one. The statistics developed by the Law Students Concerned For the Court clearly reflect negatively on Judge Carswell's qualifications for the Supreme Court. The Supreme Court docket is well known to be most burdensome in terms of both caseload and complexity of issues presented.

It might also be pointed out that Canon Seven of the American Bar Association Code of Judicial Ethics states:

"A judge should be prompt in the performance of his judicial duties, recognizing that . . . habitual lack of punctuality on his part justifies dissatisfaction with the administration of the fusiness of the court."

Moreover, bearing in mind that 10% of the civil cases in Judge Carswell's court were more than 47 months old (3 yrs. 11 mos.) before they reached trial, it should be noted that the declared policy of the Federal Judiciary is that "every case pending three years or more and appropriate for trial be regarded as a judicial emergency."

These facts are uniquely relevant now, when the issues of law and order and due process are so important to the fabric of American life, when it is so important to restore confidence in the legal process.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

EXTENSION OF PROGRAMS OF ASSISTANCE FOR ELEMENTARY AND SECONDARY EDUCATION—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. CRANSTON). As in legislative session, the Chair lays before the Senate the pending question, which the clerk will state.

The ASSISTANT LEGISLATIVE CLERK. The report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 514) to extend programs of assistance on elementary and secondary education, and for other purposes.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, will the Senator from Indiana yield for a unanimous-consent request?

Mr. BAYH. I yield.

SUPREME COURT OF THE UNITED STATES

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the further consideration of the nomination of Mr. George Harrold Carswell.

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

In executive session, the Chair lays before the Senate the pending business which the clerk will state.

The ASSISTANT LEGISLATIVE CLERK. The question is, Will the Senate advise and consent to the nomination of George Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. BAYH. Mr. President, yesterday the Senate unanimously agreed to vote on April 6 on a motion to recommit the nomination of Judge Carswell, pursuant to the unanimous-consent agreement as set forth on page 9314 of the CONGRESSIONAL RECORD. Pursuant to that unanimous-consent agreement, where there is reference to a motion to be made by the Senator from Indiana, with the understanding that the vote will come on April 6 on the motion to recommit, at this time I do hereby move that the nomination of Judge G. Harrold Carswell be recommitted to the Committee on the Judiciary.

The PRESIDING OFFICER. The motion is in order.

Mr. DOLE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOLE. Mr. President, would that still be subject to a motion to table?

The PRESIDING OFFICER. Under the same conditions as set forth in the unanimous-consent agreement. That is correct.

(The following proceedings, which occurred earlier today, are printed here by unanimous consent.)

Mr. FULBRIGHT. Mr. President, since the conclusion of hearings and the report of the Judiciary Committee on the nomination of Judge Carswell to be an Associate Justice of the Supreme Court, a number of additional questions have been raised concerning Judge Carswell's qualifications. These are questions which the Judiciary Committee did not have the opportunity to consider.

I refer particularly to the uncertainty which has arisen regarding the willingness—or lack of willingness—of Judge Carswell's colleagues on the Fifth Circuit Court of Appeals to endorse his nomination. The record, as we know, contains a

crease our firepower support to ground troops.

"Moreover, we want to provide much more mobility to all echelons. In Vietnam we started out with each Division Commander having his own chopper to get above the action and get a better view. We finally worked this air mobility concept down to the battalion level.

"In the future we want to get it down to the company level. The helicopter is a true substitute for the horse.

"With aviation integrated into the ground forces, we can achieve a closer degree of battlefield cooperation with our air elements. We can place fire more accurately and stay on target longer. We can cut down the waiting time for air support and, with aviation integrated into the ground units, we can better anticipate our air support needs on the spot—outthinking the enemy and keeping a step ahead of him.

"If Army Aviation is to make progress in the '70s," Klingenhagen asserted, "we have to pay the price of more sophisticated machines. Of course we may not have to buy as many to do the job. The three primary areas of concern for the coming decade will be providing more firepower, more mobility and a heavier lift capability."

THE NOMINATION OF JUDGE GEORGE HARROLD CARSWELL

Mr. THURMOND. Mr. President, one of the most valuable assets a man can possess is experience. It is through experience that men learn, mature, and develop wisdom. The world has learned that the value of mature men is not their age but that they have observed through the years various phenomenon and have thereby gained insight and understanding; but is better described as experience.

In Judge George Harrold Carswell, we find a man of experience.

Indeed, he has had considerable experience for a man of so few years. Judge Carswell was born in Irwinton, Ga., 51 years ago. He attended public school in Irwinton, Atlanta, and Bainbridge, Ga., before entering Duke University in 1937. He graduated from Duke University 4 years later and engaged himself in the study of law at the University of Georgia. His career as a legal scholar was interrupted by the advent of World War II. Upon returning from that conflict, Judge Carswell resumed his study of jurisprudence and graduated from the school of law at Mercer University in June 1948.

His tour of duty from 1942 until the end of the war included service aboard the U.S.S. *Baltimore* with both the 3d and 5th Fleets during engagements at Taiwan, Kwajalein, and Iwo Jima. In March 1945 he transferred to the U.S. Naval Academy at Annapolis where he did postgraduate work. He left the service in November of that year with the rank of lieutenant.

An acquaintanceship with the intricacies and subtle fine points of the law was not the only experience gained by the judge during his tenure at Mercer. While there he taught undergraduate English, edited a weekly newspaper, organized a telephone company, and served as president of the student government.

Truly the fact of his ability to engage in such a diverse and demanding extracurricular schedule demonstrates his great industry and an unusual capacity for productive endeavor at an early age.

In 1948, as a young lawyer, he ran for the Georgia State Legislature. Although he was defeated, there can be no question that the seeking of an elected office is an experience of inestimable value: It teaches one humility, gives a sense of perspective, and acquaints one with the vital issues of the day.

Moving to Tallahassee in 1949, he entered private law practice as an associate in the firm of Leroy Collins where he remained until 1951 when he organized the firm of Carswell, Cotton & Shrivers. Thereafter, he continued practice until his appointment as U.S. attorney in July 1953.

Judge Carswell proved to be a competent and able Federal advocate and in 1958 became the chief judge of the U.S. District Court for the Northern District of Florida. At the time of his appointment to the Federal bench, he was the youngest member of the Federal judiciary in the United States.

In mid-June 1969, Judge Carswell was appointed to the Fifth Circuit Court of Appeals, a post which he now holds.

Mr. President, we can see that Judge Carswell has had experience as a student, a soldier, a teacher, lawyer, U.S. attorney, Federal district judge, and Federal appellate judge.

If no other factors were present, these experiences alone would qualify this man for the position to which he has been nominated.

However, let us look a bit further at the experiences of the nominee.

During his years on the Federal bench, Judge Carswell has been unusually active in the field of judicial administration. He has served as a member of both the Judicial Conference's Committee on Statistics, which plays an important role in recommending to Congress the creation of additional Federal judgeships, and its committee on personnel, which deals with problems relating to the administration of the judiciary. In April 1969, Judge Carswell was chosen by the circuit and district judges of the fifth circuit as the circuit's district judge representative to the Judicial Conference. 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 committee to require disclosure of outside employment, and to regulate it in other ways.

It would seem clear, therefore, that Judge Carswell has realized great knowledge and ability through his varied experiences.

The record compiled by Judge Carswell as a jurist indicates that he has presided over a variety of different types of cases ranging from administrative law to wrongful death, including such subjects as civil rights, criminal law, habeas corpus, labor law, and other areas as complex as taxation and insurance.

Sometimes people forget that the Supreme Court hears a number of cases each year that do not involve civil rights and criminal law. Judge Carswell's experience in treating with different subjects will be of great benefit to the Court.

A review of the decisions he has written or participated in demonstrate his ability to single out the issue of the case, bring together the facts and applicable law, and succinctly state the conclusion with brevity and exactness. This style of writing judicial opinions is somewhat unique today, for the opinions of many of our judges are too long and superfluous. This style of legal writing indicates that Judge Carswell is capable of exactness in considering and interpreting a question of law. This ability certainly commends him to the position for which he has been selected.

Mr. President, so far I have made certain observations concerning the experience, knowledge, and ability of the candidate under consideration for confirmation to the Supreme Court as Associate Justice.

I ask my colleagues, are my observations and conclusions correct? Are they reflected by others who have turned an objective eye toward the nominee?

In evaluating the qualifications of Judge Carswell, the Judiciary Committee received the opinion of the American Bar Association. Lawrence E. Walsh, a former Federal judge and chairman of the American Bar Association's prestigious standing committee on the Federal judiciary, reported by letter to the Judiciary Committee:

> On the basis of its investigation the committee has concluded, unanimously, that Judge Carswell is qualified for appointment as Associate Justice of the Supreme Court of the United States.

In his letter, Judge Walsh exp'ained the nature of the examination which had led to that conclusion by stating that the committee's opinion was based upon the views of a cross section of the best informed lawyers and judges as to the integrity, judicial temperament, and professional competence of the nominee.

The high esteem in which Judge Carswell is held by his colleagues is further demonstrated by the fact that several of his fellow circuit judges have submitted letters to the Judiciary Committee in support of the nomination. Judge Robert A. Ainsworth, Jr., stated in his letter that "undoubtedly he will bring distinction, credit, and honor to our Highest Court." Judge Warren L. Jones praised Judge Carswell "as eminently qualified in every way: personality, integrity, legal learning, and judicial temperament for the Supreme Court of the United States." Judge Bryan Simpson and Homer Thornberry expressed the same opinion. These commendations given Judge Carswell by his colleagues are impressive indeed.

Mr. President, on the basis of the objective record, no man can rationally conclude that Judge Carswell is not qualified by experience on the Federal bench to serve on the Highest Federal Bench as Associate Justice of the Supreme Court.

There are those who would make the incredulous argument that because Judge Carswell has not written a number of law review articles he is not qualified to sit on the Supreme Court. The writing of articles for law reviews has never been and is not now a prerequisite to confirmations to the Supreme Court. Further, the position has been asserted by certain smug and self-righteous, self-styled experts on the Court that the quality of legal education dis-

pensed at any law school other than at certain ones in the northeastern section of this country is less than acceptable for candidates to the High Court. This argument is the result of prejudice and snobbishness, and should be rejected out of hand. To proffer such a postulate as a legitimate criteria for judging candidates for the High Court is folly—law schools can only be judged by the performance of their graduates, and you may rest assured that no single law school in the Nation has any monopoly on good graduates.

So much for the trite arguments that have been bantered about as to his judicial qualifications.

Mr. President, the ugly specter of racism has been deliberately raised by certain opponents of Judge Carswell. It could be suspected with reasonable accuracy that those people who have raised these arguments would be opposed to Judge Carswell or any nominee solely on the basis of his being from the South, and not having spent his life apologizing for the fact.

The ostensible basis for the charge of bigotry is a statement made by Judge Carswell when he was a candidate for the Georgia Legislature in 1948. This is over two decades ago, and he has categorically renounced that unfortunate utterance.

Like drowning men clutching at straws, the enemies of the nomination point to a charter to a country club and a deed to a house which allegedly proved the prejudice of Judge Carswell. The record bears vivid testimony to the abject failure of the evidence contained within these documents to indict him for racism. Former Florida Gov. Leroy Collins, a man possessing impeccable liberal credentials, stated before the Judiciary Committee:

> Judge Carswell, Gentleman, is no racist. He is no white supremist. He is no segregationist. I am convinced of this.

Let me point out that Governor Collins also owned an interest in the country club in question, and no one has ever hinted or suggested that that fact proved he was a racist. If it does not prove that Leroy Collins was a racist, Mr. President, it does not prove that Judge Carswell was a racist. Further, the list of prominent Americans of all political persuasions who have committed these particular sins is so long as to make this argument worthless.

Prof. James W. Moore, Sterling professor of law at Yale University, before the Judiciary Committee, recounted having met Judge Carswell while being consulted in connection with the Carswell record in racial cases, saying:

> If this were not so serious, this charge of racism against Judge Carswell, it would almost be funny. By that I mean it is certainly ironic, because you know in Florida many people regard certain parts of the Northern District of Florida as a little bit to the right of Louis the 14th, and I can tell this committee in all sincerity and honesty that Harrold Carswell has displayed unusual courage I think and faithfulness to the law that he serves in his civil rights rulings, in an altogether hostile climate.
>
> I think he is a very strong man. I was shocked to read the speech, the young man's speech he made, because in all of my dealings with Harrold Carswell including the *Brooks* case I would have thought he was just the opposite, and most people who had dealings with him in Tallahassee feel that he is indeed a fine judge. He believes in liberty and justice for all, and there is no two ways about it.
>
> My particular reason for writing you at this time is that I am fully convinced that the recent reporting of a speech he made in 1948 may give an erroneous impression of his personal and judicial philosophy and I would be prepared to express this conviction of mine based upon my observations of him during the years I was privileged to serve as chief judge of the Court of Appeals for the Fifth Circuit.

Judge Bryan Simpson of the Fifth Circuit Court of Appeals praised Judge Carswell as a legal craftsman and then added:

> More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: Superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an openminded disposition to hear, consider and decide important matters without preconceptions, predilections, or prejudices. I have always found him to be completely objective and detached in his approach to his judicial duties.

Judge Homer Thornberry observed:

> Judge Carswell has the compassion which is so important in a judge.

Mr. President, a group of northern lawyers testified before the committee that they had gone to Florida to represent civil rights plaintiffs in Judge Carswell's court, and that he had evidenced hostility toward them and their clients. These charges were handily rebutted by the statements of several individuals.

Mr. Charles F. Wilson, Negro civil rights attorney who represented criminal and civil rights litigants before Judge Carswell stated:

> As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court, there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions. I represented the plaintiffs in three of the major school desegregation cases filed in his district. He invariably granted the plaintiffs favorable judgments in these cases, and the only disagreement I had with him in any of them was over the extent of the relief to be granted.

One of the most persuasive arguments against the charge of racism was made in a letter by Mr. Allen L. Levine of the State of Massachusetts which was addressed to the Honorable F. BRADFORD MORSE, a Member of the House of Representatives from that State. The letter is long and so I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. THURMOND. Mr. Levine was in the Navy with Judge Carswell and the essence of this testimony is found in a few sentences which I shall read:

> My own position is this: I have no ax to grind for or against whatever position the Senators may take, but I hope that you may find useful the opinions of a concerned constituent who happens to have had some extended personal contact with Judge Carswell. My opinion is that Judge Carswell was not and is not a racist or bigot.

Mr. President, just as in a former hearing on the same subject, the Judiciary Committee tolerated an entourage of self-styled experts on the law, some of whom were not lawyers, who spewed forth their venom against Judge Carswell.

Each one assured the committee that he had objectively reviewed the record of the nominee and had reached the conclusion that he was unqualified and they were opposed to him. Mr. President, is there anyone so naive that he would believe that the opposition to this man is based on any rational or objective foundation?

These witnesses concentrated primarily on the school desegregation cases handled by Judge Carswell. This fact in itself clearly demonstrates their lack of objectivity, for Judge Carswell has dealt with a number of different kinds of cases and yet they were not mentioned in the testimony.

The basic belief of the ultraliberal is that if a law is bad it is not to be obeyed. This sort of premise leads directly to the destruction of our republican form of government and ultimately to anarchy.

The criticism of those who oppose Judge Carswell is based on the premise that a judge should not support or obey a law which in their opinion is bad but should go beyond the law and through the process of opinion writing destroy the existing law and impose in its place his own brand of law.

Judge Carswell's treatments of the issues before him have been in accordance of the law as it was at the time the matter was in his court. In this context I call attention to an article that appeared in the New York Times written by Fred P. Graham. The article is a lengthy one and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. THURMOND. This article bears witness, as do the decisions of Judge Carswell, to the fact that Judge Carswell understands and practices the proper role of a jurist as it should be practiced in our system of government; namely, that he is to apply the law, not as it should be, or used to be, or ought to be, but as it is.

Mr. President, look at the record. This man is no zealot and yet he is accused of being a racist and of being incompetent by some people who are zealots. The ultra-liberals have come here mouthing the pretty platitudes of the left, both old and new, but after one removes the slick veneer from his pious pronouncements of objectivity it is readily obvious that they simply oppose anyone who will not rule their way in every case, every time, even if it means complete disregard of the rule, letter, and spirit of the law. The opposition posed by these individuals is purely political and without substance.

Mr. President, this man is qualified, both as a student and practitioner of the law. The Senate has confirmed his

nomination to high Federal positions three times, two of which nominations were to the Federal bench. In doing so, this body has gone on record as approving his qualifications to sit on the Federal bench.

Some time ago, the ultra-liberals in this country decided that Congress would not go along with all of their ill-conceived visionary schemes, so they turned to the other branches of Government and found the courts most vulnerable to their arguments. They have enjoyed a virtual monopoly on judicial appointments until this administration, and they have reacted by vicious and unwarranted attacks on President Nixon's appointments.

The American judicial system is the backbone of our Republic, because the court is the place where the citizen can redress his grievances, sue his Government, and right his wrongs without force or violence. To undermine the court is to undermine the Nation, and to destroy the court is to destroy the Nation.

So we come to the crux of the matter—if Carswell or any other strict constructionist is denied a seat on the Court, it will remain outside the constitutional boundaries set by our forefathers; but if Judge Carswell is confirmed, then a balance will be effected on the High Tribunal, and the system of checks and balances will again function within the constitutional framework.

Mr. President, we must look to the dangers of refusing confirmation. Congress legislates; the Executive legislates through Executive orders, regulations, and bureaucratic fiat; and the Supreme Court has taken upon itself to legislate. Where, indeed, is our system of checks and balances? It appears that it is dormant, but it must be revived and renewed. The only way to resurrect these checks and balances is to balance the court, and it will require the placing of a strict constructionist such as Judge Carswell on the Supreme Court to accomplish this purpose. By confirming Judge Carswell, we shall accomplish more than fill a vacancy on the Supreme Court; we shall by that action reaffirm our belief in the American system of checks and balances.

Mr. President, I support the confirmation of Judge George Harrold Carswell to be Associate Justice of the Supreme Court and I call on my colleagues to support President Nixon in his choice of this able and dedicated American.

EXHIBIT 1

JANUARY 24, 1970.

Hon. F. BRADFORD MORSE,
House of Representatives,
Washington, D.C.

DEAR BRAD: Although I realize that you will not be called upon to vote on the confirmation of Judge G. Harrold Carswell, I am writing to you to share information which may be of some interest to those who will be required to decide how to vote on the matter.

You have no doubt read that Judge Carswell served in the United States Navy during World War II. He and I reported for duty aboard the U.S.S. Baltimore early in 1943 at the Fore River Works in Quincy, Mass. We were both newly-commissioned ensigns, and we were put in the junior officers bunkroom together with about twenty other civilians in uniform.

The Baltimore shook down in the Caribbean, then went to the Pacific and operated as part of the fast carrier striking force screen, participating in all the invasions of the Central Pacific campaign, Gilberts, Marshalls, Saipan, Guam, Iwo, Philippines, Okinawa—interrupted only by a return to the West Coast in August, 1944 to pick up President Roosevelt and take him to Pearl Harbor to meet with General MacArthur and Admiral Nimitz.

George Carswell and I were aboard all during that period, until he was detached in February, 1945, to attend staff school, and I was aboard until May, 1945, when I was ordered to Japanese Language School. We were promoted to junior grade lieutenants and moved out of the J.O. bunkroom and into a cabin for two officers, where we were roommates for about a year. We had a chance to learn each other's views during a period when we were both under a good deal of combat-generated emotional pressure. I think that under such circumstances a lot of basic human values become evident, and during that year we talked about everything under the sun—education, politics, philosophy, sex, history, movies and anything else that came to mind.

During all that time, I never heard George utter any point of view that could be described as racist or illiberal. His attitude was a truly humanistic and liberal one in that he reacted to people as individuals and not as stereotypes. This was especially apparent in his behavior toward black sailors. At that time Navy policy was segregationist, and black sailors afloat could only serve in the wardroom mess as stewards mates. There were other officers of Southern origin who were outspokenly antagonistic to the steward's mates for racial reasons, but George Carswell was always pleasant and considerate to all. Our Gunnery Officer, Comdr. Truesdell, felt that the steward's mates ought to be given the opportunity to serve in a more meaningful capacity, and saw to it that their station at general quarters was to man a battery of 20 millimeter anti-aircraft guns. While other officers questioned the desirability of this, George Carswell was enthusiastically in favor of it.

I remember that once during a shore excursion in the forward area George and I together encountered for the first time a black petty officer, evidence that at long last the Navy was beginning to move away from its segregationist policies, and George could see the wisdom of that too.

In view of the attacks on Judge Carswell's legal philosophy by civil libertarians, and especially in view of the pro-segregationist views expressed in his campaign for election to the state house of representatives from a rural constituency in Georgia in 1948, which he recently has firmly and, I am convinced, sincerely repudiated, I am sure that members of the Senate must be subject to pressure to vote against his confirmation to the Supreme Court. At the same time I am sure that the Administration would welcome an expression of regularity and support by an affirmative vote.

My own position is this: I have no axe to grind for or against whatever position Senators may take, but I hope that you may find useful the opinion of a concerned constituent who happens to have had some extended personal conflict with Judge Carswell. My opinion is that Judge Carswell was not and is not a racist or a bigot. He is a warm, friendly, outgoing person, extremely intelligent, and about as liberal as the Southern milieu into which he was born could produce at that time. I have no fear of his subverting past actions and decisions of the Court should his appointment be confirmed. While I do not think that his elevation to the Court would warrant the probability of his development into a liberal of the Hugo Black variety, neither do I believe that we should fear the emergence of a modern Roger B. Taney. Out of personal knowledge and affection for George Carswell as I knew him during the war, I am happy to be able to give some justification for a favorable consideration of his appointment.

Sincerely yours,

ALLAN L. LEVINE,
Executive Vice President, Towers Motor Parts Corp., Lowell, Mass.

EXHIBIT 2

CARSWELL'S CREDO IS RESTRAINT

(By Fred P. Graham)

WASHINGTON, January 20.—Judge G. Harrold Carswell, President Nixon's new nominee to the Supreme Court, has a virtually unblemished record as the type of "strict constructionist" that Mr. Nixon promised to appoint when he campaigned for the Presidency.

In speeches across the country, Mr. Nixon promised to name men to the high court who would "interpret" the law, not "make" it.

In 11 years as a Federal District judge in Tallahassee, Fla., and in six months as a member of the United States Court of Appeals for the Fifth Circuit, Judge Carswell sprinkled the lawbooks with opinions on matters ranging from civil rights to the legality of Florida's poultry law.

Throughout these opinions runs a consistent tendency to view the law as a neutral device for settling disputes, and not as a force for either legal innovation or social change.

AN IRONIC COMPARISON

An ironic byproduct of this consistency is that Judge Carswell's judicial record is more conservative than that of Judge Clement F. Haynsworth Jr., who was defeated for confirmation to the same seat by liberal forces that branded him as a conservative who was "not a contemporary man of the times."

Judge Haynsworth was ahead of the Supreme Court in devising fuller review for state prisoners in Federal habeas corpus proceedings, and occasionally anticipated the high court in ruling in favor of Negroes in civil rights cases.

An exact comparison with Judge Carswell is difficult, as the new nominee served as a trial judge much of the time, and most of his opinions dealt with day-to-day issues rather than sweeping constitutional matters. But the lawbooks contain at least 25 appellate opinions he wrote when he sat, as District judges frequently do, on the Court of Appeals.

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

ATTITUDE OF RESTRAINT

This attitude of restraint has generated friction only in the field of civil rights, where Judge Carswell's policy of sticking with settled precedents until change came from higher courts had the result of allowing dilatory school officials to delay segregation.

An example was provided when parents of Negro children in the Pensacola area sued to break up the segregation of faculty and staffs in the formerly all-black school. Although the higher courts had not said in so many words that faculty, as well as student, segregation must end, lawyers for the Negroes argued that these courts could not have meant that the newly integrated schools would be staffed with all-black and all-white faculties. Judge Carswell ruled otherwise.

"The Brown cases," he wrote, referring to the Supreme Court's landmark school decisions of 1954 and 1955, "hold that the segre-

gation of white and Negro children on the basis of race denies to Negro children equal protection of the laws guaranteed by the 14th Amendment to the Constitution." He put the word "children" in italics, and went on to state that these decisons and subsequent ones by the Fifth Circuit did not reach the question of faculty desegregation.

NOT DIRECTLY AT ISSUE

"This court can not indulge in a presumption that these Federal courts decided the points of law asserted by plaintiff by inference," he said, because staff members' rights were not directly at issue in those cases.

Finally, he declared, students have no standing to intervene in such matters: "Students herein can no more complain of injury to themselves of the selection or assignment of teachers than they can bring action to enjoin the assignment to the school of teachers who were too strict or too lenient."

Some civil rights lawyers who have appeared before Judge Carswell have charged that his tendency to issue declaratory judgments rather than injunctions—to hand down limited desegregation orders rather than sweeping ones—was a convenient use of judicial self-restraint to cloak segregationist sympathies.

Leroy D. Clark, a professor of law at New York University, who formerly headed the operations of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., in northern Florida, asserted in an interview today that Judge Carswell had repeatedly delayed school cases by failing to rule until pressed to do so, and then by often issuing decisions that were palpably wrong and quickly reversed.

"We would have a hearing and it would take several months for him to rule," Mr. Clark said. "I would have to file a motion to ask him 'would you please rule?'—which is outrageous.

"It was my view that of the Federal District judges I appeared before, Harrold Carswell was clearly the most openly and blatantly segregationist. He was a clever and an intelligent man, so that when he was wrong on the law it wasn't because he didn't know what the law was—it was because he was biased."

* * * wrote a political science dissertation in 1968 that analyzed the civil rights decisions of the 31 Federal District judges appointed to posts in the Deep South between 1953 and 1963.

When she ranked the 31 judges in terms of the number of times they had ruled in favor of Negro plaintiffs' position, Judge Carswell ranked 23d. Her study showed that, of his civil rights decisions to be appealed, 60 per cent were reversed.

In most of these cases, Judge Carswell would have had to move beyond clearly settled precedents to rule in favor of the civil rights position. When these precedents have existed, He has struck down segregation in crisp forthright opinions.

In 1965, he declared that the barber shop in Tallahassee's Duval Hotel had to serve Negroes under the public accommodations provision of the Civil Rights Act of 1964.

He brushed aside a barber's assertion that he was not covered because 95 per cent of the customers were local people and not guests in the hotel. "From a reading of the act it is clear," Judge Carswell observed, "that relative percentages of local, as compared to transient, customers may not be used as criteria to determine coverage."

PROSPECTS BRIGHTER

In 1960 when Tallahassee Negroes sued to desegregate the counters, waiting rooms and restrooms in the city-owned airport, he did not hesitate to order desegregation.

Even though Judge Carswell's civil rights record may be fully as objectionable to civil rights forces as that of Judge Haynsworth, the new nominee's prospects for confirmation seem much brighter, partly because he has not antagonized organized labor as Judge Haynsworth had.

Federal District Judges rarely rule on labor cases, which are usually appealed from the National Labor Relations Board directly to a Court of Appeals.

Tom Harris, the official of the American Federation of Labor and Congress of Industrial Organizations who led the successful attack against Judge Haynsworth, said today that Judge Carswell "doesn't appear to have a significant record on labor cases." He said the AFL–CIO had no plans at present to oppose him.

The few labor opinions that Judge Carswell has written reflect his reticence to use judicial power and his tendency not to extend the judiciary's power.

SOME DISSENTING OPINIONS

In one decision, when a three-judge Court of Appeals ordered a soft-drink company to comply with the minimum wage laws, he dissented, saying: "It is my view that the injunctive power of courts should never be invoked lightly, nor should it be converted into a mere ministerial function triggered automatically upon the finding of an infraction of the law."

Judge Carswell's opinions tend to be bloodless documents, setting out the facts and the precedents, then briskly coming to a conclusion that is said to be within the precedents.

He is not given to broad statements of his philosophy, but his creed at this point in his career seems to have been summed up in one statement from an opinion he wrote shortly after he became a judge in 1958: "Established law, with its imperfections, must nonetheless be applied as it is and not on the predilections of the court."

WHY THE LONG DELAY IN RELEASING THE LAOS TESTIMONY

Mr. SYMINGTON. Mr. President, it is now more than 5 months since the Subcommittee of the Foreign Relations Committee on U.S. Security Agreements and Commitments Abroad completed its hearings on Laos.

The record of those hearings remains classified top secret at the insistence of the State Department. That record contains a great deal of information about U.S. activities in Laos which the American people should know and have a right to know. Repeated attempts on the part of the subcommittee to persuade the State Department to declassify portions of the record, however, have been to no avail.

We want it to be clear, Mr. President, that we have never suggested the entire record should be published. I agree it contains some material which should not be published. But it contains a great deal of material which should be published if the American people are to maintain that proper confidence in their Government.

Almost daily the press makes more revelations—or raises more questions—about what is going on in Laos, and in Thailand as it affects Laos.

The Washington Star, in a dispatch by Henry S. Bradsher from Udorn, Thailand, March 15, described how the air war in Laos is run out of seven bases in Thailand, sometimes with unmarked planes.

The Washington Post on March 16, in a dispatch by T. D. Allman from Vientiane, reported in detail how 12 Americans were killed 2 years ago defending a secret air navigation facility at Phou Pha Thi, Laos.

The Washington Star on March 17, in a dispatch by Tammy Arbuckle, described the evacuation of Sam Thong, Laos, by Air America. This story went on to say that there have been approximately 70 Americans in the Sam Thong-Long Chien area armed with M–16 rifles and captured Communist AK–47 submachineguns.

In a dispatch from Vientiane March 20, the Associated Press reported that two Thai battalions have been flown to Long Chien in U.S. civil aircraft to help defend that Army base from an expected North Vietnamese onslaught.

On March 23, a story from Bangkok by Jack Foisie in the Washington Post described other Thai activities in Laos. According to this story, two Thai artillery battalions were used in Laos last year under American auspices during the defense of Muong Soui. Further, according to Mr. Foisie, Thai pilots have flown T–28 bomber planes, and Thai observers fly in spotter planes to direct artillery fire and bomber strikes.

On March 22, the Associated Press had the Thai Premier himself admitting that some volunteers may have gone to Laos.

On March 23, the Christian Science Monitor stated flatly, "A Thai artillery battalion is operating in Laos with the support of the United States."

And finally, on March 25 a story from Vientiane in the Washington Star described in some detail an American-directed secret army which operates all through Southeast Asia.

I ask unanimous consent that the full texts of the newsstories to which I have referred may be printed in the RECORD at the conclusion of these remarks.

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

(See exhibit 1.)

Mr. SYMINGTON. Mr. President, I again urge the State Department to agree to telling the American people the facts. What the Thais may or may not be doing in Laos is a matter between the Thais and the Laotians—unless the United States is paying for it, in which case it becomes a legitimate matter of public concern for the citizens of the United States.

The President himself stated it best in his televised address of November 3 last year:

> The American people cannot and should not be asked to support a policy which involvss the overriding issues of war and peace unless they know the truth about that policy.

EXHIBIT 1

[From the Washington Star, Mar. 15, 1970]

UDORN AIR BASE IN THAILAND U.S. MAINSTAY IN LAOS FIGHT

(By Henry S. Bradsher)

UDORN, THAILAND.—When President Nixon admitted nine days ago the well-known fact that the U.S. Air Force is flying combat support missions for the government of Laos, he did not mention where the bases are.

The biggest of them is on the southern edge of this dusty northeast Thailand town.

The 36 F4D Phantom supersonic fighter-bombers stationed at Udorn fly day and night to attack North Vietnamese forces in Laos.

ORDER FOR RECOGNITION OF SENATOR MANSFIELD

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may be permitted to proceed for not to exceed 15 minutes, following the conclusion of the remarks of the Senator from Vermont (Mr. AIKEN).

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

ORDER FOR CONVENING OF THE SENATE AT 9:15 A.M. TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, instead of the Senate convening at 9:30 a.m. tomorrow, it convene at 9:15 a.m. and that the first 15 minutes be allocated to the distinguished Senator from Ohio (Mr. YOUNG), to be followed, then, by the remarks, not to exceed 30 minutes, of the distinguished Senator from Indiana (Mr. HARTKE).

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

ORDER FOR RECOGNITION OF SENATOR BYRD OF WEST VIRGINIA

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, following the remarks of the able majority leader today, for which an order has already been entered, I be recognized for not to exceed 20 minutes.

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

ORDER OF BUSINESS

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

NOMINATION OF G. HARROLD CARSWELL

Mr. YOUNG of Ohio. Mr. President, Judge G. Harrold Carswell is a mediocre judge at best. Furthermore, as a judge he has in recent years displayed personal bias against members of the Negro race. On many occasions he has been hostile and tyrannical against black defendants and their lawyers. As a citizen in his community and as a judge, his conduct has been such as to cause trial lawyers to regard him as prejudiced against those who believe in complete civil liberties and civil rights for all Americans regardless of race or color.

Four distinguished New York lawyers, Bruce Bromley, former New York appeals court judge, Francis T. P. Plimpton, president of the Association of the Bar of the City of New York, and two former presidents of that prestigious bar association, Samuel I. Rosenman and Bethuel M. Webster, have issued a statement that—

> We do not believe that Judge Carswell has the legal or mental qualifications essential for service on the Supreme Court or any high court in the land, including the one where he now sits.

They expressed deep concern that in 1956, in Tallahassee, Fla., Carswell, then U.S. states attorney was connected with and contributed money to the incorporation of a private golf club. Then, the public golf course of the city of Tallahassee, which had been constructed with WPA grant of public funds, was leased to the private golf club Judge Carswell had participated in incorporating. The lease was for 99 years at $1 a year.

At the time and during preceding years, there had been agitation in Tallahassee to force desegregation of the city's public golf course. U.S. Attorney Carswell was active in the transfer of this public golf course to his all-white private golf club.

What U.S. Attorney Carswell did was to join with others for the purpose of denying blacks the right to use a golf course supported by their taxes at a time when he was sworn not to deny constitutional rights but to uphold them.

Mr. President, it is evident to me that Judge Carswell is a bigot. I will vote against his confirmation.

Furthermore, I do not go along with the views of those who say that possibly he is a mediocre judge, but we need some ordinary, mediocre persons as judges of our courts. Very definitely, there should not be mediocrity on the Supreme Court of the United States.

Mr. President, starting with Judge C. William O'Neill of the Ohio Supreme Court and considering Republican judges of our Circuit Courts of Appeals, Common Pleas Courts and Ohio Federal Court judges, I can tick off the names of 10 or more Republican Ohio judges who are far superior to Judge G. Harrold Carswell as jurists and students of law. Any one of them, I am certain, would be far better qualified to serve with distinction on the U.S. Supreme Court.

I would expect President Nixon to fill Federal court vacancies with Republicans who hold to conservative views. I go along with all that. However, I am sure there are hundreds of Republican judges of the various U.S. courts among about 440 Federal judges who are extremely well qualified. Also, judges in our 50 States who would qualify as conservatives and have backgrounds and records as distinguished lawyers and jurists. Very easily it seems to me, our Attorney General and President Nixon should have come forward with such an eminent jurist respected and admired for his wisdom, integrity, and his compassion in dealing with lawyers and witnesses. It is my opinion that Judge Carswell is not such a man.

It is unfortunate for this administration that the Attorney General, who is supposed to advise the President on his judicial nominations, was a Wall Street lawyer considered an expert on municipal bonds, but altogether lacking in trial experience. He knows little or nothing firsthand regarding court trials and trial lawyers and the caliber of lawyers, students of the law and experienced judges capable of serving on the highest court of our land.

Mr. President, it happens that I was a trial lawyer for more than 50 years trying lawsuits in the State and Federal courts of Ohio and frequently in Pennsylvania. Some years ago I was chief criminal prosecuting attorney of Cuyahoga County. I have personally prosecuted hundreds of felony cases, including more than a hundred homicide cases and later as a trial lawyer, over the years I have defended some hundreds of men and women defendants in criminal cases in U.S. district courts and in the trial courts of my State. Also, in past years I have served as president of two bar associations in Cuyahoga County. I believe I know something about the qualifications essential for a judge.

That Judge Carswell signed a covenant on real estate he deeded a couple of years ago with an illegal restriction that his property must not be sold to anyone except of the Caucasian race is some evidence of his personal unfitness to sit as an Associate Justice of the most powerful court in the world.

Incidentally, in 1960 I purchased the Washington residence which I now occupy. At that time this home in northwest Washington was occupied by Adm. George Dufek. In my negotiations with the admiral and a real estate agent, I encountered no real difficulty in agreeing on the purchase price and having made my downpayment was about to pay the balance. A group of real estate agents, including an attorney, came into my Senate office. I read the deed they had prepared for me and was shocked to find it provided that the grantee—that is I, buying the property—agree he would not sell this real estate to any person other than a member of the Caucasian race. This was the same restrictive covenant that Judge Carswell signed regarding his property. I refused to sign this restrictive covenant. Real estate agents and their lawyers gathered in my office like vultures around a dead body. Their arguments rolled off me like water off a duck's back. I said, "I know the law. Since you claim this bigoted restriction is unlawful and, therefore, meaningless, you go ahead and blot it out. You go ahead and draft a new deed. I will sign it without that restriction. Otherwise, very definitely the deal is off." They brought in another deed which I signed.

Of course, Judge Carswell could have refused to agree to that restriction the same as I refused. The real estate agents provided me with a deed without this unconstitutional, bigoted restriction. In my opinion that Judge Carswell signed such a restriction is an indication of his insensitivity to complete civil liberties for all. It already reveals his personal unfitness to sit as an Associate Justice of our Supreme Court.

Particularly distressing about the nomination of Judge Carswell is the fact that it is one more symbol of the indifference to racial justice displayed by this administration. Those who believe that the so-called southern strategy exists only in the minds of partisan journalists should consider this nomination as a part of the following pattern of administration actions: The award of defense contracts to textile firms with a history of racial discriminations; the proposal of a voting rights bill which was designed to weaken, if not destroy, our commitment

to equal suffrage in the South; the dismissal of Leon Panetta for attempting to enforce civil rights legislation, and the elevation to high public office of those who believe that the law should not be fully enforced.

The Supreme Court is too vital an institution to be embroiled in any sectional political stratagems. It is the one institution which has represented the last hope for redressing the grievances of those denied their fundamental rights and opportunities.

If President Nixon really wanted "geographical balance," he could have named John Wisdom, Griffin Bell, Frank Johnson, or a variety of other distinguished southern jurists—all of whom are fair and impartial judges. Throughout the Southern States, possibly in almost every county, there are excellent lawyers and judges who are not narrowminded and bigoted as advocates of white supremacy and whose qualifications and life records are superior to the record of Judge Carswell.

Our Founding Fathers provided three equal coordinated branches of our Federal Government and the Supreme Court of the United States has throughout nearly 200 years been made up of the most eminent men learned in the law in our country. Considering his record of the past, it is evident to me that Judge Carswell does not come close to measuring up to the high standards we must adhere to.

Mr. President, President Nixon has nominated, for a place on the Supreme Court—occupied in the past by some of our Nation's greatest jurists—an undistinguished judge whose actions in recent years have been to continue segregationist policies.

Judge Carswell, during the period when he was a judge of the U.S. district court, was unanimously reversed by judges of the U.S. court of appeals in at least 15 cases involving civil and individual rights. Eight of these cases were filed on behalf of Negroes. In every one of those eight cases the decision of Judge Carswell was reversed by the unanimous vote of the judges of the Federal circuit court of appeals. The remaining seven cases were based on alleged violation of other legal rights of defendants. In each case, Judge Carswell decided against the defendants and, in each case, his decision was also reversed by unanimous vote of the appeal court judges.

Judge Carswell indicated in those 15 cases a deep judicial hostility toward the fundamental concept of human rights. His mind was closed; he was oblivious to repeated appellate rebuke. In many of these cases Judge Carswell refused even to grant a hearing, although clearly called for by judicial precedents. In some he was reversed more than once.

In expressing this criticism of Judge Carswell's conduct and actions on the Federal bench, I call attention to the fact that five of these 15 cases were decided in 1 year—in 1968. Not one judge of the U.S. Court of Appeals in his area expressed agreement with his views and his decisions.

Mr. President, several distinguished lawyers and legal scholars testified before the Senate Judiciary Committee that Judge Carswell berated black defendants and their northern lawyers whether black or white. Prof. Leroy Clark of New York University, who supervised the NAACP legal defense fund litigation in Florida between 1962 and 1968 testified:

> Judge Carswell was the most hostile Federal District Court judge I have ever appeared before with respect to civil rights matters.

He either could not or would not separate his judicial functions from his personal prejudices. Several members of the Judiciary Committee were forced to conclude:

> 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.

The testimony of Judge Carswell himself before the Judiciary Committee reveals another reason for denying confirmation. Judge Carswell displayed what might graciously be interpreted as a lack of candor in responding to questions about his involvement in the incorporation of the private golf club in Tallahassee, Fla. The judge claimed he was unaware that the purpose of the private club was to exclude blacks—this from the man who was the principal Federal prosecutor in the area at the time.

Judge Carswell was less than frank in his statements before the Senate Committee on the Judiciary. He even stated that he thought the papers he signed and his check for $100 were to "fix up the old clubhouse." He even said that the matter of discrimination against blacks was never mentioned to him and that he did not have it in his mind.

One of his neighbors, the wife of the chairman of Florida's oldest bank, a white lady, stated she refused to join the new club. Her affidavit on record here stated:

> I would have been surprised if there was any knowledgeable member of the community who was not aware of the racial aspect of the golf course transaction.

Personally, I believe the statement of this lady who was born with a white skin and who did not associate herself with those seeking to form a club the purpose of which was to take from golf players, who happen to be black, a public golf course on which they were seeking to play.

In a secret meeting on January 26 with representatives of the American Bar Association Judge Carswell admitted that he was an incorporator of a segregated country club in Tallahassee. The following day he testified before the Senate Judiciary Committee, under oath, that he had no such role.

Mr. President, perhaps perjury proceedings would be more in order at this time than confirmation proceedings.

Mr. President, disregarding for the moment all of the evidence about Judge Carswell's personal and judicial insensitivity toward civil rights, no facts have been presented which would indicate that he has the professional qualifications to serve on the world's most prestigious judicial body. The fact is that Judge Carswell is seriously deficient in the legal skills necessary for an Associate Justice of the Supreme Court.

Judge Carswell was reversed on 58.8 percent of the appeals from all his printed decisions. This is three times the average for all Federal district judges in the country and two and one-half times the average for district judges of the fifth circuit.

Other judges accorded only minimal authoritative weight to Judge Carswell's decisions. His opinions were cited by other U.S. judges less than half as often, on the average, as those of all district judges and fifth circuit district judges.

Compared with the average of all district judges, Carswell's opinions were about two-fifths as well documented with case authority, and less than one-third as well documented with secondary source authority. His opinions were less than half as extensive as those of most other district judges.

The Ripon Society, a group which I understand includes no Democrats, has conducted an examination of 7,000 Federal district court cases appealed to the Fifth Federal District Court from 1959 through 1969, the years when Carswell was a Federal judge in Florida. Their study revealed that Judge Carswell ranked in the bottom tenth of all Federal judges in the number of his decisions upheld—61st of 67 judges.

It is a fact that Judge Carswell lacks any legal distinction whatever. He has written no scholarly articles. His judicial opinions have been mediocre at best.

Louis Pollak, dean of the Yale University Law School, after studying Judge Carswell's opinions testified:

> I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century.

Some of those who urge confirmation of Judge Carswell would have us overlook his mediocrity and his segregationist viewpoint. One proponent claims that Judge Carswell's outstanding qualification for service on the Supreme Court is the fact that he was nominated by the President. Another pro-Carswell Senator has suggested that a little mediocrity would help provide balance on the Court. Others have stated that the Supreme Court may at present be too heavily weighted with integrationists.

Mr. President, if the Senate were to accept the arguments of these supporters of the nominee before us today, we would be obligated to confirm any man—from the chairman of the American Communist Party to the imperial wizard of the Ku Klux Klan to Tiny Tim—if only he were nominated by the President. However, those who are concerned with the honor and integrity of the highest court in the land cannot condone or laugh away mediocrity and advocacy of white supremacy.

Mr. President, I feel that unless President Nixon withdraws this nomination, a majority of the Senators should vote against confirmation. Americans have every reason to honor and respect the fine men who have served as Chief Justices of the United States for nearly 200 years and for those who have served as

Associate Justices of our Supreme Court. We know that we may be proud of all of the present Associate Justices of our Supreme Court. No public official in our Government, except the President himself, has greater power or bears a greater responsibility than one of the Associate Justices of the Supreme Court or the Chief Justice of the United States.

This Court has a huge volume of most important legal questions argued before it. The decisions of the Court are of the utmost importance to the welfare of our country. Each and every member has a huge obligation and responsibility. If an Associate Justice is to fulfill his share of this obligation, as does each one at the present time, then he must study records and briefs day after day and night after night, listen to arguments of counsel and then write at least a dozen complete opinions each year.

The President should withdraw this nomination. I know that there is a unanimity of feeling in the Senate of a desire to fill this vacant chair on the Supreme Court which has been vacant far too long and we would do it immediately if the President and his advisers exercise a small degree of good judgment instead of sending us one unworthy nominee and now another. Furthermore, should Judge Carswell be confirmed by a small majority, he would be discredited from the outset.

Again, I report the Supreme Court of the United States must not be a place for any lawyer or judge whose record is that of mediocrity. Nor must it become a place for any lawyer or judge who holds opinions offensive to the basic concept of equal justice for all, black and white alike.

On Monday, April 6, there will be a vote to recommit the nomination of Judge Carswell to the Judiciary Committee where it will remain unwept, unhonored, and unsung. I hope the motion to recommit carries. I shall cast my vote in favor of this motion.

Mr. President, the St. Louis Post Dispatch recently published an editorial regarding Judge Carswell under the caption "Wrong for the Court." 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:

WRONG FOR THE COURT

One of the opponents of the nomination of Judge G. Harrold Carswell for the Supreme Court has asked how any Senator who voted against Judge Clement Haynsworth for that post could go home and explain why he accepted Judge Carswell.

Explanations should not be easy. No doubt most Senators would rely on the point that they had discovered no potential conflict of interest regarding Judge Carswell, as they did against Judge Haynsworth. Yet this explanation would disregard a number of points in which the latter was the superior candidate for the high court.

There is first of all, Judge Carswell's record of obstructionism against civil rights progress. What was mildly questionable in the Haynsworth case is clear in the Carswell case: this judge consistently found against or attempted to delay desegregation actions. A judge so lacking sympathy with the law of the land and the absolute necessity for racial equality before the law has no place on the Supreme Court.

There is what a group of 400 prominent lawyers termed "a mind impervious to repeated appellate rebuke." The lawyers reviewed 15 cases in which Judge Carswell found against Negro or individual claims of rights; in every case his decision was reversed and reversed *unanimously* by a higher court. Is this the kind of record for a man to take to the highest court of all?

There is an evident lack of candor exceeding Judge Haynsworth's hazy recollections of his business dealings. What Judge Carswell insists he never realized was that the incorporation of a Tallahassee public golf course as a private course was done to further segregation. At the time the Judge helped to incorporate the club he was United States district attorney, and several federal suits were already under way in Florida to integrate other public golf courses. If Judge Carswell did not know what was going on, everyone else in Tallahassee seems to have known.

There is, finally, a record of unrelieved intellectual and judicial mediocrity which many attorneys find especially repugnant in a candidate for the highest court. How, they wonder, can a man who has contributed nothing to the law or to the study of the law take a place on a bench that has seated many of history's greatest judicial minds? How, they ask, can President Nixon so demean the court?

Lacking an answer to such a question, we may only observe that it is totally unnecessary to demean the third branch of government. If Mr. Nixon, fixed in his Southern strategy, wants to use the court to woo the South, he can easily find Southern judges, and conservative judges, who are far more distinguished, have far better judicial records and who have demonstrated far less indifference or hostility to the Constitution.

Simply because the President might have done better instead of worse, it should be difficult indeed for Senators who voted against Haynsworth to explain a vote for Carswell. On that point we would hope that more and more members would join the score or so of Senators now determined to stand against the Carswell appointment.

There is no excuse for complicity by the United States Senate in a wrong against the Supreme Court.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Vermont is recognized for 10 minutes.

PRESIDENTIAL TENURE

Mr. AIKEN. Mr. President, as a Member of the Senate, I have served under six Presidents—two Republicans and four Democrats.

Each of them contributed much to the growth and welfare of our country.

Each of them made mistakes.

They all had one thing in common.

Each wanted to be a good President.

Quite naturally each wanted to be the best President we ever had.

And, hopefully perhaps, on my part I wanted each one to be the best.

They had another thing in common.

With the possible exception of President Eisenhower, each one was assailed and harassed not only by members of the opposite party but also by dissatisfied members of his own party.

In some instances, we might say that the opposition they engendered was warranted and contributed to the security and prosperity of the country.

In other instances, it may be said that harassment and embarrassment of the President was politically motivated and has proved costly to the people of America.

We have only one President at a time and the manner in which he conducts the duties of his office determines to a great degree whether the people of the United States are secure or insecure—prosperous or poor—happy or sad.

With this overweening belief in mind, I have to the best of my ability tried to help each to serve his country well—regardless of party.

Each President I have known has, to a great extent, been at the mercy of the times during which he served.

Each has had to establish and maintain his credibility in the field of international politics, with varying degrees of success.

And upon the success of the President in making the right decisions and in maintaining the respect of the world rested the prestige of our Nation and of you and me in the eyes of the world.

Temptation and desire are hardy and ruthless characters—possessed by all of us in varying degrees.

Each of us wants to be important, and in order to be important we seek power.

There are many kinds of power eyed by our ambition—economic, social, political and, in some cases, racial.

We seek power as individuals and we seek it collectively, although collective success inevitably leads to the rise of individual desire within the successful group.

Democracy is the best form of government.

Our two-party system is the best method yet devised for running a democracy.

Yet, democracy and the two-party system are found to be grievously wanting in some respects.

Within months after an elected President takes office he is under attack not only by those who never wanted him to be President in the first place but also by those who may have voted for him but find themselves neglected in the distribution of the political spoils, or upset by their inability to make decisions for him which coincide with their own philosophies.

An internal warfare develops, with the President on one side and the dissident and disappointed voters on the other.

And throughout the verbal bombing and incendiary malignments fired at him, the President is expected to maintain the domestic economy, defend the security of the United States, raise the standard of living, and improve the image of our country in world affairs.

A major purpose behind the attacks on the President is to put him in such a bad light that he cannot hope for reelection even if he desires to run for a second term.

President Johnson undoubtedly decided against trying for reelection in 1968 largely because of the intensity and apparent success of the attacks made upon him.

Certainly, he made mistakes of judgment which proved to be costly; yet it is possible—indeed quite probable—that any other President elected at the time he was would have made the same errors in the belief that stability could be achieved in Southeast Asia by the greater involvement of American military strength on a temporary basis.

President Johnson was assailed full force for his mistakes, but given very little credit for the good he did.

When Richard Nixon became President 14 months ago, he was confronted with almost unprecedented problems.

Over a million American military men were stationed overseas in positions best calculated to prevent the spread of what was called a "monolithic Communist conspiracy."

About 540,000 of these troops were in the small, war-ravaged country of South Vietnam.

At home, galloping inflation and a rapidly increasing crime rate—both stepchildren of war—were running rampant.

The new President was promptly met by new demands—the most insistent, the most vociferous, and the best organized coming from those who had opposed his election.

They insisted that the troops be withdrawn from South Vietnam almost immediately, regardless of consequences to the native population.

Crime and inflation were to be controlled without delay.

Domestic programs affecting health, education, and welfare were to be expanded many times over and far beyond the means of our democratic Nation to sustain.

Of course, no President could possibly meet such demands.

He has now withdrawn just over 100,000 military personnel from Vietnam in the last 8 months, and the withdrawal continues on schedule.

He has improved our standing with many other countries and has repaired our prestige where it had been damaged.

Inflation and crime are not yet under control and will not be so long as we are involved in a foreign war to the extent we are now.

President Nixon has made mistakes, but on the whole his record to date may be given a high passing mark.

Like his predecessors, he wants to be the best President we ever had.

With a congressional election coming up on November 3 this year and a presidential election 2 years later, his present high rating has only intensified the attacks on him and his decisions both from political aspirants of the opposition party and disillusioned and angry dissidents within his own.

They make the work of his office more difficult.

Not only are impossible demands made upon the executive branch but by more indirect means many undertake to lessen the President's standing both at home and abroad.

A current example of this will be found in the Carswell case now before the Senate.

I do not know Judge Carswell and I do not know for sure how good a Justice of our Supreme Court he would make; neither do those who so enthusiastically condemn him.

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

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

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

For the last 2 weeks, Members, of the Senate have received hundreds or even thousands of letters and telegrams urging the rejection of Judge Carswell's nomination.

I am quite sure that many of these protesters did not know much of anything about Judge Carswell until they were advised by organization leaders to stir up all the opposition possible.

Some others were doubtless prompted to register their opposition by unfavorable and in some instances misleading publicity.

They did not know Carswell, but they did know President Nixon, and for most of them he is their No. 1 target.

I doubt that many of them voted for him in 1968, and I doubt that many would vote for his reelection.

I am not making this statement today as criticism of those who are simply following practices well established by tradition or of those who sincerely believe that each appointment to public office, especially to the judiciary, should be as wise as Solomon and as pure as Caesar's wife.

A loyal opposition is fully warranted so long as, in its zeal, it does not weaken those qualities that have made our Nation great.

I am making this statement to call attention to the indisputable fact that no President can give his best to the Nation or maintain our prestige in the world so long as he is constantly being fired upon by those whose principal purpose is to keep him from being reelected.

On January 17, 1969, I joined the Senator from Montana (Mr. MANSFIELD) in introducing Senate Joint Resolution 21, proposing an amendment to the Constitution limiting the President to a single term of 6 years.

The one-term limitation has worked well in other countries.

It permits the President to devote all his time and efforts to the service of his country.

This constitutional amendment would go far in discouraging would-be successors to the office from wasting their time in harassing him or trumping up unwarranted charges or impeding his work because he could not run against any of them anyway.

Mr. President, I hope that this Congress will seriously consider the amendment proposed by Senator MANSFIELD and myself.

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

Mr. AIKEN. I yield.

Mr. MANSFIELD. Let me say that I am delighted that the dean of the Republicans has indicated his strong support for the resolution which he and I introduced some months ago. We think it is a way to allow any President—regardless of party—to be himself and not to be subject to political harassments. It is a way that allows the President to assume his office with one purpose in mind—to do a good job, regardless of the consequences, and then to depart.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from Vermont may have 5 additional minutes.

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

Mr. MANSFIELD. May I express the hope that, on the basis of the speech made by the distinguished Senator, the appropriate subcommittee within the Committee on the Judiciary would undertake hearings on this matter as soon as possible. Senator AIKEN's most positive statement has placed this issue in its proper context indicating that it is aimed at the Presidency—at the office itself—and is not concerned so much with the man.

Mr. President, I was impressed by what the distinguished Senator from Vermont had to say on page 2 of his speech:

> With this overweening belief in mind, I have to the best of my ability tried to help each—

That is, each President—

> to serve his country well—regardless of Party.
>
> Each President I have known has, to a great extent, been at the mercy of the times during which he served.
>
> Each has had to establish and maintain his credibility in the field of international politics, with varying degrees of success.
>
> And upon the success of the President in making the right decisions and in maintaining the respect of the world rested the prestige of our Nation and of you and me in the eyes of the world.

All I want to say is that the distinguished Senator has certainly lived up to those words in his many years of service in this body.

I only hope that as a Senator from the State of Montana and as majority leader, I can do almost as well as the distinguished Senator from Vermont, who has just addressed us.

Mr. AIKEN. I thank the Senator from Montana. It has been a privilege to be associated with him on certain proposed constitutional amendments. I still feel they are all amendments which should be approved by Congress.

Since I have enough time remaining, I am happy to yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I wish to indicate my great appreciation for another very significant statement made by the dean of Republicans in the U.S. Sen-

from Vermont (Mr. AIKEN) and the distinguished Senator from Kentucky (Mr. COOPER). For both of whom I have nothing but the highest regard—I might say, affection and respect as well.

I should like to quote from the remarks just made by the Senator from Vermont. I have quoted this before, because it is the theory behind the speech I just made, and behind the remarks I made last Friday on the same subject.

The Senator from Vermont said in his very thoughtful and worthwhile speech:

> We have only one President at a time and the manner in which he conducts the duties of his office determines to a great degree whether the people of the United States are secure or insecure—prosperous or poor—happy or sad.
>
> With this overwhelming belief in mind, I have to the best of my ability tried to help each to serve his country well—regardless of Party.
>
> Each President I have known has, to a great extent, been at the mercy of the times during which he served.
>
> Each has had to establish and maintain his credibility in the field of international politics, with varying degrees of success.
>
> And upon the success of the President in making the right decisions and in maintaining the respect of the world rested the prestige of our Nation and of you and me in the eyes of the world.

Mr. President, I intend to support any President regardless of party to the best of my ability, because I would far rather see the country benefited, the country secure, the welfare of the Nation placed first and ahead of the welfare or the success of any political party, or any individual within any political party.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia (Mr. BYRD) is recognized for a period not to exceed 20 minutes.

NOMINATION OF G. HARROLD CARSWELL

Mr. BYRD of West Virginia. Mr. President, I speak in behalf of the nomination of Judge G. Harrold Carswell to be an Associate Justice of the U.S. Supreme Court.

The opponents of this nomination are attempting to use as their chief argument the charge that Judge Carswell is undistinguished, and that he does not possess the legal credentials that an appointee to the High Court should have.

We have heard the word "mediocre" bandied about very carelessly in this debate. Some critics of Judge Carswell have said outright that he is a mediocre appointee. Others have taken a more circuitous route to say much the same thing.

The term "mediocre," Mr. President, applied to this nominee or to any nominee, or to any official of government elected or appointed, is a wholly relative term based on a subjective judgment.

By what standards is a judicial appointee or any other official mediocre? By whose arbitrary criteria is he judged?

Suppose for a moment that Judge Carswell's record were as liberal as his opponents contend that it is conservative. If it were, I suspect that—mediocre or not—he would be welcomed with open arms by many of those who now oppose him.

It is Judge Carswell's apparent conservatism, Mr. President, that probably bothers his critics more than their allegations of his mediocrity.

A review of the record made in the hearings establishes beyond question that Judge Carswell is well qualified for elevation to the Supreme Court.

During the course of this speech, I will undertake to compare the credentials and qualifications of Judge Carswell with those of every other sitting member of the Supreme Court at the time each was nominated.

Before I make this comparison, I think it is pertinent to note that the issue of Judge Carswell's legal competence and distinction was first significantly raised by certain segments of the press, especially the New York Times and the Washington Post. Each of these influential newspapers began to assert very shortly after the President submitted this nomination that Judge Carswell was undistinguished and mediocre. They have hammered consistently and hard on this issue and so have some Senators.

These newspapers and others have been lenient in their assessment of the qualifications of other nominees, depending on their judicial philosophy.

It is my view that one of the chief factors in determining whether a nominee has the necessary professional qualifications for nomination to the Supreme Court is whether or not he has had prior judicial experience.

Of course, there have been many appointees to the Supreme Court who have not had previous judicial experience but who have become outstanding and eminent jurists. So, it is not necessarily something that is required of an appointee in order for him to become a great judge. But I think that previous judicial experience is a positive factor to be considered in favor of any nominee.

Judge Carswell is eminently qualified in this regard, as he has served as U.S. district judge for the Northern District of Florida for more than 11 years, and has served as a judge of the Court of Appeals for the Fifth Circuit for almost 1 year. In addition, he was U.S. attorney for the Northern District of Florida prior to being appointed to the Federal bench for almost 5 years.

From the standpoint of prior judicial experience, as will be developed in this speech, Judge Carswell is better qualified than was any present member of the Supreme Court at the time of his appointment, except for Chief Justice Warren E. Burger.

I would assume that the New York Times and the Washington Post and other great newspapers share my view that prior judicial experience is an important factor in determining whether a nominee is qualified for appointment to the Supreme Court. In its edition of Sunday, June 30, 1968, the New York Times discussed the appointment of Justice Fortas and Judge Homer Thornberry to the Supreme Court which had been made the previous Wednesday, June 26, by President Johnson. I believe that my colleagues would find it very interesting to note what the New York Times had to say about the professional qualifications of these nominees. In referring to Justice Fortas and Judge Thornberry, the Times said:

> Both men have impressive credentials to qualify them for the Supreme Court.

In discussing the qualifications of Judge Thornberry, the Times said:

> Judge Thornberry, 59, has been on the bench since 1963 and has more judicial experience than any sitting member of the Supreme Court had at the time of his appointment except William J. Brennan Jr.

One of the writers for the Washington Post discussed Judge Thornberry's nomination in the issue of June 27, 1968, the day after the nomination was made:

> He has had more judicial experience than any sitting member of the Supreme Court at the time of his appointment except William J. Brennan Jr.

I am very pleased that the New York Times and the Washington Post agree with me that prior judicial experience bears great weight on the issue of legal qualifications and distinction.

Perhaps some clue can be gained as to why these newspapers assessed the legal qualifications of Judge Thornberry in such a manner by referring to a headline which appears on page 30 of the New York Times issue of June 27, 1968, which describes Justice Fortas and Judge Thornberry as "Liberal Nominees for Supreme Court Posts," and to the Washington Post article of June 27, above mentioned, which describes Judge Thornberry's record in the following manner:

> President Kennedy nominated Thornberry to the Federal district bench shortly before his death in 1963. President Johnson promoted him to the Fifth Circuit Court of Appeals in 1965. He has had more judicial experience than any sitting member of the Supreme Court at the time of his appointment except William J. Brennan Jr.
>
> A quick look at Thornberry's opinions on the Fifth Circuit Court—which has handled all the difficult racial cases from the Deep South—suggests a liberal stance on civil liberties and civil rights.

I do not intend any disrespect to Judge Homer Thornberry in making these remarks. I personally feel that he is a thoroughly competent and able judge of the Fifth Circuit Court of Appeals. He has endorsed the nomination of his colleague, Judge Carswell, to be an Associate Justice of the United States Supreme Court, for which I commend him.

I do feel, however, that the contrasting assessments made by these two great and influential newspapers of Judge Thornberry and Judge Carswell highlight the profound wisdom of the distinguished Republican leader in opening this debate on March 13, in stating:

> 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. (S. 3729)

I now proceed to compare Judge Carswell's qualifications from the standpoints of education, legal experience, and judicial experience with those of the present members of the Supreme Court.

First, I start with our standard of comparison, which is the qualifications of

Judge Carswell himself. The record shows that he received his undergraduate education at Duke University, Durham, N.C., from which institution he received a B.A. degree in 1941.

Most of us would agree that Duke University is one of the outstanding institutions of higher learning in this Nation. The President of the United States received his law degree from Duke. There may be a few people in the academic and legal and political communities who think that this fact makes Duke mediocre, but I certainly do not share that opinion.

Judge Carswell attended the University of Georgia Law School at Athens, Ga., for 1 year, 1941–42, and at the conclusion of that school year he enlisted in the U.S. Navy to serve with distinction in World War II.

After the war, he completed his legal education at the Mercer University Law School, Macon, Ga., which awarded him an LL.B. degree in 1948.

In 1949 Judge Carswell moved to Tallahassee, Fla., and became an associate in the firm of Ausley, Collins, and Truett. His practice of law in that firm was varied, and he acquired the reputation of being an able and outstanding lawyer. Judge Carswell left the Collins law firm in 1951 and formed his own firm in Tallahassee, where he continued to actively engage in the practice of law.

Judge Carswell's reputation as a lawyer attracted such notice that in 1953, at the age of 33, he was nominated by President Eisenhower to be U.S. attorney for the Northern District of Florida. He served in that capacity in an able and conscientious fashion. No complaint has ever been publicly stated—or at least I have heard none—as to his treatment of any litigant or lawyer during his service as U.S. attorney. In this position, he handled a broad range of cases encompassing the entire area of Federal criminal jurisdiction.

He made such a fine record as U.S. attorney that President Eisenhower nominated him as U.S. district judge for the northern district of Florida in 1958, and he became a Federal district judge on April 18 of that year. Contrary to the assertions of a few people, he served with great ability and distinction as a trial judge in our Federal court system. The area of litigation handled by Judge Carswell encompassed the entire spectrum of Federal criminal law and Federal civil law.

He did such a good job as district judge and acquired such an outstanding reputation that President Nixon in 1969 appointed him to be judge of the U.S. Circuit Court of Appeals for the Fifth Circuit. The Senate again confirmed his nomination, and he became a circuit judge on June 27, 1969. For the third time, therefore, the U.S. Senate unanimously confirmed Mr. Carswell's nomination to a high position on or associated with the Federal judiciary.

So, in summary, we find that Judge Carswell has a very good educational background; he engaged in an active general practice of law for approximately 4 years; he served as U.S. district attorney—which required Senate confirmation—for almost 5 years; he was a U.S. district judge—which required Senate confirmation—for more than 11 years; and he has been a U.S. circuit judge—which required Senate confirmation—for almost a year.

These seem to me to be impressive credentials, and should settle the question as to whether Judge Carswell has the legal competence and training and experience which would qualify him for appointment to the Supreme Court.

Let us compare his qualifications with those possessed by each of the present members of the Supreme Court at the time of his nomination.

First, as to Mr. Justice Black, we find that he received his law degree from the University of Alabama in 1906. He began the practice of law in Birmingham in 1907 and served as police judge in that city for 18 months during the years 1910–11. He held the office of solicitor, which is prosecuting attorney in Alabama, during the years 1915–17. He engaged in the general practice of law in Birmingham for 8 years from 1919 to 1927. He was elected to the U.S. Senate in 1926 and served in the Senate from 1927 to the time of his appointment to the Supreme Court by President Roosevelt and his confirmation by the Senate on August 17, 1937.

Thus, we find that Justice Black, at the time of his nomination, had had prior judicial experience of 18 months as police judge in Birmingham; he had engaged in the private practice of law for approximately 16 years, and had served as State prosecuting attorney for about 2 years; he had also served in the Senate for 10 years.

Of course, each of us can judge and assess these facts according to our own best judgment, but it seems to me that Judge Carswell possesses legal qualifications comparable, if not superior, to those held by Justice Black at the time of his appointment.

Let us look at the Justice who is next senior in service, Mr. Justice Douglas. He received his undergraduate degree from Whitman College, Walla Walla, Wash., in 1920, and received his LL.B. degree from Columbia University Law School in 1925; he engaged in the private practice of law in New York City from 1925 to 1927, and was a member of the law faculty of Columbia University from 1925–28. He was on the Yale law faculty for 6 years from 1928–34 and was named by President Roosevelt to be a member of the Securities and Exchange Commission in 1936, and he served as Chairman of that Commission from 1937 to 1939. He was nominated by President Roosevelt to be an Associate Justice of the Supreme Court of the United States at the age of 40, and took his seat on the Court on April 17, 1939.

Justice Douglas had had no prior judicial experience. He had been engaged in the practice of law for less than 5 years, and had a background of approximately 9 years in the legal academic community.

There may well be a place on the Supreme Court for one with the legal qualifications and credentials of Justice Douglas, but how can one possibly unfavorably compare Judge Carswell's qualifications to those of Justice Douglas?

Next we come to Justice John M. Harlan. In my opinion, at the time of his nomination he possessed very high qualifications. He received his B.A. degree at Princeton University and advanced degress in jurisprudence from Oxford University, and his law degree from New York Law School. He was an associate and a member of the distinguished New York law firm of Root, Ballatine, Harlan, Bushley & Palmer, for over 20 years, and was appointed by President Eisenhower to the Second Circuit Court of Appeals in 1954, where he served for 1 year, and then was appointed by the President on March 17, 1955, to be an Associate Justice of the Supreme Court. During the time he was in private practice, he served in such capacities as special assistant attorney general of the State of New York and chief counsel to the New York State Crime Commission.

Realistically speaking, it must be considered that Justice Harlan's qualifications pertaining to his background in the private practice of law were extremely outstanding, and were superior to those possessed by Judge Carswell. On the other hand, in the area of prior judicial experience, Judge Carswell's qualifications would have to be rated above those of Justice Harlan.

In my opinion, from the standpoint of professional qualifications, Justice Harlan stands as a giant among the present members of the Supreme Court.

I think it is no accident that Justice Harlan also happens to be the leader of the strict constructionist forces on the Supreme Court. His outstanding background as a lawyer has taught him the true and correct function of a judge under our constitutional system.

We now come to Justice William J. Brennan, Jr. As I have noted, the New York Times and the Washington Post stated that the prior judicial experience of Justice Brennan was greater than that of any other member of the Supreme Court at the time of his appointment. Justice Brennan received his B.S. degree from the University of Pennsylvania and his LL.B. degree from Harvard. He engaged in the private practice of law in Newark, N.J., as an associate in the firm of Pitney, Hardin & Skinner for 6 years, and was a member of the firm for another 9 years. His work with the law firm was interrupted by 3 years of service in the U.S. Army in World War II.

Justice Brennan was appointed to the New Jersey Superior Court in 1949, and was appointed to the appellate division of that court in 1951. Thereafter, he was appointed in 1952 to be an associate justice of the Supreme Court of New Jersey, where he served for approximately 4 years until appointed by President Eisenhower to the Supreme Court in 1956.

Thus, at the time of his appointment, Justice Brennan had had 15 years' experience in the private practice of law and had served 7 years as a judge of the State courts of New Jersey. From the standpoint of prior judicial experience, Justice Brennan had had 7 years of serv-

ice in the State courts, while Judge Carswell has had almost 12 years of experience in the Federal courts.

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may proceed for an additional 10 minutes.

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

Mr. BYRD of West Virginia. Mr. President, Mr. Justice Potter Stewart received his undergraduate and law degrees from Yale. He engaged in the private practice of law in New York City for 3 years, which was interrupted by his service in the U.S. Navy during World War II. He then practiced in Cincinnati, Ohio, for 7 years, from 1947–54. At that time he was appointed by President Eisenhower to be a judge of the U.S. Court of Appeals for the Sixth Circuit. He served on that court for 4 years, until he was nominated by President Eisenhower in 1958 to be an Associate Justice of the Supreme Court.

Mr. Justice Stewart, at the time of his appointment to the Supreme Court, had had 4 years of prior judicial experience and 10 years in the private practice of law. This is almost the reverse of Judge Carswell's qualifications, in that Judge Carswell has had 4 years in the private practice of law and almost 12 years of prior judicial experience. In addition, Judge Carswell has served for 5 years as U.S. attorney.

I do not see how anyone can say that Judge Carswell's qualifications do not compare favorably with those of Mr. Justice Stewart.

As to the qualifications of Associate Justice Byron R. White, who would ever have contended at the time of his appointment that he would make the good Associate Justice that he is making in his service on the Court today?

To most Americans in March, 1962, when he was named by President Kennedy, "Whizzer" White was known only as a great football player. From 1935 through 1937 he had starred at the University of Colorado, leading his team in his final year of play to an undefeated season, and excelling all college backs in scoring and ground gaining.

He went on to play with the Pittsburgh Steelers and the Detroit Lions, led the National Football League in ground gaining twice as a professional player, and in 1954 was named to the National Football Hall of Fame.

He practiced law in Denver, organized the State of Colorado in support of the Kennedy campaign, became a deputy Attorney General to Robert Kennedy, and in March 1962 was appointed to the Supreme Court. A good and enviable record, yes. But background and qualification for the Nation's highest court? I wonder.

Many at the time thought not. Yet, Byron White, in my opinion and the opinion of many others, is serving with diligence and competence on the Supreme Court.

Let us now examine the background and qualifications of Justice Thurgood Marshall at the time of his appointment to the Supreme Court. He received his college education at Lincoln University and his law degree in 1933 from Howard University. Upon his graduation from law school he entered the private practice of law in Baltimore, and in 1934 became counsel for the Baltimore branch of the NAACP. In 1936, he joined that organization's national legal staff, and in 1938 was appointed its chief legal officer. He served from 1940 until 1961 as director-counsel of the NAACP legal defense and educational fund. On September 23, 1961, he was appointed by President Kennedy as a judge of the Second Circuit Court of Appeals, on which he served until nominated by President Johnson to be Solicitor General of the United States on July 13, 1965. President Johnson nominated him to be an Associate Justice of the Supreme Court on June 13, 1967.

Justice Marshall was very active in the private practice of law, but his practice was confined exclusively to the civil rights field and the representation of the NAACP and its affiliated organizations.

As a matter of fact, he was often referred to as "Mr. NAACP." He was engaged in the private practice of law for a very long time, 28 years, but it cannot be said that his practice was of a general nature. He then served as a judge of the second circuit for almost 4 years, and as Solicitor General for 2 years.

Last, we come to the most recent appointment, that of Chief Justice Warren Burger, named by President Nixon as Chief Justice on May 22, 1969.

Chief Justice Burger received his college education at the University of Minnesota and his law degree from St. Paul College of Law. He was a member of a St. Paul law firm for 22 years, from 1931 to 1953. At that time he was appointed by President Eisenhower as an Assistant Attorney General of the United States. He held that position until 1956, when he was appointed by the President to be a judge of the U.S. Court of Appeals for the District of Columbia Circuit. He was a judge of that court for more than 13 years until he was nominated by President Nixon to be Chief Justice of the United States.

The solid judicial experience which Chief Justice Burger brought to the Court, it should be noted, exceeds Judge Carswell's equally solid experience on the Federal bench by only about a year.

What a contrast these two eminently qualified men—with their judicial backgrounds—provide to former Chief Justice Earl Warren. When Governor Warren was nominated, his prior experience in government was almost wholly political. Yet, his nomination was confirmed, although he brought to the Court no judicial experience of any kind and little knowledge bearing on the complicated legal issues with which he was to be confronted.

The imperious manner in which he dispensed decisions, as from on high, indicated how little he understood or valued this country's vital and historical constitutional processes. It is my considered judgment, Mr. President, that many of the increasingly serious difficulties in which our country finds itself at this point arise directly from the unwise rulings of the Court during the years of Mr. Warren's tenure as Chief Justice.

The type of opposition to Judge Carswell that we are witnessing now—and which brought about the defeat of the nomination of Judge Clement Haynsworth—is not new. It has happened before many times, and subsequent events more often than not have shown how poorly taken such opposition has often been in the past. Conservatives as well as liberals have indulged in such opposition, and almost always the opponents of nominees to the Court have attacked them on the grounds that they were not fit to serve.

In the long history of the U.S. Supreme Court many men have been appointed—and have served with distinction—the first mention of whose names brought opposition and even ridicule.

One of the towering figures of the Court, Joseph Story, of Massachusetts, appointed by President James Madison in 1811, was such a man—bitterly opposed by the conservatives of that time.

He was an unknown in most of the young Nation, although he had served a term in Congress and had been speaker of the Massachusetts House of Representatives. He had held no judicial office, and the reasons for President Madison's appointment of him have never been learned. He was the youngest man ever appointed to the Court.

Jefferson made repeated expressions of personal antipathy to Story, and the Federalists reacted to his appointment with ridicule and condemnation.

But, as Charles Warren, the former U.S. Assistant Attorney General, writes in his book "The Supreme Court in United States History":

> As in so many other instances in the history of the United States when comparatively unknown men have been raised to positions of high authority, the nation was singularly fortunate in the event.
>
> In Story's case, as in so many other instances in the history of the court, there was shown the utter futility of the expectations, frequently entertained by politicians, that the judicial decisions of a judge would accord with his politics at the time of his appointment to the supreme bench.
>
> Time and time again it has been proved—and to the great honor of the profession—that no lawyer, whose character and legal ability would warrant his appointment to that lofty tribunal would stoop to smirch his own record by submitting his judgment to the political touchstone; and no president has dared to appoint to that court a lawyer whose character and ability could not meet the test.

One does not have to go back to the early history of the court, however, to find nominees who have served with distinction to themselves and with benefit to their country whose credentials were questioned at the outset and who were bitterly assailed while their nominations were under consideration.

The case of Associate Justice Louis D. Brandeis comes readily to mind. Again in this instance it was the conservatives who were after him. I alluded to the fight over the Brandeis nomination when I spoke in this Chamber in support of the

nomination of Judge Haynsworth, and much of what I said at that time is once again applicable in this debate over Judge Carswell.

I said then that the real reasons for the bitter fight half a century ago against the confirmation of Justice Brandeis were his social and economic ideas and the fact that he was a Jew, and that the real reason for the high pressure to defeat Judge Haynsworth were his judicial philosophy and the fact that he was a white, conservative southerner. The same may be said in considerable measure of the opposition to Judge Carswell.

Justice Brandeis was appointed to the Court in 1916 by President Wilson, and the fight over the nomination that ensued is generally regarded as one of the most celebrated senatorial confirmation contests in history.

In the study of the confirmation of appointments by the Senate made by Joseph P. Harris in his book, entitled, "The Advice and Consent of the Senate," the following comment concerning the Brandeis case appears on page 113, and I believe that it has validity in the present connection:

> The case illustrates that a person who has . . . taken a definite stand on controversial public issues, particularly if he has incurred the hostility of powerful groups of society, will face strong opposition. Such a person can be confirmed only by the greatest effort, whereas a middle-of-the-road individual who has never participated in economic and social struggles or offended powerful groups is usually confirmed without opposition.
>
> The opposition to Brandeis was due chiefly to the fact that his opponents regarded him as a dangerous radical and a crusader and hence unfit to serve on the Supreme Court, which they regarded as the bulwark of conservatism. . . .
>
> Their stated reasons for opposing him, however, were entirely different—that he was not trustworthy and had been guilty of unprofessional conduct. Their charges of unprofessional conduct did not stand up under the examination of the subcommittee, though at the end, the Senators who were opposed to Brandeis gave credence to practically all the charges. . . .
>
> In the cases investigated by the subcommittee, it was found that the conduct of Brandeis was not only ethical and correct but indeed indicated that he had extraordinarily high professional standards.

Mr. President, there are many more cases of ill-founded opposition to nominees to the Supreme Court that could be cited. But the point that I wish to emphasize is that Judge Carswell compares very favorably with the men who presenty sit on the Supreme Court, and, in my opinion, is superior to some.

If Judge Carswell were not as well qualified as he actually is—if he were indeed mediocre as critics have said—he would still be much to be preferred over William O. Douglas, who had no judicial experience when he was confirmed for the Court, and who has now written a book which encourages violence and revolution in America.

As John F. Bridge, writing in the National Observer on March 2, observed

> Those who are so upset about the intellectual qualifications of Judge Carswell ought to read the book Justice Douglas has just written, Points of Rebellion, in which, among many other wild assertions, this sitting Associate Justice says:
>
> "We must realize that today's establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress honored in tradition, is also revolution."

As the National Observer writer noted, this is no black militant screaming. This is a member of the Nation's court of last resort.

One need not bother to condemn Justice Douglas; his own words condemn him. Consider this passage:

> . . . where grievances pile high and most of the elected spokesmen represent the Establishment, violence may be the only effective response.

The "Puritan ethic," the "highway lobby," the "industrial-military complex," all are targets for Mr. Justice Douglas. As an author, he sounds more like a spokesman for the SDS than a guardian of constitutional processes. In my judgment, he is a disgrace to the U.S. Supreme Court.

As I have already noted, Mr. Douglas' words ought to be of more than passing interest to the critics of Judge Carswell, for, to quote the reviewer of his book again:

> Mr. Douglas has a lot to say . . . about mediocrity in American life. At least mediocrity is one subject on which he conceivably could be an expert.

The confirmation of Judge Carswell's nomination, Mr. President, could help to restore a badly-needed balance to the Court on which Justice Douglas sits. In this regard, Mr. President, if Judge Carswell's nomination were to be rejected by the Senate, I should hope that impeachment proceedings would be immediately instituted in the other body, and I would like to see Senators who oppose the Carswell nomination have to show down on a trial of Mr. Douglas, who presently is a member of the U.S. Supreme Court and whose own words condemn him, not as one who is just mediocre, but as one who advocates violence and revolution in America.

I discern a definite pattern in the nominations President Nixon has made to the Supreme Court—a pattern of seeking out men who have had experience where it really counts, in the Federal judiciary itself.

Chief Justice Burger was eminently qualified in that respect, as was Judge Haynsworth and as is Judge Carswell. I commend President Nixon for seeking this quality in making his appointments to the Court. I believe that many people in America share my opinion on this matter.

There are other factors to be taken into consideration, but certainly prior judicial experience should be a major one. The survey of the qualifications of the present members of the Supreme Court I have made shows that President Nixon is seeking to restore a balance on the Court in more ways than one. We do need to have more Justices on the Court with great prior judicial experience, and Judge Carswell is certainly qualified in this regard.

As the distinguished chairman of the Judiciary Committee pointed out on the floor of the Senate on March 17, it is very strange that the Washington Post has taken the position all of President Nixon's nominations to the Supreme Court have been undistinguished. This, of course, includes Chief Justice Burger.

I think that the ideological bias underlying this opinion of the Washington Post gives us a clue to the motive of some who say that Judge Carswell is "mediocre" or "undistinguished."

The record and the facts completely negate such an assertion. The truth of the matter is, Mr. President, that seldom has so much been made out of so little. Weeks have been dragged out in the hope that with the passage of time a hostile press could encourage wavering Senators to join the opposition.

Judge Carswell is eminently qualified from the standpoint of professional background and qualifications. The prestigious Standing Committee on the Federal Judiciary of the American Bar Association has affirmed and reaffirmed that Judge Carswell is qualified. As the Honorable Lawrence E. Walsh, the chairman of the standing committee, wrote Chairman EASTLAND, the committee investigated Judge Carswell as to his integrity, judicial temperament and professional competence.

On the basis of this investigation, Judge Carswell was unanimously found to be qualified for appointment to the Supreme Court.

After the hearings had been concluded by the Judiciary Committee, and all of the charges against Judge Carswell had been aired, the standing committee reaffirmed its previous judgment that the nominee was qualified.

I hope and trust that no one will vote against this confirmation on the misguided belief that Judge Carswell does not possess the necessary legal qualifications.

I intend to vote, if a tabling motion is made, to table the motion to recommit.

If such a tabling motion is not made, I intend to vote against the motion to recommit. If that motion to recommit is not sustained, I intend, of course, to vote for the confirmation of the nomination of Judge Carswell.

I urge the Senate to consent to the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Mr. President, I yield the floor.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. EAGLETON) 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 to the Department of Justice for the Federal Prison System "Support of United States Prisoners," for the fiscal year 1970, had been reapportioned on a basis which in-

in the level of social security benefits that are paid to our retired citizens. It is time to close the gap. My proposal to increase the minimum monthly payment to $100 for each single person and $150 for each married couple is a matter of first priority.

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

The bill (S. 3658) to amend title II of the Social Security Act so as to raise from $64 to $100 the minimum primary insurance amount thereunder, introduced by Mr. GORE, was received, read twice by its title, and referred to the Committee on Finance.

ADDITIONAL COSPONSORS OF BILLS

S. 3623

Mr. GOLDWATER. Mr. President, I ask unanimous consent that, at the next printing, the name of the Senator from Utah (Mr. BENNETT) be added as a cosponsor of the bill I introduced on behalf of myself and the senior Senator from ARIZONA (Mr. FANNIN), S. 3623, to amend title 39 of the United States Code to prevent insulting and profane use of the U.S. mail as a means to distribute unsolicited and unwanted sexually offensive advertisements.

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

S. 3643

Mr. DOLE. Mr. President, on behalf of the Senator from Pennsylvania (Mr. SCOTT) I ask unanimous consent that, at the next printing, the names of the Senators from Nebraska (Mr. HRUSKA and Mr. CURTIS), the Senator from Wisconsin (Mr. PROXMIRE), the Senator from New York (Mr. JAVITS), and the Senator from Oregon (Mr. HATFIELD), be added as cosponsors of S. 3643, to provide for the issuance of a gold medal to the widow of the Reverend Dr. Martin Luther King, Jr., and the furnishing of duplicate medals in bronze to the Martin Luther King, Jr., Memorial Fund at Morehouse College and the Martin Luther King, Jr., Memorial Center at Atlanta, Ga.

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

ADDITIONAL COSPONSOR OF A JOINT RESOLUTION

S.J. RES. 181

Mr. YOUNG of Ohio. Mr. President, for the distinguished junior Senator from Missouri (Mr. EAGLETON) presently presiding over the Senate, I ask unanimous consent that, at the next printing, the name of the Senator from Alaska (Mr. STEVENS) be added as a cosponsor of Senate Joint Resolution 181, proposing an amendment to the Constitution to provide for the direct popular election, of the President and Vice President of the United States and for the determination of the result of such election.

The ACTING PRESIDENT pro tempore (Mr. EAGLETON). Without objection, it is so ordered.

NOMINATION OF JUDGE G. HARROLD CARSWELL TO THE SUPREME COURT

Mr. YOUNG of North Dakota. Mr. President, the time is long overdue for the Senate of the United States to vote up or down President Nixon's nomination of Judge G. Harrold Carswell, as Associate Justice of the Supreme Court of the United States. This nomination has been before the Senate for more than a month and there has been ample opportunity for everyone to study his qualifications in detail.

A motion to recommit would mean an unnecessary delay. A substantial majority of the circuit court judges with whom he served, have expressed strong support for his confirmation. This, together with the unanimous approval of the American Bar Association's Committee on Judicial Selection, Tenure, and Compensation, provides a strong and convincing argument, for confirmation by the U.S. Senate. These attorneys should be the best judges of his professional qualifications.

Judge Carswell's membership on the Supreme Court of the United States, would provide a better philosophic balance. He has established an enviable reputation of being able to write opinions that are short, concise, and understandable. The Supreme Court of the United States, in recent years, has an overbalance of Justices who may be considered by some, as intellectual giants, but whose opinions lack both judgment and clarity.

Judge Carswell may be no Abraham Lincoln, but Lincoln, too, was belittled and ridiculed for not being a great intellectual. Time has proven the great wisdom of his judgment. The writings and speeches of this man, who was not looked upon as an intellectual giant of his time, are among the most revered of any, in all the history of this Nation.

I shall vote against recommital and for the confirmation of the nomination of Judge Carswell.

Mr. CRANSTON. Mr. President, yesterday I made a statement concerning the nomination of G. Harrold Carswell to the Supreme Court. I discussed the support or the lack of support, or the nature of that support from civil rights attorneys who have practiced before Judge Carswell in Florida.

I ask unanimous consent that my statement be printed in the RECORD.

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

STATEMENT OF SENATOR CRANSTON

On March 18, I publicly accused Judge G. Harrold Carswell of bias and hostility against civil rights attorneys who argued cases in his court, in violation of Canons 5, 10, and 34 of the Canons of Judicial Ethics.

I did so on the basis of:

1. An analysis of the record of hearings conducted by the Senate Judiciary Committee, and

2. Personal conversations I had with four civil rights attorneys who had appeared before Judge Carswell. They included John Lowenthall, law professor at Rutgers University; LeRoy D. Clark, an associate professor of law at New York University—both of whom had previously testified before the Committee—and Theodore Bowers, an attorney in Panama City, Florida, who had not testified.

Mr. Bowers accused Judge Carswell of being emotional, excitable and hostile on civil rights matters, of having criticized Supreme Court civil rights decisions from the bench, and of having verbally attacked U.S. attorneys appearing on civil rights matters, as well as private civil rights attorneys.

Professor Lowenthall accused Judge Carswell of overt and close-minded hostility, of pre-judging civil rights cases, and of having acted toward him in a threatening manner.

Professor Clark charged Judge Carswell with being extremely hostile, intemperate and intimidating—especially toward civil rights attorneys—and of deliberately confusing legal proceedings to throw civil rights attorneys off balance and muddy the record so as to make successful appeals difficult. He said the other civil rights lawyers in northern Florida, all of whom he knew, had voiced similar complaints against Judge Carswell.

The fourth civil rights attorney I had talked with also had not testified before the Committee. He too confirmed Judge Carswell's biased and hostile behavior. But he asked that his identity not he made public. I, of course, honored his request. But since my March 18 statement, this attorney has decided to come forward and has given me permission to make his identity known.

He is Earl M. Johnson, an attorney in Jacksonville, Florida. Mr. Johnson is a member of the Jacksonville City Council.

I and my staff have continued this line of investigation. We have tried to contact every civil rights attorney who had argued a case before Judge Carswell while he was a federal judge in the northern district of Florida. Over the past two weeks, we have spoken to ten attorneys, including the four I have already identified. The others are: Jerome Borstein, James Sinderlin, Tobias Simons, Maurice Rosen, Reece Marshall, and Sheila Rush Jonee.

Every one of the 10 attorneys told us that Judge Carswell was unfair and biased, had pre-judged his clients' cases and had a statewide reputation for being anti-civil rights. Every one declared strong opposition to the confirmation of Judge Carswell.

In addition, one of these attorneys has furnished me with an affidavit swearing that "Judge Carswell was very discourteous to me, interrupting me with frivolous comments as I attempted to argue the motion. In general he treated me in a mocking, ridiculing way. Only after I began prefacing my remarks with such statements as 'Let the record reflect I am attempting to say etc.' did he cease to interrupt and allow me to complete my argument. I have never before or since received such disrespectful treatment from a federal judge."

The signer of this affidavit is Sheila Rush Jones. Mrs. Jones had appeared before Judge Carswell in January 1967, less than two years after she had been admitted to the bar. At the time, she was 26 years old.

Thus, so far as we have been able to determine, civil rights attorneys who practiced before Judge Carswell unanimously agree to his bias and hostility in civil rights matters and unanimously oppose his confirmation.

There has been only one apparent exception.

He is Charles F. Wilson. Mr. Wilson has been with the Equal Employment Opportunity Commission in Washington since last fall. He is Deputy Chief Conciliator.

On February 5, Mr. Wilson sent a letter to the Chairman of the Judiciary Committee stating that he had represented plaintiffs in civil rights cases before Judge Carswell from 1958–1963.

In that letter, Mr. Wilson said in part:

"As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court, there was not a single instance in which he was ever rude or discourteous to me, and I received fair and

courteous treatment from him on all such occasions. I represented the plaintiffs in three of the major school desegregation cases filed in his district. He invariably granted the plaintiffs favorable judgments in these cases, and the only disagreement I had with him in any of them was over the extent of the relief to be granted."

Supporters of Judge Carswell have given this letter great weight and credence.

In his March 17 speech on the Senate floor in which he announced his decision to support Judge Carswell, Senator Fanning, for example, said he had "relied to a great extent" on statements of "lawyers and judges who have known and worked with Judge Carswell over the years."

He said he was "particularly impressed" with the Wilson letter and urged every Senator to read it.

"It is true that some witnesses appeared before the Senate Judiciary Committee and testified that Judge Carswell was biased and prejudiced against civil rights litigants," Senator Fannin said. "However, none of these witnesses had nearly as much experience in dealing with Judge Carswell as Mr. Wilson."

Balancing the "impressive testimony" of Mr. Wilson's letter against those other allegations, Senator Fannin said, "it is not difficult for me to make my decision."

On March 19, in a colloquy with Senator Hart, and again on March 20, in colloquy with Senator Mondale, Senator Gurney repeatedly cited Wilson's letter in attempting to refute my charges of ethics violations and bias against Judge Carswell. He called Mr. Wilson's letter a "very persuasive" refutation of anti-civil rights charges against Judge Carswell and said the letter was "weighty evidence" of Judge Carswell's "sensitivity" in human rights matters.

"For the life of me," Senator Gurney said, "I cannot see how Senators, in the face of evidence like that [letter], can come here and say that Judge Carswell is insensitive, that he is not interested in human rights, that he does not like black people, that he does not give them a fair shake in his court."

And the majority of the Judiciary Committee itself relied heavily on the Wilson letter in an effort to refute charges against Judge Carswell of anti-civil rights bias.

In its Feb. 27 report recommending the Judge's confirmation, the majority singled out the Wilson's letter to answer allegations by other civil rights attorneys that Judge Carswell "had evidenced hostility toward them and toward their clients' claims."

"If Judge Carswell were discourteous to civil rights attorneys or biased against civil rights litigants," the majority report declared, "Mr. Wilson would certainly know of it."

The fact is, Mr. Wilson did know of Judge Carswell's discourtesy to civil rights attorneys. Mr. Wilson did know of Judge Carswell's bias against civil rights litigants. But Mr. Wilson withheld that information from the Committee.

I have received an affidavit from Theodore R. Bowers, a Panama City attorney, who took over a number of civil rights cases from Mr. Wilson when the latter was appointed legal counsel for the Technical Assistance Program of the State of Florida.

Mr. Bowers, one of the leading civil rights attorneys in the state, declares that on September 8, 1965, he and Wilson had "a long discussion" about the cases and about Judge Carswell, who was then presiding over them.

Mr. Bowers discloses that Mr. Wilson apmeanor" in regard to school desegregation cases and swears that "Mr. Wilson described Judge Carswell as having segregationist views and tendencies and stated that Judge rised him of the Judge's "attitude and de-Carswell was antagonistic toward such cases."

Why, then, did Mr. Wilson send a letter to the Committee which he knew would be interpreted as an endorsement of Judge Carswell?

Mr. Vincent H. Cohen, an attorney in Washington, D.C., provides the answer. Mr. Cohen has given me an affidavit in which he swears that Mr. Wilson told him on Mar. 26 that his letter "was written at the request of the Department of Justice" and that "if he had not been contacted by the Department of Justice, he would have never sent his Feb. 5, 1970, letter to the Judiciary Committee.

Cohen further swears that Mr. Wilson informed him that he "does not now nor has he ever supported Judge Carswell's nomination", that "as a U.S. attorney and U.S. District Judge as well as in his private affairs, Judge Carswell has gone beyond the bounds of all propriety in taking part in discriminatory schemes and plans designed to thwart federal law," and that "Judge Carswell lacks the necessary intellectual and moral capacity to sit in judgment on the issues facing the court which are critical to the well being of American citizens, both black and white".

Besides being subjected to this pressure by the Justice Department, Mr. Wilson also acted out of loyalty to Judge Carswell.

In his affidavit, Mr. Bowers avows that Mr. Wilson confided that Judge Carswell had written "a magnificent recommendation" to help him get his new job with the Florida Technical Assistance Program.

After carefully reviewing all these facts:

1. I charge that [out of nearly a dozen civil rights attorneys who had appeared before Judge Carswell, the administration sought out the one attorney who was vulnerable to pressure—a government employee, beholden to Judge Carswell, who could be dismissed at Executive discretion.]

2. I charge that the administration used Mr. Wilson in a deliberate effort to mislead the Committee, the Senate and the American people.

3. I charge that the administration led Mr. Wilson to withhold from the Committee what he knew to be the full truth about Judge Carswell's unethical bias and hostility against civil rights attorneys and their clients.

4. I charge that this deception by the administration and Mr. Wilson materially contributed to Judge Carswell being approved by a majority of the Judiciary Committee.

I believe that President Nixon, himself, has been misled by his advisors as to Judge Carswell's qualifications and fitness for the Supreme Court. I call upon him to withdraw the nomination.

Short of that, I believe this additional evidence certainly provides new and conclusive reasons for recommitting the nomination to the Judiciary Committee.

Clearly, the full and accurate record of Judge Carswell's anti-civil rights bias, and his repeated violations of Canons 5, 10, and 34 of the Canons of Judicial Ethics, was not presented to the Committee before it sent Judge Carswell's nomination to the floor.

Mr. CRANSTON. Since I made my statement, a variety of statements have been made by those involved in this situation. The statements have been inconsistent and contradictory in a great many ways. They have also, I think, been quite revealing.

In this controversy over the letter sent to the Committee on Judiciary on February 5 by Charles Wilson, Deputy Conciliator for the Equal Employment Opportunity Commission, we must not lose sight of the main issue; that is, the qualifications and fitness of Judge Carswell to serve on the Supreme Court, particularly in light of evidence that he holds segregationist views, that he has been biased against civil rights cases, and that he has been involved in the discriminatory practices of private groups.

Mr. Wilson's letter was written to help offset this image, and it worked for a while.

Senate supporters of Judge Carswell, taking the letter on its face value, have relied heavily on it as evidence that he is not biased against or hostile to the black community, especially to civil rights attorneys and their clients.

Mr. Wilson's letter was widely interpreted as an implied endorsement of Judge Carswell's nomination by a black civil rights attorney.

On March 20, the Senator from Florida (Mr. GURNEY) placed in the RECORD a telegram from one Julian Bennett, which reads:

First counsel for Negro plaintiffs was Charles F. Wilson, Pensacola, Florida, who I understand has filed a letter supporting Judge Carswell's nomination to Supreme Court.

There in the RECORD is a flat suggestion that the letter did amount to an endorsement of Carswell by Wilson. It is no accident that this letter has been interpreted as an endorsement. It was carefully written to give that impression. The letter was sent at the request of the Department of Justice. Mr. Wilson himself admits this. So does Mr. William H. Rehnquist, Assistant Attorney General for the Office of Legal Counsel.

More than that, the letter was actually written by Mr. Rehnquist acting as a top official of the Department of Justice. The letter was submitted to Mr. Wilson for his approval and signature.

I read from this morning's Philadelphia Inquirer:

Wilson acknowledged he wrote the letter at the request of a Justice Department official.

I read from this morning's Baltimore Sun:

Mr. Rehnquist asked him whether he would testify before the Judiciary Committee, prepare an affidavit, or write a letter. He chose to present his views by letter, Mr. Wilson said.

I read from this morning's New York Times:

Mr. Rehnquist said that he had drafted the letter.

However, the letter was made to appear to be a personal, unsolicited letter from Mr. Wilson to the committee. Obviously, it was no such thing.

There is a world of difference between a letter spontaneously written, drafted by the writer himself of his own volition, and a letter requested and actually drafted by an important representative of Attorney General John Mitchell, the leading Presidential adviser charged with the responsibility of securing the confirmation of the nomination he recommended to the President.

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

Mr. CRANSTON. Mr. President, I ask unanimous consent that I may proceed for not more than 5 minutes.

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

Mr. CRANSTON. Mr. President, how, under these circumstances, can the Wilson letter be considered an unbiased and complete statement of fact, as Mr. Wilson intended it?

It cannot. Mr. Wilson himself now concedes that he did not intend his letter to be an endorsement of Judge Carswell.

Mr. Wilson told the press yesterday:

> My letter was a statement of fact. It was neither an endorsement nor a commendation.

I think Mr. Wilson should have said his letter was a statement of partial fact. Though given repeated opportunities by the press yesterday to endorse Judge Carswell, Mr. Wilson consistently refused to take a stand in support of the Judge's confirmation.

I read from this morning's New York Times again:

> Mr. Wilson replied that his letter had not been intended as an endorsement of Judge Carswell—as it has been characterized by some of the judge's supporters—and that he personally would have chosen a more liberal nominee.
>
> He added that he had "stated facts and not conclusions, limited to my own experience," and had not meant to say how other civil rights lawyers might have been treated by Judge Carswell. Mr. Wilson also said that he "didn't intend to say one way or another whether he [Judge Carswell] was biased."

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

Mr. CRANSTON. Let me close with these remarks.

Mr. Wilson is an intelligent man. He knew that a letter requested by the Justice Department and written by the Justice Department would be used to support Judge Carswell's nomination. He knew that his letter would be used to put on the Supreme Court a man whom he now admits he does not endorse. The question that Mr. Wilson must now explain is, What induced him to write such a misleading letter?

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

Mr. CRANSTON. I yield to the Senator from Kansas.

Mr. DOLE. As I recall last evening on television, Mr. Wilson indicated the pressure may be coming from the anti-Carswell forces and not from others. Does the Senator from California have any comment on that?

Mr. CRANSTON. It is for that reason that I did not speak, myself, or have any member of my staff talk to Mr. Wilson prior to the revelations I made yesterday. I suspected that he would then say that he had been pressed by a U.S. Senator. I did not want to give him that opportunity.

It seems to me that the administration singled out the one man who had appeared in Judge Carswell's court as a civil rights attorney who would be vulnerable to pressure, a man working for the Government now, and solicited this letter from that man, knowing it would be easier to get such a thing from him than from any other person who could give testimony.

Mr. DOLE. If the Senator will yield, I think he may do a disservice to Mr. Wilson. I understand he is a very well qualified attorney.

I have read his letter, which appears on pages 328 and 329 of the hearings. I read it as a statement of fact, as a statement indicating that he did receive courteous and fair treatment before Judge Carswell's court.

I might add that he was very active in integration activities in Tallahassee. He did practice before Judge Carswell's court many times. I assume that he has a right to make that statement, whether or not he is an employee of the Federal Government. I accept his word when he says he was not pressured by anybody in the administration; that he did make a statement and is going to stand by it. He deserves great credit for doing so, notwithstanding the indirect pressures being brought upon him.

Mr. CRANSTON. I would say the issue is, did this man write a letter that amounted to an endorsement of Judge Carswell as it has been interpreted by supporters of Judge Carswell? The fact is that he did not. He stated that it was not an endorsement; and the fact is that the main question in regard to the origin of the letter, then, is, why did he write a letter which he knew would be used to support a man whom he, himself, does not support for the Supreme Court?

Mr. DOLE. The letter speaks for itself. That is the best evidence, as the Senator from California knows. I would be happy to read the letter but we can read the letter in the RECORD. The New York Times can read the letter, though they failed to read Senator COOPER's statement of Saturday. It did not even appear in the first edition of their paper on Sunday. We can all make our own determination concerning opponents of Judge Carswell.

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

Mr. CRANSTON. I yield.

Mr. BROOKE. Is it the Senator's contention that the letter which the distinguished Senator from Kansas has referred to was not written by Mr. Wilson?

Mr. CRANSTON. Yes. It now develops that Wilson admits he did not write the letter; that Mr. Rehnquist, the Assistant Attorney General, states he did write the letter. He submitted it to Wilson, and Wilson made a minor change, according to the press accounts, and the letter was sent to the Senate. It is an administration letter, written by officials of the administration.

Mr. BROOKE. But the Senator states that the letter was signed by Mr. Wilson, though Mr. Wilson was not the author?

Mr. CRANSTON. Yes.

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

Mr. CRANSTON. I ask unanimous consent that I may proceed for 5 additional minutes.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD of West Virginia. Mr. President, reserving the right to object—and I shall not object—is the Senate now in the period for the transaction of routine morning business, with statements therein limited to 3 minutes?

The PRESIDING OFFICER. As in legislative session.

Mr. BYRD of West Virginia. I thank the Presiding Officer.

The PRESIDING OFFICER. Without objection, the Senator from California may proceed for 5 additional minutes.

Mr. CRANSTON. I yield to the Senator from Massachusetts.

Mr. BROOKE. I offer no judgment on this matter. I do not know Mr. Wilson, and I certainly have all respect for the distinguished Senator from California. I think the distinguished Senator from California has provided a great service to the Senate in this debate, particularly a great service insofar as the motion made by the distinguished Senator from Indiana is concerned. He raises the question as to whether the letter written by Mr. Wilson constitutes an endorsement of the candidate. As I understand it, he raises that question because he believes—and I think justly so—that several of our colleagues have relied upon this letter as an endorsement in making their decision as to whether they should vote for the confirmation of the nomination. Is that correct?

Mr. CRANSTON. That is correct.

Mr. BROOKE. So it seemed to me that this would be a perfect opportunity for the Judiciary Committee to conduct a hearing, at which time they could call Mr. Wilson before that committee, under oath, and question him as to the purpose for which the letter was written—whether pressures were brought to bear on him at the time he agreed to sign the letter, which was written by someone in the administration, as the Senator says, and whether in fact he does endorse this nominee for confirmation to the Supreme Court of the United States.

Does the Senator agree with this?

Mr. CRANSTON. I agree with that. I would add to that that the members of the committee, themselves, should reappraise their action, because the majority report cited the Wilson letter as one of the convincing elements of the case for Judge Carswell. The specific comment they make, after inserting the letter, is as follows:

> If Judge Carswell were discourteous to civil rights attorneys or biased against civil rights litigants, Mr. Wilson would certainly know of it.

The fact is that Mr. Wilson never has made any statement on that subject. He never has said that he did not know of bias being employed by Judge Carswell in his court against civil rights attorneys other than himself.

Mr. BROOKE. Mr. President, will the Senator yield further?

Mr. CRANSTON. I yield.

Mr. BROOKE. Does the Senator know whether Mr. Wilson was given an opportunity to appear personally before the Senate Judiciary Committee?

Mr. CRANSTON. No; he was given no opportunity, except that Mr. Rehnquist, of the Department of Justice, states that he offered him three alternatives; to write a letter or to appear before the committee were among those alternatives. I gather that it was decided that

it would not be wise for Mr. Wilson to appear before the committee, because under cross-examination by those who have doubts about Judge Carswell's qualifications, it would emerge that this man by no means was endorsing him, as the simple matter of a letter would enable them to imply he was endorsing Carswell.

Mr. BROOKE. The question has been raised about the best evidence. I ask this question of the distinguished Senator from California: Does he have any knowledge as to whether there was any impediment or any reason why Mr. Wilson did not—could not—appear before the Senate Judiciary Committee?

Mr. CRANSTON. I think the officials of the administration would not want him to appear, because it would become apparent under cross-examination that he was not a supporter of their cause within his heart.

It is also a fact that this man holds a position in Government and apparently is seeking promotion, a promotion which depends upon—or can depend upon—decisions made in the White House.

A further point is that I made affidavits available yesterday, and I have more, in which people swear that Mr. Wilson told them privately that he is opposed to Judge Carswell because he knows he is biased.

Mr. BROOKE. Well, with all due respect to the distinguished Senator from California, that is the Senator's opinion as to why he did not appear?

Mr. CRANSTON. That is right.

Mr. BROOKE. It would seem to me that a motion for recommittal should carry if, in effect, it would give an opportunity to the Judiciary Committee to go deeper into the several matters upon which doubt has been raised during the course of this rather lengthy debate on this confirmation. One was the question of credibility concerning the golf course incident where the committee would call in Mr. Horsky, for example, and question Mr. Horsky so that they could make some determination as to what the other facts are in that matter.

The Senator has raised another point which I think certainly would be a proper subject for inquiry by the Judiciary Committee; namely, did Mr. Wilson intend an endorsement by the letter which he sent to the Judiciary Committee? It would seem to me that this is the contribution the Senator from California has made because I am sure that many Senators feel there are matters which have not been thoroughly examined by the Judiciary Committee in its deliberations on the confirmation; is that not correct?

Mr. CRANSTON. That is correct. I thank the Senator for his comments on my efforts in this regard. Others have raised many other questions which remain unanswered beyond those cited by the Senator from Massachusetts. They all add up to a very strong, I believe, totally convincing case for recommittal of the nomination to the committee so that it can explore the unanswered questions which have arisen since they reported the nomination from that committee.

ORDER OF BUSINESS

Mr. PROXMIRE. Mr. President, I ask unanimous consent that I be allowed to proceed for not to exceed 10 minutes.

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

FUNDAMENTAL QUESTIONS ON LOCKHEED'S FINANCIAL CONDITION REMAIN UNANSWERED

Mr. PROXMIRE. Mr. President, I would like to make an interim report on the information I have been able to gather so far concerning the request of the Lockheed Aircraft Corp. for $641 million to alleviate its financial difficulties on its military contracts.

On March 10, I formally requested the Comptroller General of the United States to investigate Lockheed's financial condition and its ability to continue performance of its military contracts. Because of the urgency of the situation, I asked that the report be completed within a very short time period, just 10 days. Not unexpectedly, the data that has been gathered is incomplete and raises additional questions. I have therefore asked the Comptroller General to continue gathering information in answer to my original request and to provide additional facts.

LACK OF FACTS

Regrettably, I must report that as of this date, no one in the Congress or in the Department of Defense has the facts on which to base an intelligent decision on the Lockheed request.

In effect, Lockheed is asking for payment of claims growing out of four military contracts, the C–5A cargo plane, the Cheyenne helicopter, the SRAM missile, and several shipbuilding projects.

In each case, the claim is disputed by the Government.

Normally a contractor continues in the performance of his contracts regardless of the claims that he may have filed against the Government, awaiting adjudication by the administrative process. In this case, however, Lockheed complains that the amounts in question are so great that it will not be able to continue performance unless it receives immediate payment. Another way of viewing Lockheed's position is to say that it has threatened to quit working on programs deemed by the Pentagon to be necessary to national security unless the Government pays up and pays up in a hurry.

QUESTIONS NEED ANSWERS

At this point, several fundamental questions need to be answered before any decision is made.

First. What is Lockheed's financial condition?

Second. How did Lockheed's financial problems develop? Are they the result of Pentagon mismanagement, or contractor inefficiency?

Third. Do similar financial difficulties exist with respect to other military contracts with Lockheed?

Fourth. To what extent is Lockheed's present difficulty the result of problems with its non-Government, commercial ventures?

Fifth. If the Government provides Lockheed with the funds it is requesting, is there any assurance that this contractor will not come back for more in the future?

I am shocked that none of these questions can be answered at the present time. On March 10, the New York Times, on the basis of Deputy Defense Secretary David Packard's testimony to the House Armed Services Committee, reported that the "Pentagon backs aid for Lockheed." I fail to see on what basis the Pentagon could have made its decision to support Lockheed's request, if indeed such a decision has been made. In fairness, it should be observed that spokesmen for the Department of Defense have stated that they are exploring all ways to resolve this problem.

EXPLORATIONS IN THE DARK

But I cannot help but wonder whether these explorations are being carried on in the dark. For example, I asked in my letter to the Comptroller General for a list of all Lockheed military, space, and related contracts, their dollar amounts, the funds authorized and appropriated so far, and the sums paid to Lockheed as reimbursement to date. To my surprise, we learned that no such list had yet been prepared in the Department of Defense. Of course, Lockheed complains about its financial plight on only four programs. But Lockheed has many military contracts. It is the biggest defense contractor we have. It would seem to me to be fundamental to any consideration of such a monumental request for funds—that is $641 million—for the Government to review all of its dealings with this contractor.

I am now assured that such a listing is being compiled by the Pentagon, and that it will be made available within the next few days.

By the way, it is interiguing to me that only four contracts have been selected for the basis of the extraordinary claim that is being made. It is true, of course, that huge cost overruns infect each of the four programs.

But other Lockheed contracts are similarly infected. There is a multibillion-dollar cost overrun on the Poseidon program. And there is a huge overrun on the deep submersible rescue vehicle. How have these programs affecetd Lockheed's financial capability?

There is also the S–3A aircraft contract, awarded only last year to the Lockheed Corp. This is a $3 billion program and, according to my information, it is already in trouble.

NO CASH FLOW STATEMENT

A more shocking example than the lack of information is the fact that the Pentagon does not have a cash flow statement of Lockheed's finances.

The cash flow statement is the most fundamental information necessary for an analysis of short-term cash needs. It is essential for any examination of short-

THE FEDERAL EMPLOYEES' STRIKE AGAINST THE GOVERNMENT

Mr. GOLDWATER. Mr. President, the time has come in the minds of most citizens of this country, and I hope in the minds of many Members of Congress, that we must give serious consideration and discussion to whether or not a Federal employee may strike against the people. I have always believed that the right to strike is really the only weapon that a worker has; but when a person goes to work for the Federal Government, he is in effect working for the people, and in my opinion, he should be denied the right to strike.

At the same time, the Congress should pay constant attention to the problems of the various jobs involved in working for the Government, and they should be always alert to the needs of the workers, both as to salary, retirement, and the other facets of employment that concern the worker.

Two hundred million Americans should not be made to wait for mail, or to circle airports in holding patterns, or to wait hour after hour for transportation to and from different cities of this country, or to and from loved ones with whom they might spend a few precious days of a vacation.

Title 5, section 7311 of the United States Code says in part:

> An individual may not accept or hold a position in the Government of the United States or the District of Columbia if he . . . participates in a strike, or asserts the right to strike, against the government of the United States or the government of the District of Columbia;

I wish to point out that I have been a pilot for over 40 years and have kept abreast with most of the problems of aviation and its associated industries.

I have had great sympathy for the dedicated professional air traffic controllers and expressed my feelings before this body on February 25, 1970, during the airport/airways user bill debate. I would like to read into the RECORD a portion of my remarks at this time:

> Mr. President, I would like to mention a fact that we have not talked about as yet. This is the continuing problem that our airway controllers face—not just the controllers who operate the control towers, but also the man who sits in the Washington center, the Albuquerque center, or wherever it may be, and is required to look at a very difficult radar screen most of the period of his 8-hour working day.
>
> Mr. President, any of us who have been acquainted with radar knows that this is a very, very difficult assignment. It is difficult on their eyes. And it is difficult mentally. It is an extreme responsibility to place on one man, the responsibility for a dozen or more aircraft in a heavily congested part of the airway system. This would include both those controllers in centers and those controllers in the tower.
>
> I am glad to see that in the pending legislation there is a recognition of this problem.
>
> I do not go along with those who feel that the controllers should be allowed in effect to join a union so that they could threaten the system with strikes or even to strike. I think we should be a head of them and provide all they are asking. We are long overdue on this. In that way, we could prevent another catastrophe from happening such as the sick-out we had before or a strike because the controllers justifiably think they should be getting something more than they get today.
>
> I cannot think of a job today that is more exacting or demanding on a man's physical ability than the jobs I am talking about.

The deliberate defiance by the controllers of their responsibility to the traveling public, to the Federal Government, and to the courts of our land is inexcusable. These controllers have refused to recognize that Congress is cognizant of their problems. The airways/airport bill was passed by both Houses of Congress last month and is now in conference committee.

Under subsection 2(b) of section 204 we provided a provision for improving air navigation facilities. It states:

> The Secretary is authorized within the limits established in appropriations acts to obligate for expenditure not less than $250,000 for each of the fiscal years 1970 through 1979.

Last year Congress authorized hiring 2,000 new controllers and the new legislation provides for additional controllers. The number of controllers will be increased in 1971 by 4,141; in 1972 we will add another 1,075 new controllers; in 1973 another 1,380 will be added and so on, with the result that between today and 1980 we will have provided funds to hire an additional 19,109 air traffic controllers.

The controllers that have refused to work have been so gullible as to be led by the "Pied Piper," F. Lee Bailey, who has only his own interest at heart. He has convinced 50 percent of the air traffic controllers to join his organization PATCO. He guaranteed these controllers that his competency as a criminal attorney enables him to protect them from any harm coming to them as the result of defying Federal law by walking off their jobs and then sweetened the pot by guaranteeing each controller shorter working hours, better equipment, and an increase in pay.

Mr. President, since the time I have prepared these remarks and the present time, I am glad to note that the head of the FAA has read the riot act to them and stated that they will be back to work at the end of the first shift or they will be fired and will be subject to rather heavy fines.

The controllers who have left their jobs have certainly lost my support. They are playing with the lives, safety, and well-being of all air travelers. This utter disregard for safety is inexcusable and cannot be tolerated. I have listened and read with disgust the TV, radio, and newspaper coverage of F. Lee Bailey and his attempt to justify his irresponsible actions.

He has organized the most militant group of controllers into striking for additional benefits, shorter working hours, improved equipment and more controllers. Yesterday, F. Lee Bailey finally indicated what his real goal is, the removal of air traffic controllers out of Government service into a quasi-public corporation such as the one proposed to operate the strife-torn postal service. Bailey would, as head of such a corporation, have all the dictorial powers he indicates he must have to improve the conditions of the controllers.

The selfishness of the controllers has resulted in tragic financial losses to our already depressed airline industry. Executives of one airline inform me that the first week of the controller slow down has resulted in a loss in excess of $2½ million. They were forced to cancel 740 hours of revenue flying and the additional holding over airports waiting to land have totaled in excess of 730 hours of additional flying time.

It is my hope that Congress will voice unanimous support of the administration's ultimatum that those controllers who abided by the law be rewarded and those controllers who defied the responsibility they accepted when they became controllers be suspended or dismissed.

If we add to the two crippling strikes, whether they be called sick-ins or what, the threatened strike of the Teamsters Union, this country can face total economic paralysis within the coming few weeks.

I think it is past time that the Congress conduct hearings to look into the problems involved relative to the complaints of the workers and to, at the same time, reassess the position of the Federal Government that it is illegal to strike against the Government, which in effect is striking against the people.

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

Mr. BROOKE addressed the Chair.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. BROOKE. I am happy to yield.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator from Massachusetts may be permitted to proceed for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator may proceed.

Mr. BROOKE. I thank the distinguished Senator from West Virginia.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 15 minutes.

THE NOMINATION OF JUDGE CARSWELL

Mr. BROOKE. Mr. President, there are several ways in which the matter of G. Harrold Carswell can be disposed of: First, Mr. Carswell could withdraw his name from consideration; second, the Senate could vote on confirmation and vote favorably on that confirmation and thus confirm him; third, the President could withdraw Mr. Carswell's name, and that has been suggested by the very distinguished and able senior Senator from Oregon (Mr. HATFIELD).

Mr. President, I ask unanimous consent to have printed in the RECORD a telegram which was addressed to the President by the Senator from Oregon (Mr. HATFIELD), and sent to the President on Thursday, March 26, 1970.

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

MARCH 26, 1970.

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

DEAR MR. PRESIDENT: I shall vote yes on the motion to recommit the nomination of Judge Carswell to the Judiciary Committee and I am prepared at this point to vote the nomination up or down.

I write you as one of your early supporters for the Presidential nomination and as one who has remained publicly uncommitted on Judge Carswell. I write also as reflecting my own evaluation of the mood of the Senate and the thinking of many of my close colleagues.

You and I share the common goal of restoring the needed balance to the Supreme Court. We share a common concern about the need to restore confidence in our entire judicial process. I was a strong supporter of Chief Justice Warren Burger and would welcome the nomination of a man of his stature.

I stand ready to support a nominee from any geographical area of the country. Just as every section should be open for consideration for an appointment, so should any nominee represent the best in professional excellence and personal integrity. There are men within the Southern states who represent these composite traits and who do justice to the best and to the future of that region.

As I spoke very recently with my constituents and with many others from throughout the country, I have become more deeply concerned about the crisis of confidence that confronts our governmental process. In all such discussions I continually urge the full utilization of our constitutional and judicial process in seeking the orderly redress of grievances. Yet, the name of G. Harrold Carswell has become a symbol of the despair, distrust, and disillusionment that beguiles our admonitions to work peacefully within our democratic institutions.

You and I share the commitment to promote a national reconciliation between the polarized factions in our land. We can do no better than to give our words the ring of authenticity by granting to our institutions the assurance of complete credibility.

Therefore, I respectfully urge you to withdraw the nomination of G. Harrold Carswell.

Sincerely,

MARK O. HATFIELD.

Mr. BROOKE. Mr. President, then the nomination could be sent back to the Committee on the Judiciary for further hearings and further study and examination. Most of the debate which has taken place on the floor of the Senate has been addressed to confirmation. Proponents have argued for confirmation and the opponents, of course, have argued against confirmation. But we now have before the Senate a motion to recommit, and by unanimous consent the Senate has agreed to vote on that motion on April 6 at 1 p.m.

Mr. President, my purpose today is to suggest that in the waning days of this debate the opponents of Mr. Carswell and those who have questions in their minds address themselves mostly to reasons why the motion for recommittal should carry. Many persons have suggested both in the press and in conversation that the purpose of the motion to recommit is really to deny Mr. Carswell's confirmation. But I suggest there are many valid reasons for this motion to recommit, and that, in fact, the Senate would be doing Mr. Carswell a great service, doing the President a great service, doing the country a great service, and doing itself a great service by acting favorably upon the motion to recommit.

I will not go into all of the questions of doubt that have been raised, but certainly one was raised on the floor of the Senate today by the distinguished junior Senator from California relating to a letter which was sent by a Government employee to the Committee on the Judiciary stating, in effect, that he, as an attorney appearing before Judge Carswell, received fair and courteous treatment. The Senator from California has raised the issue as to why this letter was sent by Mr. Wilson. He has charged that Mr. Wilson was acting under pressures from the administration. He has further charged that Mr. Wilson's letter did not constitute an endorsement, but that, in fact, several Senators had used this letter as the basis for their decision to vote favorably upon confirmation. I do not propose to argue the truth or the falsity of these charges, for, in fact, I do not know, Mr. President, but they do raise a very serious question which I think should be resolved.

One of our distinguished Senators, the senior Senator from Arizona, said that his decision—and his decision was to vote favorably upon the nomination—was based primarily, if not entirely upon Mr. Wilson's letter which was certainly favorable to Mr. Carswell. This raises a question as to the weight of that letter, a question as to the reasons why the letter was sent. I think these questions can be resolved only by calling Mr. Wilson before the committee, placing him under oath, and asking him these questions instead of speculating upon them, as we have heard done.

Mr. DOLE. Mr. President, will the Senator yield at that point?

Mr. BROOKE. I am pleased to yield to the Senator from Kansas.

Mr. DOLE. I wish to point out that the letter appears in the RECORD as part of the hearings on pages 328 and 329. I do not think anyone questions Mr. Wilson's honesty and integrity and see no reason to have further hearings. The letter is in the transcript of the hearings and it speaks for itself. The letter states that he is a civil service employee. Mr. Wilson states in the letter that he was treated courteously in the courts of Judge Carswell. It seems to me that just because someone says Judge Carswell is courteous does not mean we should start a new hearing.

I assume many hundreds of lawyers appeared before Judge Carswell, and under the thesis the Senator is pursuing, perhaps we should call all of these people before the Committee on the Judiciary, every one of them.

Mr. BROOKE. Will the Senator yield?

Mr. DOLE. The Senator from Massachusetts has the floor.

Mr. BROOKE. I wish to say to the Senator that I think a question of integrity has been raised.

Mr. DOLE. Not of Mr. Wilson.

Mr. BROOKE. Yes. I think the question of Mr Wilson's integrity has been raised. This is the sort of question I think could and should be resolved by the Committee on the Judiciary. I think that by raising the issue as to his motives, stating publicly and on the floor of the Senate that Mr. Wilson was not motivated by anything other than his desire to tell the truth to the committee, one does raise a question as to the man's integrity.

I think that, whether it is raised directly or indirectly, the effects are the same. Mr. Wilson is an employee of the Justice Department, and as such was appointed by the present administration. He has given testimony in the form of a letter to the Judiciary Committee. The distinguished Senator from California says that that letter was drafted by a member of the Justice Department in the present administration, and that it was signed, after some minor corrections, by Mr. Wilson.

If the facts are as the Senator from California states them, it certainly raises a doubt in my mind, and as the distinguished Senator from Kansas well knows, I try to be as fair and as objective as I can. As I say, I do not know the facts in this case. I do not know Mr. Wilson, I do not know whether he would be motivated by career considerations; whether he feels his job may have been in jeopardy had he not signed the letter. I do not know that.

I do not make any such charge. I do state that the best way to resolve the question is by letting the Judiciary Committee conduct hearings on this issue; let members of the committee ask Mr. Wilson questions. Let them sit, look into his eyes to judge whether he is telling the truth; whether he really believes Mr. Carswell is the man to sit on the Supreme Court of the United States; whether the statements he signed were, in fact, truth and fact. I think that question can best be resolved by giving him the opportunity to testify. I do not know of any impediment——

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

Mr. BROOKE. In just a moment I shall be pleased to yield.

I do not know why this man cannot appear before the committee, or why he did not appear before the committee. Apparently he is in good health. He is right here in Washington, D.C. He would not have had to travel very far to come before the Senate and testify before the committee.

I certainly do not want the Senator to feel that I am now suggesting that all the possible witnesses in the whole country be brought in to take the committee's time, but the committee, at least, had before it the letter of Mr. Wilson, on which several members said they based their judgment. From what I read in the RECORD, these Senators not only based their judgment on it, but said they were voting for the nomination because of the high endorsement made by Mr. Wilson.

Now, did he make an endorsement, or did he not?

Mr. DOLE. I do not know which Senators the Senator from Massachusetts is referring to. Several Senators have commented on this letter—I have, myself—as an indication that Judge Carswell was courteous to civil rights lawyers

appearing before his court. But the basic question raised is that every time somebody says Judge Carswell was a fair and a courteous man, we question his integrity. What about the others? Are they entitled to different treatment?

Mr. BROOKE. No; I think they should be called before the committee and given an opportunity to testify. Many testified that Judge Carswell was discourteous, that he was downright rude to them when they appeared before him in court. I do not know. I am not charging anyone with anything. All I am saying is that, under our system of law, when a man has some testimony to give to a committee, he ought to be given that opportunity to come before that committee, that he ought to take an oath, that he ought to testify, and be subjected to examination and cross-examination. I think there is nothing wrong with that.

The fact that a man is a Federal employee does not make him immune to this sort of procedure. In fact, there is a stronger case that he ought to be given an opportunity to come before the committee, particularly, as I said, as he is here in Washington and could readily testify. I suggest to the Senator that this is a wonderful way to give him that opportunity; namely, by sending this nomination back to the committee and inviting him back to testify.

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

Mr. BROOKE. I yield.

Mr. DOLE. I will comment generally on that. That is one way to defeat the nomination of Judge Carswell. If that is what the Senator from Massachusetts has in mind, that is one way to proceed. But I believe the President has a right to have the nomination voted up or down on the Senate floor. We have a right, under the Constitution, to advise and consent to nominations. We should have the courage to express ourselves; we should be willing to vote them up or down. I see no reason why we should resort to a stratagem or subterfuge of sending it back to committee, where it can die an unnatural death. Why not vote on the nomination on the Senate floor?

Mr. BROOKE. That is precisely why I raised this question on the Senate floor. I am glad the distinguished Senator from Kansas, in his customary and usual honest and forthright stance, has come out and said what many have been saying quietly—that the only purpose of the motion to recommit is to, in effect, kill the Carswell nomination. I am saying today that there are many reasons—very valid and compelling reasons—for recommitting this particular nomination.

Mr. DOLE. Mr. President, will the Senator yield at that point?

Mr. BROOKE. Certainly.

Mr. DOLE. Does the Senator know any Senator who is promoting the motion to recommit who might vote for Judge Carswell if there were further hearings?

Mr. BROOKE. I, frankly, have not asked any Senator that question.

Mr. DOLE. What about the Senator from Massachusetts?

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

Mr. BROOKE. Mr. President, I ask unanimous consent that I may be permitted to proceed for an additional 15 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Massachusetts may proceed for an additional 15 minutes.

Mr. BROOKE. Let me say to the distingulshed Senator from Kansas that I have already stated very clearly my intent to vote against the nomination of G. Harrold Carswell. I have stated my reasons for such a decision, and a painful decision it was. And still is.

I have also stated that I hope that there will never be a time in my life when I cannot change my mind. I think a man who cannot change his mind should not serve in the U.S. Senate.

Mr. DOLE. Or on the Supreme Court.

Mr. BROOKE. Or on the Supreme Court. I quite agree with that. So I will not say I cannot change my mind. Perhaps some evidence will come before the Judiciary Committee, and ultimately the Senate, which would cause me to change my mind. There is that possibility. I do not rule out that possibility. I do not rule it out for my colleagues, either.

As I have said, there are many valid and compelling reasons for recommitting the nomination to the Senate Judiciary Committee, where I think it may be given a more thorough and exhaustive examination and inquiry than it had in the first instance.

Mr. DOLE. Mr. President, if the Senator will yield further, I think the nomination might be given a more quiet burial in the Judiciary Committee than on the floor. If we are being practical, as I think the Senator from Massachusetts is——

Mr. BROOKE. Is that a fair statement, that it will be given a quiet burial if it goes back to the Senate Judiciary Committee?

I have great faith that members of the Judiciary Committee will perform their duties, as they should; and that if there is new evidence to come before them, they will hear that evidence and judge it fairly. If there are witnesses who can shed light on some of these areas of darkness—and there are areas of darkness—I think the Judiciary and the country should be given an opportunity to hear, and judge, and ultimately decide about that testimony.

I would be less than candid if I did not say that I certainly recognize the possibility that the committee may not vote to return the nomination to the floor. But the committee certainly could also vote to report the nomination favorably a second time or it could report it adversely.

Mr. DOLE. Mr. President, will the Senator yield at that point?

Mr. BROOKE. I yield.

Mr. DOLE. I am merely discussing this nomination. I have no quarrel with the Senator from Massachusetts.

Mr. BROOKE. I think the Senator's comments have been helpful.

Mr. DOLE. I respect his position and trust he respects mine.

Mr. BROOKE. That is a proper assumption.

Mr. DOLE. I know how a motion to commit is used in the other body.

I would point out to the Senator from Massachusetts that this is a straight motion to recommit. There are no instructions to report the nomination back.

Mr. BROOKE. That is correct.

Mr. DOLE. I am advised by the Parliamentarian that it is too late to change that motion, to add instructions. The Senator from Indiana made the motion last Thursday. It was accepted and is a straight motion to send the nomination back to committee.

I would say, based on my experience in Congress, that what we are doing is, in effect, killing the nomination. I can visualize that there are Senators saying, "Send the nomination back to committee," who will say if they are successful, "The President should withdraw the nomination. Why should we continue hearings on it? The Senate has indicated it is not in favor of the nomination. There are 50–x votes for recommittal"—ad infinitum.

This might be a fair argument. I believe the President recognizes the practicality of it. My only point is—and I would hope that the Senator from Massachusetts might agree with me——

Mr. BROOKE. Is that not true at the present time? Could not the President withdraw the name now because of speculation that at this very moment at least 40 Senators are prepared to vote against confirmation?

Mr. DOLE. At least 40 other Senators might vote the other way.

Mr. BROOKE. Such widespread opposition, such widespread doubt would seem to me to be more than cause for a motion to recommit. Does the President have to withdraw a name merely because 51 Senators said the name should be recommitted?

Mr. DOLE. In a case where there is a yea-and-nay vote, and it is on a motion to recommit, I would hope the Senator from Massachusetts would favor a motion to table the motion to recommit. The Senator from Massachusetts and other Senators recognize that we have an obligation to vote the nomination up or down. We have had adequate hearings. Only a few votes were cast against the nomination in committee.

Mr. BROOKE. That is precisely what I am saying. We did not have adequate hearings, as is borne out by the many clouds, the many areas of doubt, that have been raised since the Committee on the Judiciary reported this nomination to the Senate.

Mr. DOLE. Did the Senator from Massachusetts raise those doubts when he made his speech against confirmation? Did he raise the question that there should be more hearings?

Mr. BROOKE. I made my speech relatively soon after the Committee on the Judiciary had reported the nomination, and the report had been completed. I studied the record as best I could, and based my decision upon the record and my own personal inquiries. But since that time many things have come to light which I, frankly, did not know of, and I think many other Senators did not know of.

Take the matter of Judge Tuttle. There

is certainly some question as to Judge Tuttle's endorsement or withdrawal of his endorsement, about how, in fact, the judge stands on this nomination. Things of that nature could be cleared up, once and for all, if the nomination goes back to the committee.

Questions were raised by the Senator from California (Mr. CRANSTON) yesterday and today about the letter of Mr. Wilson. Mr. Wilson's credibility and the credibility of Judge Carswell himself have been questioned. Those are important things to consider and I think the Judiciary Committee should consider them.

No one wants to have sitting on the Supreme Court a man whose credibility has been challenged, unless that issue has been resolved. I do not make such a charge. I do not say Judge Carswell did not tell the truth to the Committee on the Judiciary at the time I believe my distinguished colleague from Massachusetts (Mr. KENNEDY) was interrogating him as to whether he knew when he signed the incorporation papers that he was setting up a device to circumvent the law of the land as determined by the Supreme Court. But there is a question—a doubt—in my mind. I would like to know whether Judge Carswell was or was not telling the truth. I do not think the interrogation was exhaustive or complete.

I think that certain things which have happened since the hearings have raised doubts in my mind and have raised doubts in the minds of other Senators. I am looking for a means to resolve those doubts.

It seems to me that if I were in Judge Carswell's position and my name were before the Senate for confirmation, and if some doubt had been raised as to my credibility, and I were about to sit on the Supreme Court of the United States, I would want any and all doubts resolved promptly and decisively. I would want them resolved by the official body that should resolve them.

I do not think the Senate has all the facts before it at the present time. Nor has it an opportunity to get those facts. The Senate itself does not take testimony. The Committee on the Judiciary does. I think that a further hearing by that committee is the only way these doubts can be resolved.

Mr. DOLE. If the name of the Senator from Massachusetts were before the Senate, I would vote for its confirmation.

Mr. BROOKE. I am certainly honored. I thank the Senator from Kansas.

Mr. DOLE. Many statements have been made since the hearings were concluded. There was the telegram, released the past Sunday, by 11 of 15 active members of the fifth circuit, endorsing the nomination of Judge Carswell. Judge Wisdom was the only one who said he could not endorse Judge Carswell because of his record on civil rights. The others said they felt they should not because of the doctrine of the separation of powers.

Seventy-nine lawyers in Tallahassee, who have engaged in Federal practice before Judge Carswell endorse the Judge's experience and nomination.

So if we were to reopen the hearings on a day-by-day basis, the hearings would never end. When would we start, and when would we stop and say to the committee, "You have performed your task"?

If we want to kill the nomination, let us do so on the Senate floor next Monday, April 6—at 1 o'clock.

Mr. BROOKE. Would not the Senator agree that the whole question of the weight that should be given to the American Bar Association's endorsement is one that should be resolved? Certainly the American people have been led to believe that when the American Bar Association gave its approval to Mr. Carswell's nomination, the American Bar Association, the most distinguished and most prestigious legal body in the country, had conducted a rather extensive, if not exhaustive, investigation; and that, therefore, if they approved a nomination, their approval was one upon which the Senate, the President, and the Nation could rely.

But it would appear now that no such thing happened. The American Bar Association did not conduct an extensive examination into Mr. Carswell's qualifications. The American Bar Association merely gave him a rating of "qualified," whatever this means.

As I have said, I am a member of the American Bar Association, but I think it was certainly misrepresentation to the Senate, to the President, and to the Nation for that association to say that Judge Carswell was qualified, considering the minimum of investigation which the ABA's committee conducted.

I think the same thing applies to the Department of Justice. I think it is a shame, some would say a scandal, frankly, that the Justice Department did not know or did not report to the Committee on the Judiciary the statement which some television reporter discovered, by happenstance or through diligence—well, not by happenstance, but by diligence—that created some serious doubts in my mind and in the minds of other people across the Nation as to this nominee's fitness to serve on the Supreme Court.

Many of these things came out after the Judiciary Committee had made its report. If these were just more things that had already come before the Committee on the Judiciary, then, as the Senator from Kansas has wisely pointed out, we could not keep the record open for an indeterminate period. The hearings have to be ended at some time.

All I say now is that serious questions of doubt have been raised since the Senate began to consider this nominee. We can resolve those doubts and the way to do that is to vote favorably upon the motion to recommit and thereby give the Committee on the Judiciary an opportunity to conduct further hearings, which conceivably and hopefully could resolve those doubts.

Is that not a logical argument?

Mr. DOLE. That is a logical argument; I will agree to that. I would add—this is my notion again—that we have the right to have differing opinions. Surely many headlines have been written about the fact that 400 or so lawyers had signed petitions saying that Judge Carswell was not fit to sit on the Supreme Court.

If we review that—and that is a great number of lawyers—we find that of those 400 lawyers, only 126 are practicing attorneys; the other 300 odd are law professors. About 4,000 law professors teach in 145 law schools in America. We find the names of 126 practicing lawyers appeared in the advertisement published in certain newspapers.

The PRESIDING OFFICER. The Senator's additional time has expired.

Mr. BROOKE. Mr. President, I ask unanimous consent that I may be permitted to proceed for an additional 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD of West Virginia. Mr. President, reserving the right to object—I shall not object—there is other morning business; and I would hope that after this 15 minutes the Senator will not request additional time.

The PRESIDING OFFICER. Without objection, the Senator from Massachusetts may proceed for 15 additional minutes.

Mr. DOLE. There are 300,000 practicing attorneys in America. 143,500 of them are members of the American Bar Association. The ad carried the names of 126. My point is this: That is approximately .3 percent who oppose, at least publicly, the nomination of Judge Carswell. There may be others. But there has been so much notoriety and so much publicity given to 126 out of 300,000, and 334 law professors out of 4,500, why not call these people in if there are to be more hearings.

Mr. BROOKE. Does the Senator know whether a poll was taken of every lawyer in this country and every law professor in this country?

Mr. DOLE. In the State of Kansas we have approximately 3,000 practicing lawyers—and not a single Kansan's name appeared in the ad. Perhaps there are some Kansas lawyers who oppose Judge Carswell and I am certain there are.

The point is some seem to put great reliance on and give great credit to small numbers of people if they oppose Carswell, and it makes little difference how many are not opposed. We find one who is or five who are; then we should take this into consideration and weigh it very heavily, but should we forget about the 300,000 we have not heard from, the 3,000 in Kansas, or the approximately 1,480 members of the bar association in my State.

Mr. BROOKE. Does the Senator want to state that all 3,000 lawyers in Kansas agree that G. Harrold Carswell should sit on the Supreme Court?

Mr. DOLE. No. And they do not all agree that I should be in the Senate.

Mr. BROOKE. The Senator knows the realities of these things. I would presume that those names were solicited by some interested group from one side or the other.

Mr. DOLE. One side or the other.

Mr. BROOKE. They would get the

people they were interested in, and they would make out the best case they could. In the list of lawyers to which the Senator has referred are some of the most distinguished lawyers in the country who practice law, deans of law schools, members of faculties, who are merely stating that in their opinion G. Harrold Carswell should not sit on the Court.

The Senator has referred to 11 judges in the fifth circuit who said G. Harrold Carswell should sit on the Supreme Court, and he has also very fairly pointed out that Judge Wisdom was not one of them. I think we can point out now that Judge Tuttle also did not sign that telegram.

Mr. DOLE. But he is not an active circuit judge. I believe he is on call.

Mr. BROOKE. I am merely saying that these men disagree. So do other men disagree on this serious constitutional question. We have an almost evenly divided Senate at the present time. We had an equally close division on the nomination of Mr. Haynesworth, as the Senator will recall. I do not put too much weight on that. I certainly respect the rights of all these lawyers, law school deans, members of the faculties, members of the judiciary, and others to voice their opinion. But when we get to the question of how much weight should be given to a particular piece of evidence and how much weight should be given to a statement or a petition, that really becomes an individual matter. I think that is as it should be.

We have been having all sorts of discussion about this judge as a conservative. A speech was delivered on the floor of the Senate today the thrust of which was that if this man were a liberal, perhaps those opponents who are arguing most eloquently against him now would be arguing in favor of him. That distressed me when I heard it. I do not believe it to be true; let me say that. We are not here to decide whether a man is a Republican or a Democrat or whether he is a liberal or a conservative. The Senate's job is to decide whether this particular individual is qualified to sit on the Supreme Court of the United States. That is a very weighty and a very heavy responsibility. I think frivolous considerations should not be taken seriously by any of us, frankly.

It does not matter to me whether the man is from Florida or from Massachusetts. If he is not qualified to sit on the Supreme Court, he should not sit on the Supreme Court. It does not matter to me whether he is a Republican or a Democrat. Mr. Carswell happens to be a Republican; I happen to be a Republican. But if I do not think he is qualified to sit on the Supreme Court, I should vote against him.

I do not know where I fall on the philosophical spectrum. Whether some put me in all three camps—liberal, moderate, and conservative—does not matter to me. At any rate, if I am considered a liberal-moderate and he is a conservative that matters not to me. The issue is the question whether Judge Carswell is qualified to sit on the Supreme Court of the United States. This is what we are trying to determine, and I think this is what this debate is all about.

I am merely saying to the Senator from Kansas, at this time, that in my opinion there are sufficient questions which have not been resolved, there is sufficient doubt which should be resolved, in fairness to Mr. Carswell; in fairness to the President, who has made this nomination; in fairness to the American people, who have the right to expect only the best, and in fairness to the Senate, which has this very grave responsibility.

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

Mr. BROOKE. I yield.

Mr. DOLE. Who would the Senator call as additional witnesses? I will not trespass on the Senator's time further. I realize that I have interrupted too often.

Mr. BROOKE. I certainly would call—I have not gone over it in detail—Mr. Horsky, for one.

Mr. DOLE. He is a former adviser to President Johnson. I assume he might have a little leaning against a Republican nominee.

Mr. BROOKE. I just cannot presume that a Democrat is going to come before the Senate Judiciary Committee and, under oath, is going to give testimony which is not truthful, merely because he is a Democrat. I have to presume that he would be honest and forthright.

The Senator is a distinguished lawyer. He knows that there is a presumption of truthfulness, and we have to go on that presumption. I have traveled all my life on that presumption, and I have been very happy with it. I have never presumed a man to be wrong until he is proved wrong, and I think that is what this country stands for.

Mr. Horsky should be called. Then I think Mr. Wilson should be called before the committee. I will not repeat the reasons.

I think Mr. Carswell should come back before the committee because of the question of credibility which has been raised. I think very serious questions have been raised about his credibility.

I would call before the committee some of the incorporators of the golf course in Florida. I think they should come before the committee so that the committee might question them.

I think our judicial system is the best that has ever been devised by man. Although I know that under our system of laws at times we have to use affidavits, I think the best system is to have a man appear before a committee so that its members can look into his eyes and make a determination as to whether that man is telling you the truth or the untruth. You cannot always tell by this method; but, generally speaking, judges and juries have been very successful. They might convict the wrong man occasionally, or a convicted man might escape occasionally. But, generally speaking, our system of examination and cross examination, as I have said, is pretty reliable. I do not think we should change that system insofar as making a decision on the confirmation of a nominee for the Supreme Court of the United States.

So I just want to say to the Senator that I know he has some serious doubts as to the reason for a motion to recommit, and generally his doubts might be very valid. He has served in the House, and he has said that generally in the House a motion to recommit is a motion to kill. But I merely am trying to point out—and I hope I have—that sufficient questions have been raised since the Judiciary Committee reported this nomination that would justify recommittal of this particular nomination to the Judiciary Committee for the purpose of resolving those doubts.

I do not think I could make any stronger statement than to say that I think that in the end Mr. Carswell's interests will be better served if the Senate, in its wisdom, votes favorably upon the motion to recommit. I do not say this in any threatening manner at all. I do not mean by that that if it is not, he will be denied confirmation. I frankly really do not know that. But I think the Senator would agree that at this moment the Senate is so divided, there are some who still do not know how they will ultimately vote. The issue hangs in the balance. But we have the opportunity to resolve the doubts and I think the way to do that is by voting favorably upon the motion to recommit. I hope that the motion carries when it is voted upon on April 6.

I understand that the Senator intends to make a motion, prior to that vote, to table the motion. He invited my support of that motion to table but I will have to say that unless I hear more convincing arguments than I have heard so far, I would be disposed at this moment to vote against the motion to table and vote for the motion to recommit and hope that these questions can then be favorably resolved.

I thank the distinguished Senator from Kansas for joining this colloquy, which I hope will set the tone for the few remaining days of debate. I think that we have practically exhausted all the arguments on the evidence that we have before us, and fear that we soon may get into the area of speculation, charges, countercharges, innuendoes, guilt by association, and all of that murky area, which would make our decision even more difficult. I think that we can avoid that pitfall if we direct the few remaining days to intelligent and exhaustive debate on why we should or should not vote favorably on the motion to recommit.

Again I thank the distinguished Senator from Kansas.

Mr. WILLIAMS of Delaware. Mr. President, I ask unanimous consent that I may proceed for 10 minutes.

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

Mr. WILLIAMS of Delaware. Mr. President, President Nixon has nominated Judge G. Harrold Carswell to be Associate Justice of the Supreme Court and the question before the Senate is, Should he be confirmed?

For the past several days I have carefully reviewed the testimony before the Senate Judiciary Committee and I have also followed the arguments presented in the Senate by those who would support and those who would oppose his con-

firmation. It appears that the principal arguments against his confirmation are confined to two basic points:

First, there are those who oppose his confirmation because they do not want a man of Judge Carswell's conservative background to be a member of the Supreme Court. These opponents criticize some of his earlier decisions as a judge on the basis that they were not as favorable to labor or the civil rights movement as they would like.

Second, others base their arguments on the premise that while Judge Carswell may be a man of integrity they do not think he is the best qualified man that the President could have found to fill this vacancy.

I first comment just on argument No. 1; namely, that Judge Carswell's conservative background would justify a vote against his confirmation.

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

In fact, if this argument were to be accepted as the basis for a decision all conservatives would have voted for Judge Haynsworth and they would have opposed the confirmation of men such as Justice Goldberg, and many others who admittedly had liberal views. Yet men with liberal views were confirmed with scarcely any opposition by the Senate.

At the time of Justice Goldberg's appointment, I received many letters of protest on the basis that as a former representative of labor he would be prejudiced against management. I took the position then that, while Mr. Goldberg's views were more liberal than mine and that had it been my choice I would have selected a man with a more conservative background, this was the President's appointment and Mr. Goldberg was in my opinion a man of high integrity. I supported his confirmation.

Justice Goldberg proved to be an able member of our Court and no one has challenged his decisions as being biased. Justice Black had been a member of the Ku Klux Klan, yet he proved to be a liberal on the Court.

Under our constitution nominations to fill vacancies on the Supreme Court are made by the President and it is expected that in making this selection the President will nominate men whose social or political philosophy more nearly coincides with his own. Had Mr. Humphrey been elected President I am sure he would have named a liberal to fill this vacancy, and the country expects Mr. Nixon to name a man of more conservative background.

Therefore, in my opinion objection to or approval of Judge Carswell's conservative record is not a valid basis upon which to base our decision.

That brings us to the second question; namely, is Judge Carswell qualified for this position and does he represent the best possible choice the President could have found to fill this vacancy?

As to his qualifications, I point out that the Senate has on three occasions unanimously confirmed Judge Carswell, once as a U.S. attorney and twice as a member of the Federal court.

In 1953 Harrold Carswell was appointed and confirmed by the Senate as the U.S. attorney in the Jacksonville, Fla., area. He served in this position until 1958 at which time he was appointed and again unanimously confirmed by the Senate to be a Federal district judge in that same district. He served in that capacity until 1969. In June 1969—just last year—President Nixon recommended that Judge Carswell be elevated to the position as a member of the U.S. Court of Appeals for the Fifth Circuit.

At the time of this later appointment, in 1969, Judge Carswell had already served as a Federal Judge for over 10 years or between 1958 and 1969.

The Senate Judiciary Committee again considered both his qualifications and his record as a Federal Judge and in June 1969—less than one year ago—unanimously reported his nomination to the Senate and the Senate unanimously confirmed his appointment.

Significantly, while some may disagree with certain of his decisions, at no time has anyone presented any challenge to the honesty or integrity of this man.

I repeat three times Judge Carswell has been unanimously approved by the Senate Judiciary Committee and three times he has unanimously been confirmed by the U.S. Senate and at no time was any question raised as to his qualifications.

That brings us to the last argument, namely do we think that Judge Carswell is the very best qualified man that President Nixon could have found to fill this important position.

I will answer that question in exactly the same manner as if the question was, did I think that I or any of the other 99 Members of this body are the best qualified men that our States could have found to represent them in the U.S. Senate. Let's face it, no man is so great that it would be impossible to find a better man to replace him and I would hope that there is not a single Member of this Senate who is so egotistical that he would try to claim that he is the best man his State could have selected.

This is true of every other man in public or private office and I would suggest that Senators not push this argument too far, our constituents may get ideas.

One last point: an argument has been raised concerning a speech that Judge Carswell made about 20 years ago wherein he supported segregation.

Twenty years ago when Judge Carswell made that statement we had segregated schools, segregated restaurants, and segregated clubs in every State in the North as well as the South. Right here in Washington Members of Congress lived in, ate in, and were members of such segregated facilities.

On June 7, 1948, the Senate by a rollcall vote of 67 to 7 rejected an amendment which would have abolished segregation in our Armed Forces. Only two of the present Members of the Senate supported that amendment and as I recall no effort was made in the House to eliminate this discrimination in our Armed Forces. Who are we to point the finger at Judge Carswell for his views of 20–25 years ago?

Then too, Judge Carswell has been criticized because of a segregation clause in a deed. Senators know such clauses have been declared null and void years ago by our courts; therefore, they have no meaning. Besides half the property on the Atlantic seaboard carries such a historic clause. This includes much of the property right here in Washington and its surrounding areas.

In one area of my own State all property—including some property which I own carries such a clause that was initiated years ago by some former owner.

Only recently it was pointed out that one of the candidates for President on the Democratic ticket had owned property bearing such a clause.

Did this mean that he or the other property owners were segregationists? Certainly not. I doubt if many of them even knew such a clause was in their deed. I did not until 10 years later.

Then too, how many Senators have made speeches, cast votes, or done something during the past 25 years that we would rather have forgotten?

Mr. President, in the light of the Senate's own record on civil rights I suggest we be careful as to how we point a finger of criticism at Judge Carswell for his views of 25 years ago.

I respect all my colleagues who are members of the American Bar. Early in life my ambition had been to be a lawyer but let it be remembered that there is nothing in the Constitution which requires even a member of the Supreme Court to be a lawyer. Ability, integrity, and good commonsense are the essential ingredients for public offices and not the least of these is good commonsense.

Mr. President, in my opinion Judge Carswell's 17-year record as a public servant with 10 years service as a Federal judge fully justifies our support. He is a man of high integrity, well qualified to be a member of the Supreme Court and I shall vote for his confirmation.

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

Mr. WILLIAMS of Delaware. I yield.

Mr. GRIFFIN. Mr. President, I know that the Members of the Senate and the American people have waited with interest to hear the views of the distinguished Senator from Delaware on this nomination.

Of course, the Senator from Delaware is generally acknowledged to be, and often is referred to as, the "conscience of the Senate."

Naturally, I am pleased that his conclusions concerning the nomination of Judge Carswell coincide with mine; I am pleased that the distinguished Senator from Delaware supports the nomination.

Speaking of the qualifications of Judge Carswell, I dare say that there have been few Supreme Court nominees in this century who have had the training, qualifications, and experience on the bench that Judge Carswell would bring to the High Court. Having served as a district attorney, as a trial judge on the district court, and as a member of the circuit court of appeals, he is much bet-

ter qualified than most who have been nominated.

When one considers the number of nominees in the past with less experience and had less background who over the years developed into outstanding Supreme Court justices, it occurs to me that we have good reason to believe that this nominee is even more likely to develop into a great justice of the Supreme Court.

I wish to commend the distinguished senior Senator from Delaware for his very excellent statement—a statement which is bound to have an important effect upon the vote to confirm this nomination.

Mr. WILLIAMS of Delaware. Mr. President, I agree completely. I reviewed this matter very carefully.

In making this selection we are confirming a man to a very high and very important position. In my opinion, he is fully qualified. His record during the time he has been in public service as a district judge and later as a judge of the circuit court of appeals reflects to the credit.

I think Judge Carswell's record fully justifies the support of the Senate, and I welcome the chance to vote for his confirmation.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, first I commend the Senator from Delaware.

As the distinguished acting minority leader, the Senator from Michigan, has pointed out, many of us applaud the statement of the Senator from Delaware. The Senator from Delaware has a unique way of cutting through much of the morass and putting things in proper perspective by example and by illustration which is very helpful to this Senator.

I would say, as the Senator from Michigan has said, and as the Senator from West Virginia (Mr. BYRD) said earlier today, that Judge Carswell has more experience than all of the present occupants of the Supreme Court combined, having been a U.S. attorney, a Federal district judge, and a judge of the circuit court of appeals.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. BYRD of West Virginia. That is true with the exception of Chief Justice Burger.

Mr. DOLE. The Senator is correct.

Mr. President, I fear that the merits of the Carswell nomination have recently been obscured by a swelling tide of misleading statements on the part of those who oppose confirmation. Whether this represents desperation tactics in the stretch drive, or whether it is the normal way opponents go about trying to influence public opinion, I do not say. I believe the U.S. Senate and the American public are entitled to fair play on this issue.

Let me take only the most recent example of these tactics. Yesterday the junior Senator from California called a press conference to make the charge that Charles F. Wilson, a black lawyer who had submitted a letter to the Judiciary Committee telling of fair treatment he had received at the hands of Judge Carswell, had been "pressured" into doing so. He further stated that the administration had used Mr. Wilson in a "deliberate effort to mislead" the Senate committee. He further stated, according to the Washington Post account of the matter this morning, that the "letter was widely cited by Senate supporters as showing a leading civil rights lawyer felt Carswell was fair."

As I said before and as I say again—and it appears on pages 328 and 329 of the hearings record—there is not one word of his statement that constitutes an endorsement. It states a fact, and that fact is that he was a black attorney, a civil rights attorney who had appeared many times before the court presided over by Judge Carswell. And he said, and I repeat, that he had never been treated discourteously, that the had been treated fairly every time and any time he appeared before that court.

Now, what are the facts of the matter? Mr. Wilson told the newsmen who swarmed around him after the junior Senator from California's press conference that, and here again I quote from the news account, that "he had 'absolutely not' been mistreated in court by Carswell and had 'absolutely not' been used by the administration."

He said that he had not been pressured or used by the administration in an effort to gain support for the nomination of Judge Harrold Carswell.

It also is a fact that Mr. Wilson holds a civil service position, from which he could not have been dismissed without good cause.

So the record is now straight. The charges are demonstrated to be false. But what of the tactics used? What of the tactic of making public statements indicating that a man has repudiated a position he has taken, without ever going to the man himself? What of the tactics of relying only on hearsay affidavits to support such a conclusion? What would some of our great advocates of civil liberties say if one of the Internal Security Committees of the Senate or of the House of Representatives formed its conclusions as to a witness' testimony on such a basis—on the basis of third-party affidavits.

Unfortunately, this is but one of several similar forays in which the opposition has recently engaged. On Friday, March 27—less than a week ago—the Baltimore Sun carried a leading article containing, among others, two statements which were totally without factual foundation.

First, it attributed to Clarence M. Mitchell, Jr., the National Association for the Advancement of Colored People representative in Baltimore, the report "that the FBI did an exceedingly thorough investigation into Judge Carswell's background and turned up, among other things, the 1948 white supremacy speech."

"However," he continued, "somewhere along the way it got dropped."

The Attorney General and the Director of the FBI categorically denied the truth of this statement later the same day, and the record on that has now been set straight.

Second, the Sun attributed to "a source in the Senate" that "according to 'unimpeachable information' he had received, Senator GEORGE MURPHY, Republican of California, who is facing a reelection campaign this fall, will vote to recommit the nomination in the face of minority group pressures being brought to bear at home."

That very evening, the senior Senator from California issued a flat denial of any intention on his part to vote to recommit the nomination, and reaffirmed his strong support for Judge Carswell.

And so the record is now straight on these two matters. But what of the tactics of the opponents in resorting to misstatements, distortions, and falsehoods such as this?

This does not by any means exhaust the list. The United Auto Workers news release of February 1970, for example, states that Dean Pollak of Yale Law School, an opponent of Judge Carswell, supported Judge Haynsworth. Dean Pollak did not support Judge Haynsworth. Such a statement is critically misleading, because it suggests that Dean Pollak is actually quite neutral in matters of liberalism versus conservatism, that he supported one conservative nominee of the President, but could not bring himself to support the second nominee. Actually, Dean Pollak, as vice president of the NAACP's lawyers defense fund, has been a leading activist and liberal in the field of civil rights. He is certainly entitled to his opinion as to whether or not Judge Carswell should be confirmed, but no one ought to suggest in opposing the nomination that Dean Pollak is neutral or unbiased on the ideological issue involved.

Let me carry my catalog of misleading information one additional step further. We have recently been treated to long lists of law school deans and law school professors who have opposed Judge Carswell. The Washington Post this morning devoted the latest in what must have been at least a dozen editorials attacking Judge Carswell to a list of law school deans, pro and con, and of law school faculty members.

Now, the question that comes to my mind, is whether or not these law school deans and professors are against Judge Carswell because they are teachers of the law, or whether they are against him because they are liberal Democrats. A liberal Democrat has every bit as much right as any other kind of Democrat, or any kind of Republican, to express his view about the nomination of Judge Carswell or about any other matter in the public forum. And a liberal Democratic newspaper, in its campaign to help defeat the nomination of a conservative, has every right to quote liberal Democrats. But is there not some departure from strict accuracy when law school deans and professors are treated by editorialists as if they were a neutral or relatively neutral class of participants in the debate? To be more specific, and

a good deal more blunt, how many of the law school deans and law school professors who have opposed Judge Carswell's confirmation voted for or supported in any way President Nixon in the 1968 election?

And while I am on the subject of the Washington Post's editorial of this morning, after observing that 79 lawyers in Tallahassee supported Judge Carswell, the editorial noted that "it is useful to note there are 284 lawyers in that city listed in a national directory." A national directory, no doubt, kept in the editorial office of the newspaper in question. But the important point here is that the Washington Post recognizes in this context that it is not just the number of signers, but the number of nonsigners out of the class as a whole that is important. Unfortunately, it has not chosen to recognize this fact in the case of a very similar petition circulated by law school professors and practicing lawyers opposing Judge Carswell's confirmation. Here, the news media headlined that 400-odd prominent attorneys and law professors opposed Judge Carswell's confirmation. They did not point out that of this 400-odd, only 126 were practicing lawyers, as opposed to law professors. Nor did they point out the number of nonsigners of this petition, the way they did with respect to the Tallahassee lawyers. Since the press did not do it, I am going to do it for them. On this petition, 334 law school professors signed in opposition to Judge Carswell. There are 4,062 professors who teach at the 145 law schools approved by the American Bar Association. This is useful to note.

There are 126 practicing lawyers, as opposed to law professors, who signed the petition. There are approximately 300,000 practicing lawyers in the United States, excluding law professors. This is useful to note.

Finally, there are 143,449 members of the American Bar Association as of December 31, 1969. If all 400-odd signers of this petition against Judge Carswell were members of the American Bar Association, that number would represent something like three-tenths of 1 percent of the membership of the American Bar Association. This is useful to note.

In my State of Kansas, there are 2,974 lawyers, and 1,480 members of the American Bar Association. Not a single practicing lawyer in Kansas signed this petition. This, too, is useful to note.

The senior Senator from Iowa, in his very able speech on the floor of the Senate March 20, made the following comment, and I quote:

> Not being a member of the Judiciary Committee and not having any personal knowledge of Judge Carswell, it seemed prudent for me to study the hearings record before reaching a final decision on this matter. To do otherwise would be to make a judgment on a most important matter without considering the evidence—to indulge in "trial by the press" and to thus shirk the duties of a Member of a separate, co-equal branch of our federal government in his exercise of the constitutional power of confirmation.

I fully endorse the comments of the senior Senator from Iowa with respect to the dangers of "trial by press." I deplore the misleading tactics of the opponents of this confirmation in these closing days of the debate. I reaffirm more strongly than ever my determination to vote against recommital of the nomination—I shall offer a motion to table the motion to recommit—and vote in favor of Judge Carswell's confirmation.

Mr. CURTIS. Mr. President, the Senate of the United States is on trial. For some months there has been a vacancy on the Supreme Court waiting to be filled.

President Nixon's nomination of G. Harrold Carswell is before the Senate. This nomination should have been confirmed a long time ago. Now there is a move underway which would avoid a vote for or against the confirmation of Judge Carswell. This is through a motion to recommit the nomination to the Committee on the Judiciary.

Mr. President, the people of the United States and the President of the United States are entitled to have the Carswell nomination voted upon. The motion to recommit it to the Judiciary Committee should be tabled and I shall vote for the tabling motion that will be offered by the distinguished Senator from Kansas (Senator DOLE).

Few nominees for the Supreme Court have possessed the fine qualifications of Judge Carswell. It was the late President Dwight D. Eisenhower who appointed him as U.S. Attorney. Judge Carswell's many years in that capacity gave him valuable courtroom experience. President Eisenhower, recognizing the high qualifications of the then U.S. Attorney Carswell, appointed him as U.S. District Judge. This gave him a decade or more of experience as a trial judge. It was logical that some months ago President Nixon should elevate this outstanding man to the U.S. Court of Appeals. Judge Carswell has been confirmed by the U.S. Senate three times prior hereto.

This fight against President Nixon's nomination of Judge Carswell to the Supreme Court is being carried on by an unholy alliance of rank partisans and militant pressure groups. Their arguments are phony and the facts are against them.

Mr. President, the people of the United States are entitled to have a balanced court made up of jurists who can act independently of all vested interests and pressure groups. The President of the United States is entitled to have his nominee voted upon and confirmed.

Mr. HUGHES. Mr. President, in considering a nominee to the Supreme Court, those of us who are not lawyers must inevitably give some special weight to the views of the legal profession. I have found it to be a particularly persuasive factor that Judge Carswell is widely opposed by his professional colleagues, including those who might have been expected to follow their custom of refraining from entering into this controversy if it were merely "political," as recently asserted by the Deputy Attorney General.

When law faculties and members of leading law firms throughout the Nation join in opposing a nominee, it is ridiculous to suggest that their position stems from either political or regional bias.

Mr. President, I ask unanimous consent that there be included in the RECORD at this point a letter signed by 45 members of the well-known Washington law firm of Hogan and Hartson, and an editorial from the Washington Post of March 31, 1970.

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

MARCH 17, 1970.

HON. HUGH SCOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCOTT: We, the undersigned are all lawyers practicing in the District of Columbia, and many of us have worked in the United States Government. We write in strong opposition to the appointment of Judge G. Harrold Carswell to the Supreme Court of the United States.

The hearings which were held with regard to his appointment, the attitudes and judicial temperament of Judge Carswell himself, the judicial posture which he has taken on significant issues, and the careful analysis of his fitness for the Supreme Court by respected members of the legal profession throughout the nation demonstrate beyond any question that Judge Carswell does not possess the requisite attitudes or abilities which warrant his being made a member of the highest court in the land.

Not only has he demonstrated callous disregard for, and open hostility to, the clear constitutional rights of Black Americans, but he has, in his capacity as a United States Attorney and United States District Judge, as well as in his private affairs, gone beyond the bounds of all propriety in taking part in discriminatory schemes and plans designed to thwart federal law. If, as he claims, he was not aware of any wrong-doing, then he betrays a shocking lack of awareness of the events around him, which alone should disqualify him from sitting on the Supreme Court of the United States.

Although callous disregard and indifference toward Black Americans is not the same as having been guilty of financial impropriety, it is clear that the Canons of Judicial Ethics require that a judge avoid even the "appearance" of impropriety, and that his personal behavior "not only upon the Bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach" (Canons of Judicial Ethics, No. 4). Clearly, it cannot be said that Judge Carswell has met this critical test.

Finally, at a time when Black Americans are finding it increasingly difficult to believe that the leadership of this country is concerned about their legitimate and constitutional rights, the appointment of a Justice of the Supreme Court whose past history is full of denial of those rights, both in his public and private life, would represent a most serious blow and one from which it may well be difficult to recover. Particularly when so many issues critical in the well-being of our citizens are awaiting judgment by the Supreme Court, this country cannot afford to have on that Court one who lacks the necessary intellectual and moral capacity to sit in judgment.

Because you and those Senators to whom we are sending copies of this letter are in a position to prevent this appointment, and thus, a tragic mistake, we urgently request that you heed the advice of the legal community, as well as other concerned Americans, and reject the appointment of Judge

G. Harrold Carswell to the Supreme Court of the United States.

Very truly yours,

James A. Hourihan, Edward A. McDermott, Jay E. Ricks, George W. Miller, William T. Plumb, Jr., Joe Chartoff, Harold Himmelman, Vincent Cohen, Peter F. Rousselot, Eric H. Smith, Stanley Marcuss, Robert H. Kapp, Seymour S. Mintz, Arthur J. Rothkopf, Timothy J. Bloomfield, Bob G. Odle, Raymond E. Vickery, Jr., Curtis E. von Kann, Kevin P. Charles.

Sherwin J. Markman, Jerome N. Sononsky, David B. Lytle, David A. Ludtke, Lee Loevinger, Stuart Philip Ross, Gerald E. Gilbert, Matthew P. Fink, Marvin J. Diamond, William A. Bradford, Jr., Douglas A. Nadeau, Richard S. Rodin, Sara-Ann Determan, C. Ronald Rubley, Alfred T. Spada.

David J. Hensler, Peter W. Tredick, Francis L. Casey, Jr., Alvin Ezrin, James J. Rosenhauer, Robert M. Jeffers, Alfred John Dougherty, Arnold C. Johnson, Austin S. Mittler, Richard B. Ruge, Robert K. Eifler.

JUDGE CARSWELL: KEEPING THE RECORD STRAIGHT

Things are beginning to happen so rapidly in the battle over confirmation of Judge Carswell that it is a little hard to keep them in perspective. The weekend began, for example, with Senator Cooper's announcement of support for the judge, and while we would not wish to pretend to anything but regret about this, the fact is, of course, that his decision was expected and largely discounted in advance, as will be a string of such announcements in the coming days, as both sides play for psychological advantage. Leaving this part of the struggle aside, there were these weekend developments which bear closer examination: 11 judges from the Fifth Circuit Court of Appeals signed a telegram endorsing Judge Carswell: 79 lawyers from Tallahassee, the judge's home, sent a similar endorsement; and Deputy Attorney General Kleindienst unloosed a broadside attack against assorted Carswell critics, expressing the belief that those who oppose him for political reason have run out of "misleading" and "deliberately untruthful" charges against him.

Well, on this last count we would certainly hope so, too. But we would also hope that those who support the judge would be a little more precise in what they say, and a little more to the point, which in the case of the Fifth Circuit judges and the Tallahassee lawyers and some of the complaints of Mr. Kleindienst have to do, at bottom, with what people in the legal profession think of Judge Carswell.

Turning to first things first, Judge Carswell's nomination did get a timely phychological lift from the telegram signed by those 11 judges—which only goes to show what trouble it is in. What would have been the outcry about any preceding nominee if it had become known publicly that any substantial number of his closest colleagues opposed confirmation? Remember that if Judge Carswell is not confirmed his colleagues, specifically including those who did not sign the telegram, must continue to sit on the bench with him. And there are four sitting judges as well as three retired judges who did not sign. Interestingly, only three of the eight judges who were active when that court underwent its most serious attacks between 1955 and 1965 are openly supporting this nomination. And none of the court's big four in those days (three of them, incidentally, appointed by President Eisenhower)—Tuttle, Rives, Wisdom and Brown—signed that telegram.

As to other matters, the Ripon Society did not, as Mr. Kleindienst said, first say Judge Carswell was reversed 54 percent of the time and then on further study change that to 40 percent. It reported originally that Judge Carswell was reversed in 58.8 percent of those cases in which appeals were taken from his printed opinions. No one that we know of has challenged that figure. The Ripon Society subsequently examined all the appeals from all Judge Carswell's decisions and reported the reversal rate was 40.2 percent, noting that the rate got worse the longer he was on the bench—25 percent for the first quarter of his appeals, 33 percent for the second, 48 percent for the third, and 53 percent for the fourth. Either Mr. Kleindienst misread the Ripon Society's statements or chose to ignore its careful distinction between written opinions (which judges usually file only in major cases) and all decisions.

It is true, as Mr. Kleindienst said, that the official voice of the American Bar Association is for confirmation. But we suspect that columnists Mankiewicz and Braden (see letter on this page) were more accurate than was Mr. Kleindienst when they suggested that a majority of that Association's members who have an opinion are against confirmation. At least, that's the feeling we get from reading the Congressional Record, which senators love to stuff with communications from home—and from reading our own mail. With less than a dozen exceptions, all the letters we have seen in the Record or received ourselves from lawyers supporting Judge Carswell come from his home state of Florida. As for the list of 79 Tallahassee lawyers, it is useful to note there are 284 lawyers in that city listed in a national directory.

Certainly one segment of opinion is heavily against Judge Carswell's confirmation; these are the people who teach law. We have collected the following tabulation of the universities which have law schools that have been heard from during this debate:

LAW SCHOOL DEANS

Against confirmation (22)

Boston College, Catholic, Chicago, Columbia, Connecticut, Georgetown, Harvard, Hofstra, Illinois, Indiana, Iowa, Kansas, New York U., Notre Dame, Pennsylvania, Puerto Rico, Rutgers, Stanford, UCLA, Valparaiso, Western Reserve, Yale.

For confirmation (2)

Florida, Florida State.

FIVE OR MORE FACULTY MEMBRERS

Against confirmation (31)

Arizona, Boston U., California (Berkeley), Catholic, Chicago, Columbia, Connecticut, Florida State, Georgetown, Harvard, Illinois, Indiana, Iowa, Kansas, Loyola (Los Angeles), Maine, New York U., New York U. (Buffalo), North Carolina, Notre Dame, Ohio State, Pennsylvania, Rutgers, Stanford, Syracuse, Toledo, Valparaiso, Virginia, Washington & Lee, Willamette, Yale.

For confirmation (0)

None.

It is impossible to dismiss this overwhelming vote of no confidence in Judge Carswell from the legal teaching profession; certainly it reduces to irrelevancies the complaints of Mr. Kleindienst about the calculations of the Ripon Society or the argument over who speaks for the American Bar Association—the members who are plainly split on the matter, or the ABA's 12-man Committee on the Judiciary which rated him "qualified." Still less is it any longer possible to argue from this listing that the opposition to Judge Carswell is narrowly sectional and confined to the northeastern corner of the country, as some of the judge's supporters have argued in the Senate debate. It is in every sense a national list—South as well as North, Midwest and Far West as well as East. And it is a devastating list. For it is made up of men and women who teach lawyers and who therefore care deeply about the quality of the law they must teach.

Mr. BROOKE. Mr. President, the debate thus far has shown that the Senators who oppose Judge Carswell do so because their study of his record has compelled the conclusion that he lacks the basic intellectual qualifications necessary for service on the High Court and that he is hostile to the precepts of the 14th amendment. The discussion has largely dealt wtih the totality of his record, which is, of course, of vital significance in setting the basic theme of the debate. But I believe a further insight can be achieved by examining in depth the judge's performance in a single proceeding. For this purpose I have analyzed Judge Carswell's handling of the case which was most thoroughly discussed in the Judiciary Committee, County of Gadsden against Wechsler. In my view, Judge Carswell's performance in the Wechsler case graphically illustrates his judicial deficiencies. At the outset, I shall summarize the significant aspects of this episode.

First: A fee was required to remove civil rights prosecutions cases to the Federal court despite a square holding by the fifth circuit that no such fee was to be charged. *Lefton* v. *City of Hattiesburg*, 333 F. 2d 280, 285, reprinted in the hearings 460, 465.

Second: Judge Carswell insisted that petitions for habeas corpus be filed on a special form designated by the court, although the rule which prescribed the form was adopted for an entirely different class of cases, so that form called for information which was entirely irrelevant since mere filing of the removal petition entitled the defendants to habeas corpus.

Third: Defendants' attorneys were directed to obtain the signatures of the defendants on the petition, which further delayed their relase, although it is universal practice that court papers are to be signed by attorneys rather than the parties whom they represent.

Fourth: Judge Carswell criticized the defense attorney because he was from out of the State, although no local lawyers were available to represent the civil rights workers. He did so despite the recent opinion of the court of appeals in Lefton which, in the clearest terms, instructed district judges in its circuit to permit out-of-State attorneys to represent civil rights workers who would otherwise be without counsel. See 333 F. 2d 285–286, hearings, 465–466.

Fifth: Judge Carswell refused to permit his marshal to serve the writ of habeas corpus and required defendants' attorney to do so themselves, although 28 U.S.C. 1446 provides that when the court issues its writ of habeas corpus "the marshal shall thereupon" take the defendants into custody and deliver a copy of the writ to the clerk of the State court.

Sixth: Judge Carswell permitted his marshal to notify State authorities of the order of remand by telephone, although 28 U.S.C. 1447(c) provides that such notice shall be given by mail. By this violation and that of 28 U.S.C. 1446(f) Judge Carswell enabled the State to rearrest the civil rights defendants immediately after their attorney served the writ.

Seventh: Judge Carswell remanded the case to the State court without affording the defendants a hearing on the question of the propriety of the removal. He did so, although that question was, at the very least, one of considerable complexity and although the only authority which Judge Carswell cited was not even remotely in point.

Finally, Judge Carswell denied a stay pending an appeal, although such an appeal was expressly granted by Congress, the question raised on the appeal was substantial, and there was no danger that the defendants would flee or commit any illegal acts.

Before discussing these matters in detail, it is appropriate to describe the context in which the Wechsler proceeding arose. A group of civil rights workers came to northern Florida, as they did to some other areas in the South, to engage in a voter registration campaign among Negroes. The activities of these civil rights workers were in the finest tradition of democracy for they recognized, as Congress recognized in the Voting Rights Act of 1965, that Negroes would remain second-class citizens as long as they were denied the franchise. For precisely that reason the white community and more particularly the incumbent Government officials who benefitted from the retention of the status quo and the denial of suffrage to the Negroes resisted these efforts. The atmosphere which greeted the civil rights workers was well described by Norman Knopf who at that time was a law student but who presently is an attorney in the Department of Justice and appeared before the Judiciary Committee pursuant to subpena:

> The CORE volunteer workers, many of whom were from Florida itself, and some of whom came from the North, would assist black people in getting to the registration place to register so that they could vote in the Federal elections scheduled in November.
>
> As I heard Mr. Rosenberger testify and as this committee has heard, the project met with a great deal of hostility by the white people of the area. There were assaults. There was a bombing. There was a shooting, and so on. There were frequent arrests.
>
> Specifically with the arrests, this is where the Lawyers' Constitutional Defense Committee attorneys came in, and tried to defend project workers that were arrested or remove the cases." (Hearings 175.)

Mr. Rosenberger testified:

> Hostility to us was patent throughout the area. The postman in Quincy would not deliver mail because the mailbox was mounted about 6 inches back from the line of mailboxes.
>
> Senator TYDINGS. Who is "us"?
>
> Mr. ROSENBERGER. Well, sir: volunteers working in voter registration, that is student volunteers, the lawyers and law clerks. All of us stayed in this house in Quincy. Now there were places where voter registration volunteers had put up posters and those posters were regularly torn down by a deputy sheriff.
>
> There were restaurants, several, where I was refused when I tried to enter.
>
> Voter registration workers were assaulted. Firebombs were placed under an automobile. Shots were fired through the window of a house where volunteers were staying. That was just to indicate what the general aura of hostility was in the area at that time." (Hearings 150.)

This characterization of community attitudes was confirmed by Mark Hulsey, Jr., a witness who appeared on behalf of Judge Carswell:

> If this were not so serious, this charge of racism against Judge Carswell, it would almost be funny. By that I mean it is certainly ironic, because you know in Florida many people regard certain parts of the northern district of Florida as a little bit to the right of Louis the 14th, and I can tell this committee in all sincerity and honesty that Harrold Carswell has displayed unusual courage I think and faithfulness to the law that he serves in his civil rights rulings, in an altogether hostile climate. (Hearings 107.)

If the President of the Florida Bar Association regards occasionally procivil rights rulings by a Federal judge who is protected by life tenure and the full panoply of Federal power to be a display of unusual courage, what words are there to describe the fortitude of private individuals who came into this altogether hostile climate to help Negroes register to vote? I cannot believe that Judge Carswell was unaware of these community attitudes; indeed, for him not to have known it would display an insensitivity and unworldiness which would ill fit him to perform the functions of a justice of the Supreme Court of the United States. Moreover, he cannot have been unaware of the circumstances under which the Wechsler defendants had been arrested and tried in the State courts, for these were set forth in the papers before Judge Carswell. See hearings 178. The defendants were arrested for trespassing on private, nonposted ground, and without having the opportunity to leave after they were requested to do so:

> Mr. ROSENBERGER. Yes, sir; that is correct. In the case of Wechsler, there were seven young people, seven volunteers, who had been arrested in Gadsden County. Three of them were adults and four were under the age of 17. I believe five of the seven were residents of Gadsden County and two were volunteers from elsewhere who had come as voter registration workers. They were arrested for trespassing on lands which were not posted, which were reached by a road leading from the public highway, which had no indication that it was a private road, not posted, not fenced, and they were arrested while they were talking to people about registering. They were arrested by sheriff's officers of Gadsden County, Fla.
>
> The CHAIRMAN. Now someone swore out an affidavit against them in a justice of the peace court; is that correct?
>
> Mr. ROSENBERGER. An affidavit was sworn after the time of the arrest; yes, sir.
>
> The CHAIRMAN. After the time of the arrest?
>
> Mr. ROSENBERGER. They were taken into custody on the road.
>
> Senator TYDINGS. Go into a little more detail. Tell the chairman the whole story.
>
> Mr. ROSENBERGER. All right, sir. These seven people were on this road. This was a place where tenant farmers lived on a larger farm. Actually on this farm there lived, I believe, the cousin of one of the people who had been arrested and she had frequently visited on this farm to visit her family.
>
> Now the overseer of the farm came down the road and saw these people talking to tenant farmers. He came up to them. He told them that they were trespassing, that this was private property. They explained that they were there to talk to people about voting. He said they were trespassing. They said, All right, we'll leave. He said, No, I am having you arrested. And he told them to wait, which they did, and they were arrested there, for trespassing on unposted lands while talking to people about registering to vote.
>
> The CHAIRMAN. What is the Florida statute on posting?
>
> Mr. ROSENBERGER. The Florida statute, as I understand it, did not require posting.
>
> The CHAIRMAN. So they were trespassing. You keep saying that the land was not posted.
>
> Mr. ROSENBERGER. Yes, sir, but there was no way for them to know it was a trespass.
>
> The CHAIRMAN. A man is presumed to know the law, is he not?
>
> Mr. ROSENBERGER. He is presumed to know the law, sir, but he is not presumed to know the fact.
>
> The CHAIRMAN. I know, but a lot of States in this country have got a statute that provides when you are on private property if you are told to get off and you do not do it you commit trespass.
>
> Mr. ROSENBERGER. Yes, sir, if you are told to get off.
>
> The CHAIRMAN. And that is what you tell me the Florida statute is.
>
> Mr. ROSENBERGER. When told it was private property they said they would leave, and the man said, No, you are going to be arrested.
>
> Senator TYDINGS. In other words he would not let them leave?
>
> Mr. ROSENBERGER. He would not let them leave. Had he said get off, that would have been a different circumstance. He said, this is private property. They said, we will leave. He said, No you won't, you will be arrested.
>
> The CHAIRMAN. They stayed there until when? They went to the justice of the peace court?
>
> Mr. ROSENBERGER. No, sir, he did not go to court prior to their arrest. He had them arrested while there, while they were on the premises.

Because the civil rights workers felt that there was no chance for a fair trial in the State courts, they removed the prosecutions to the Federal court. (Hearings 175.) Thereupon the State court was advised that it had been ousted of jurisdiction, and the State court judge not only ignored the removal—in direct defiance of Judge Carswell's jurisdiction—but tried and convicted the defendants without giving them the opportunity to be represented by counsel:

> Senator TYDINGS. Now go back to the Wechsler case. What happened in the Wechsler case in the local court when the removal papers were filed?
>
> Mr. KNOPF. Did you say local Federal court?
>
> Senator TYDINGS. In the State court.
>
> Mr. KNOPF. In the State court? I was present when Mr. Rosenberger served the papers on the judge, and the defendants were already in the courtroom, and the trial was just about to start when Mr. Rosenberger gave the papers and explained to the judge who appeared to be unfamiliar with removal proceedings exactly what had occurred and that the State court no longer had jurisdiction to try the case.
>
> The judge indicated, as Mr. Rosenberger said, that he was going ahead. He didn't know anything about removal. He wasn't going to pay any attention to it and told him to sit down and get away from these people because he asked Mr. Rosenberger whether he was a member of the Florida Bar, and when he said "No," the judge said, "Well, then, get away from these defendants. You cannot represent them."
>
> I believe sometime before Mr. Rosenberger was thrown out of the courtroom it was stated that there was no attorney present to represent these people, that they could not get an attorney and they would like a continuance at least to get an attorney to represent these persons, and at one point one of

the—when the trial had started the judge had asked the workers some questions. One of the workers turned around to look at Mr. Rosenberger who was sitting in the back, for some kind of advice, and at that point the judge threw Mr. Rosenberger out of the courtroom. He ordered him out and when he was slow in going somebody came along and helped him out.

Senator HRUSKA. Would the Senator yield? That is a reference, when you say the courtroom, that is the city court.

Mr. KNOPF. This is the local Gadsden County.

Senator HRUSKA. The local court?

Mr. KNOPF. That is correct.

Senator HRUSKA. You wouldn't want the impression to be gotten that Judge Carswell suffered any lawyer to be kicked out of his courtroom at any time?

Mr. KNOPF. Oh, no, I am referring to the Gadsden County Court; yes sir. (Hearings 176.)

It was immediately thereafter that the defendants' attorney prepared an application for habeas corpus and presented it to Judge Carswell, which the Judge refused to entertain until it was filed on a form purportedly prescribed by the rules of his court, on which he originally required the signatures of the defendants themselves, and which he granted with obvious reluctance, although it was absolutely mandated by statute.

I shall now discuss separately and in detail the ways in which the release of the civil rights workers from State custody was delayed and ultimately frustrated and the other means by which Judge Carswell demonstrated his dislike of the civil rights workers and his disregard of applicable law.

First. When Mr. Rosenberger, who was representing the Wechsler defendants at the beginning of this episode, filed a removal petition in Judge Carswell's court, he was required to pay a filing fee of either $5 or $15 for each of two removal petitions. See Hearings 165, 180. Such a fee had been exacted in Judge Carswell's court for the removal of other criminal prosecutions. This requirement was contrary to a decision which had been issued approximately 2 months previously by the United States Court of Appeals for the Fifth Circuit in *Lefton* v. *City of Hattiesburg*, 333 F. 2d 280, which is reprinted at pages 460–467 of the hearings. In Lefton the Court of Appeals squarely held:

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, Hearings at 465.)

The Wechsler defendants were thus denied the right of removal without fee which had been granted them by Congress and recently been declared by the appellate court to which Judge Carswell's court was subordinate. While the amount of money involved may appear to be insignificant to us, it was not to these defendants (hearings 156, 180), and even a petty harassment had symbolic significance under the circumstances. Whereas the Court of Appeals had made clear that the Federal courts should be freely open to defendants seeking protection of constitutional rights who were being jeopardized in State courts, an artificial and illegal barrier was imposed in Judge Carswell's court.

In the Judiciary Committee hearings Judge Carswell's supporters pointed out that the collection of the fee was the immediate responsibility of the clerk of the court rather than that of the judge. However, Judge Carswell did not assert either in his oral testimony or in the letter which he wrote to the Committee in response to opposition testimony that he was unaware of the practice followed by the clerk of his own court, of which he was the only judge. In any event, Judge Carswell bore statutory responsibility for the actions of his clerk, for the clerk and his deputies "shall exercise the powers and perform the duties assigned to them by the Court" 28 U.S.C. section 956. Indeed, the Court of Appeals in Lefton itself recognized it to be the duty of the judge to enforce the statutory right to remove criminal cases without prepayment of filing fees. That case, as the report shows, was a mandamus action against the district judge, and the court declined to issue the writ only on the assumption that the judge—not the clerk—would follow the law as there declared (333 F. 2d at 283–284, 286; hearings at 463–464, 466). Judge Carswells' obligation to instruct the clerk of his court with respect to his duties was particularly manifest where those duties were affected by a judicial decision, for such decisions come to the judge's attention, not the clerk's; the clerk said that he first learned of the Lefton decision when he received a new manual from the administrative office of the United States Courts in 1966 (hearings 198). The upshot is not that Judge Carswell is to be absolved of responsibility for requiring the Wechsler defendants to pay a filing fee; rather, it is that he is chargeable for the denial of the rights declared in Lefton to defendants generally for almost 2 years.

Second. The filing of the removal papers in Federal court automatically ousted the State court of jurisdiction Mr. Rosenberger testified that the following then transpired:

Mr. ROSENBERGER. Now the judge in Gadsden County was Judge Blackburn. I told him the cases had been removed. He said that he had the papers, but that he did not recognize this removal. He was going to proceed. I explained to him the provisions of the statute dealing with removal, that is that he no longer had any jurisdiction. He said he would proceed with the case.

I asked for a continuance. He said he would proceed with the case. I then left the front of the courtroom and seated myself in the spectators' section of the courtroom behind the rail. I sat down there. At that point Judge Blackburn told the sheriff, who was present in the court, to remove me from the court, and I was physically ejected from that courtroom by deputy sheriff Martin.

Senator TYDINGS. Was there any other attorney in there to defend those boys?

Mr. ROSENBERGER. No, sir. They went to trial without counsel, were convicted without counsel, and were sentenced without counsel. I drew an affidavit that covered what had happened, and the next day I left Florida to come back to New York, and I understand that later Mr. Lowenthal served a writ of habeas corpus in the northeastern district based on the facts as I have briefly outlined them here.

Senator TYDINGS. What happened to those four boys and three adults after the trial? Did they go to jail?

Mr. ROSENBERGER. Yes, sir. They were sentenced to jail immediately that morning. (Hearings 154).

The volunteer attorneys for the civil rights workers operated on shifts, and Mr. Lowenthal arrived at 2 o'clock the next morning to replace Mr. Rosenberger. In his words:

It was obvious that since my clients were now in jail, the first move was habeas corpus, so I prepared habeas corpus petitions at once.

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. Moreover, the voter registration drive was stalled while the workers were in jail, and the local blacks were intimidated from registering. (Hearings 141).

Mr. Lowenthal and Mr. Knopf, a law student who was assisting him and who also testified, pursuant to subpena, drafted the habeas corpus petition. Judge Carswell would not entertain it as filed because it had not been prepared on the form prescribed by rule 15 of his local court rules. As Mr. Knopf explained:

In addition I remember typing out, I mean this stuff was done on an emergency basis, the habeas corpus, I remember staying up very late at night typing out a habeas corpus petition only to have it rejected the next day by the judge because we hadn't done it on the special forms his office provided for, and so we had to then go and make out special forms which really involved quite a lot more work. They had to be typed, information had to be gotten, and then when those special forms were filed the matter was before Judge Carswell. In addition I specifically——

Senator TYDINGS. Tell us about those forms. Were they pursuant to, did Judge Carswell say that they were required pursuant to rules of his court?

Mr. KNOPF. I don't really recall. I presume—I don't really recall. I just know he said he couldn't entertain it unless they were on the forms provided by his court. I do know that with regard to the rules of the court, since I was more or less responsible for getting the papers in proper order, and typing them up and so on, I was very sensitive to this. I had been rebuked by Judge Carswell for failing to follow rule 15, a local rule of his court, and I seem to recall on several occasions we had been criticized because our papers were not proper in that they failed to follow local rule 15. (Hearings 180.)

Thus, the prisoners were denied habeas corpus relief while counsel rewrote the application, and while they sought to obtain the signatures of the prisoners as required by the form. Judge Carswell's insistence on compliance with his own rule was contrary to law for two reasons: First, the statute does not authorize the court to delay or deny relief as the basis of a local rule of procedure; and, second, the rule itself was misconstrued because it prescribed for an entirely different class of cases and served no useful purpose for a habeas corpus application in a removal case.

First, the applicable provision of the Judicial Code commands:

If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of heabeas corpus * * * 28 U.S.C. § 1446(f).

This language appears to impose upon the district courts an absolute duty to issue the writ of habeas corpus when a prosecution has been removed and does not authorize the court to condition its exercise of that duty on the filing of a particular form or in any other manner. It will be noted that this provision of the Judicial Code serves an important function for the Federal Government. United States Code 28, section 1446(f) applies with respect to all removals of State prosecutions, an important class of which is described in 28 United States Code section 1442(a)(1):

Any officer of the United States or any agency thereof, or person acting under him, for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

Plainly, the United States is vitally interested in the immediate release from State custody of United States officers who are being subjected to State prosecution for any acts committed as Federal officers. As the Supreme Court said in the leading case of *Tennessee* v. *Davis*, 100 U.S. 257, 263:

The Federal Government can act only through its officers and agents, and they must act within the States. If, when thus acting, and within the scope of their authority, those officers can be arrested and brought to trial in a State court, for an alleged offense against the law of the State, yet warranted by the Federal authority they possess, and if the general government is powerless to interfere at once for their protection—if their protection must be left to the action of the State court—the operations of the general government may at any time be arrested at the will of one of its members.

Similarly, 28 United States Code, section 1442(a)(4) gives a right of removal to "Any officer of either House of Congress, for any act in the discharge of his official duty under an order of such House." Obviously, if an officer of the Senate were to be arrested by a State officer in the course of the exercise of his duties, for example while serving subpena authorized by one of our committees, we would be extremely anxious that he obtain habeas corpus immediately to be released from State custody.

Second, even if Judge Carswell had been empowered to promulgate a rule prescribing a form on which an application for habeas corpus under 28 United States Code, section 1446(f), rule 15 of his court was not such a rule, for it had been designed solely for a different purpose. It is clear from the history of rule 15 that its objective was to facilitate the disposition by Federal courts of the growing number of applications by State prisoners, unrepresented by counsel, for release on the claim of an infirmity of their State or Federal convictions.

The language of Judge Carswell's rule is identical to that which had first been adopted by the U.S. District Court for the Northern District of Illinois, which is reprinted at 33 Federal Rules Decisions 391–393. Rule 15 of the Northern District of Florida, reprinted at pages 203–204 of the hearings, is identical except for the numbering and lettering of the paragraphs and, of course, the name of the court to whose clerk petitions should be addressed. Adoption of the Northern District of Illinois' rule had been recommended to all Federal district courts by the judicial conference pursuant to the Report of the Committee on Habeas Corpus of the Judicial Conference dated September 19, 1963, which is reprinted at 33 F.R.D. 367–408. That report makes clear that, as I have stated, the rule was addressed to applications made by prisoners in custody pursuant to a State or Federal court judgment attacking the validity of that judgment. The information which the prisoner was required to supply on the form was prescribed by the rule to enable the Federal court to determine whether a hearing was necessary on such application; particularly pertinent is the observation—33 F.R.D. 382–383—that it was amended in light of the new standards enunciated in 1963 by the Supreme Court in *Townsend* v. *Sain*, 372 U.S. 258; *Fay* v. *Noia*, 372 U.S. 391; and *Sanders* v. *United States*, 373 U.S. 1. The judicial conference report contains nothing which suggests that the rule was to govern applications for habeas corpus under 28 U.S.C. 1446(f). On the contrary, the information called for by the form which Judge Carswell required the Wechsler attorneys to submit is largely if not entirely irrelevant in such a proceeding, since the right to habeas corpus under 28 U.S.C. 1446(f) does not depend on facts which are to be ascertained at a hearing but instead attaches automatically when a State prosecution has been removed to Federal court. As Professor Moore explains:

The writ of habeas corpus here referred to [in § 1446(f)] is not the "great writ" habeas corpus ad subjiciendum to inquire into the legality of the detention of the petitioner and whose object is the liberation of those who may be imprisoned without sufficient cause. It is in substance the old writ of habeas corpus ad faciendum et recipiendum or writ of habeas corpus cum causa, whose purpose is to transfer custody of the defendant from the state court to the federal court, as a necessary adjunct to the removal of the state proceeding. In issuing the writ, as provided by subsection (f), the federal district court does not pass upon the merits of the case; the defendant's guilt or innocence is not involved; and upon a proper showing being made the federal court has no discretion and should issue the writ." (1 A Moore, Federal Practice, pp. 1310–1311, footnote 2 incorporated into text, other footnotes omitted.)

Judge Carswell either did not understand this distinction or, despite his understanding, insisted that civil rights workers seeking habeas corpus on removal comply with a rule and prepare a form designed and useful only for an entirely separate class of cases wherein a writ of a different nature is sought.

It may be worth noting that the attorneys for the civil rights workers who were confronted with Judge Carswell's erroneous interpretation of the rule were not in a position to question it because they never saw the rule. As Mr. Knopf testified in colloquy with Senator TYDINGS:

Senator TYDINGS. Tell us about those forms. Were they pursuant to did Judge Carswell say that they were required pursuant to rules of his court?

Mr. KNOPF. I don't really recall. I presume—I don't really recall I just know he said he couldn't entertain it unless they were on the forms provided by his court. I do know that with regard to the rules of the court, since I was more or less responsible for getting the papers in proper order, and typing them up and so on. I was very sensitive to this. I had been rebuked by Judge Carswell for failing to follow rule 15, a local rule of his court, and I seem to recall on several occasion we had been criticized because our papers were not proper in that they failed to follow local rule 15.

I had gone to the clerk's office and tried to get a copy of the local rules, but during the summer the clerk kept on informing me that they were out, they had all been given out and there were none available, he would try to get me a copy. I did not obtain a copy until very nearly the end of the summer when we were going back home, and at that time the copy that the clerk gave me showed that the local rules went from rule 1 through rule 14, there was no rule 15. (Hearings 180–181.)

The reason that Mr. Knopf was unable to find the rule became evident when a copy was produced by Mr. Waits, the present clerk, who testified as follows:

Sir, rule 15, this copy here, has been attached to the U.S. District Court, Northern District of Florida General Rules of Practice, *Bankruptcy* Rules of Practice, effective July 1, *1959*. This amendment has been attached to this copy of those rules, sir. (Hearings 205, emphasis added.)

In other words, rule 15 of the local rules was not attached to rules 1 through 14, but to another document, the Court's bankruptcy rules. Since the Judiciary Committee did not permit Judge Carswell to be recalled to respond to the testimony, the record does not show whether he was aware of this extraordinary situation. But it is entirely clear, and Judge Carswell has not denied, that he would not even entertain an application for habeas corpus which was not filed according to that rule. Yet, as we have seen, 28 U.S.C. 1446 can accomplish its purpose only if the district courts give prompt obedience to its unequivocal command that when a prosecution has been removed to the Federal court it "shall issue its writ of habeas corpus." Judge Carswell's assumption of power to impose elaborate procedural requirements before issuing the writ was entirely unwarranted.

Third. The forms which Judge Carswell prescribed called for the signature of the prisoners. So, as their counsel testified:

We had to drive way out to Quincy where the jail was, some 25 miles from Tallahassee, only to learn that the defendants were 25 miles further out on a road work gang. (Hearings 141).

This trip, of course, resulted in a further delay in the ultimate granting of habeas corpus. Insistence on the signature of the prisoners was unjustified not only because rule 15 did not properly apply in this instance, but because as a general proposition the signature of an attorney on a court paper is sufficient. This is an obvious element of our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent, see *Link* v. *Wabash Railroad* Co., 370 U.S. 626, 634, is expressly provided for in rule 11 of the Federal Rules of Civil Procedure, and is

well known to every lawyer. Indeed, the fact that rule 15 called for the signature of the prisoner is itself strong evidence it was not intended to be applied in any case in which counsel appeared. For the great writ, habeas corpus ad subjiciendum, for which rule 15 was designed, is frequently applied for not by the prisoner himself but by someone else, since a person in custody will often be physically unable to make the application, and even his precise whereabouts may be unknown to those seeking his release. See, for example, *U.S. ex rel Toth* v. *Quarles*, 350 U.S. 11, 13 n. 3. This is recognized in 28 U.S.C. 2242:

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

The same practical considerations govern the different class of habeas corpus under 28 U.S.C. 1446(f). This can appropriately be illustrated by the example to which I referred previously, that of a Federal officer in State custody whose prosecution has been removed under 28 U.S.C. 1442(a)(1). Because removal is in the interests of the United States, the removal petition and the request for habeas corpus will often be made by the U.S. attorney. But the U.S. attorney may not know where the State is holding the Federal officer. If he is compelled, before habeas corpus issues, to locate the imprisoned official and obtain his signature, the State could, by spiriting the prisoner away, deny his liberty indefinitely. Thus, neither the removal statute nor 28 U.S.C. 1446(f) requires that the signature of the defendant appear on the papers.

In the committee the able Senator from Nebraska implied that Judge Carswell's ultimate waiver of the prisoners' signatures on the habeas corpus application demonstrated an absence of hostility to the civil rights workers—hearings 189. That suggestion, however, is unsound. Since the attorney's signature on formal court papers was sufficient, as I have shown, the original imposition of this unique and unjustifiable requirement, which delayed action on the habeas corpus application in Wechsler, is a surer clue to Judge Carswell's sympathies than its belated waiver.

Fourth. When counsel for the civil rights workers presented the application for habeas corpus in a form acceptable to Judge Carswell, a hearing was held in his chambers. Mr. Lowenthal described this incident as follows:

Mr. LOWENTHAL. I attended therefore in Judge Carswell's chambers a session in which I can only describe his attitude as being extremely hostile.

He expressed dislike at northern lawyers such as myself appearing in Florida, because we were not members of the Florida bar. I might add here that we could not find local lawyers willing to represent the voter registration people in Florida. It was either northern lawyers or no lawyers. * * * Judge Carswell indicated that he would try his best to deny the habeas corpus petitions, but I pointed out that he had no discretion in the matter, that the Gadsden County officials had clearly acted in derogation of Judge Carswell's own jurisdiction, since the removal to Judge Carswell's court was wholly proper. Judge Carswell agreed with that and granted the habeas corpus petitions, but at the same time on 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." (Hearings 141–142)

Mr. Knopf, who had assisted Mr. Lowenthal, testified:

Mr. KNOPF. It is relatively clear in my mind. I remember this. This was my first courtroom experience, really, out of law school, and I remember quite clearly Judge Carswell. He didn't talk to me directly. He addressed himself to the lawyer, of course, Mr. Lowenthal, who explained what the habeas corpus writ was about, and I can only say that there was extreme hostility between the judge and Mr. Lowenthal. 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 and he was especially critical of Mr. Lowenthal in fact he lectured him for a long time in a high voice that made me start thinking I was glad I filed a bond for protection in case I got thrown in jail. I really thought we were all going to be held in contempt of court. 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 against—rather just arousing the local people, and he in effect didn't want any part of this, and he made it quite clear that he was going to deny all relief that we requested. At that point, Mr. Lowenthal argued that the judge had no choice but to grant habeas as the statute made it mandatory.

Senator TYDINGS. Did the State send a representative?

Mr. KNOPF. No, sir. I personally had called the county prosecutor to inform him of the hearing to tell him when it would be held so that he could show up, and I remember his response roughly, his attitude, because it was an attitude that I met of numerous other prosecutors while working down there. Their attitude was they were not going to chase all the way over to Federal court to defend this case, that everything would blow over after the summer anyway, and they had much more important things to do in terms of criminal matters or private practice back in their home seat, and they were not going to show up and they didn't want anything to do with it in effect. So there was no one there from the county. There were just the civil rights attorneys plus the judge. So no one had argued against the granting of habeas corpus relief.

But I remember Mr. Lowenthal going on and on with the judge that he had to grant relief because the statute spoke in terms of "shall grant habeas corpus," not "may," and Judge Carswell said that there were very few areas of the law, I am not quoting, I mean this is my impression, it was something along like this, that there were few areas of the law that there wasn't some discretion left to the judge, and he was going to exercise that discretion against us and he would keep these people in jail.

Mr. Lowenthal argued strenuously that we feared for the safety of these people in jail, and that it was quite clear that these persons were convicted in violation of Federal law. They didn't even have an attorney. They were working on voter registration projects and things like that.

Senator TYDINGS. Did Judge Carswell have all of the facts before him?

Did Mr. Lowenthal give him all of the facts as related here by Mr. Rosenberger to this committee this morning?

Mr. KNOPF. Yes, he did, and they were also, most of them. I wouldn't swear to all of them exactly, were in the petition, because I drew up the petition, these facts were set forth either in the removal petition or in the habeas corpus petition, generally setting forth all these facts. There then went on a lengthy discussion between Mr. Lowenthal and the judge exactly as to what the law was, and the judge required some books to be brought out, the statute to be put before him and so on, and he eventually concluded that we were right, I mean Mr. Lowenthal was right, in that he had no choice. He had to grant habeas corpus, because the state court was without jurisdiction. So he then very reluctantly granted it. He said all right, we win, something like that, you know, all right, here it is.

He then said, however, I don't know exactly in what order, but I remember that he then said but he did have discretion with regard to removal, and he would remand the removal petition back to the state court, and Mr. Lowenthal argued that there had been no request from the county prosecutor, no one had showed up to ask for this remanding, and the judge said that he had the power to do it himself, and that he would do it without a request. So on his own motion he remanded.

They then got into a discussion about serving the habeas corpus. At first I was under the impression, and it appeared, the Marshal was there, that the Marshal was taking the habeas papers to serve them, but Judge Carswell announced that the Marshal would not serve the papers, that Mr. Lowenthal would have to drive out to the county jail himself, and serve these papers. (Hearings 177–178.)

There are two highly disturbing elements in this testimony: first that Judge Carswell demonstrated hostility to Mr. Lowenthal because he was a northern lawyer representing civil rights interests, and second, that he stated that he would try if at all possible to deny habeas corpus. Hostility to any attorney is injudicious behavior, as Judge Carswell indeed acknowledges (hearings 320) but in the contest of the Wechsler case it necessarily reflected opposition to the lawyer's cause, namely, the civil rights movement. Even in the absence of any judicial precedent such an attitude would reflect most unfavorably on Judge Carswell, particularly given the background of his 1948 speech; but the court of appeals in Lefton against City of Hattiesburg had instructed the district courts to be hospitable to out-of-State lawyers in civil rights cases. I shall not dwell at length on this point, however, because Judge Carswell has denied that he was ever discourteous to consel (hearings 320). I am sure that Senators will decide for themselves whether that denial is sufficient to dispose of this issue, or whether as I have concluded, that Judge Carswell's behavior in the Wechsler case failed to conform to the teachings of Lefton.

The second charge in the Lowenthal and Knopf testimony cannot, in any event, be dismissed. Judge Carswell's letter does not expressly deny that he had indicted a disposition to withhold habeas corpus relief, if possible. Nor can Judge Carswell's assertion that he has "consistently approached hearings with an open mind, to be convinced by counsel of the merits of the arguments" (hearings 320) be treated as a denial of this charge by implication.

That this was not his invariable prac-

tice is shown by the Wechsler case itself, because he remanded that case without hearing argument on the important and difficult question whether the removal was authorized by 28 U.S.C. 1443. As Dean Pollak put it:

One element which concerned me as I read his opinions was a repeated use of dispositive techniques which avoided hearings. (Hearings 240).

This criticism gains force from the numerous decisions of the court of appeals which reversed Judge Carswell because of his summary disposition of causes. See cases cited at hearings 240–41 and 290–91.

Fifth. Although Judge Carswell followed 28 U.S.C. 1446(f) to the extent that it mandated the issuance of the writ of habeas corpus, he did not comply with the next clause of that section:

• • • 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.

It is not disputed that Judge Carswell deliberately refused to permit his marshal to serve the writ of habeas corpus on the State officials or to take the defendants into custody and, instead, required Mr. Lowenthal, the defendants' counsel, to serve the writ. (Hearings 144, 178, 199.) Judge Carswell cannot have been unaware of the statutory language since it was in the same section that Mr. Lowenthal had quoted to him as declaring the judge's duty to issue the writ. Indeed, Mr. Knopf testified that—

The judge required some books to be brought out, the statute to be put before him and so on, and he eventually concluded that • • • Mr. Lowenthal was right, in that he had no choice. (Hearings 178).

Whatever denials or excuses which Judge Carswell's supporters may make with regard to other aspects of the Wechsler case, they cannot explain away Judge Carswell's willful disregard of the unambiguous mandate of 28 U.S.C. 1446(f). Nor can they possibly reconcile his action with the strict constructionism which the President has stated that he seeks in a Justice of the Supreme Court, and with the duty of all judges to follow the law.

Sixth. When Mr. Lowenthal served the writ of habeas corpus the sheriff presented the prisoners, released them momentarily, and immediately rearrested them. He advised Mr. Lowenthal he had been notified by telephone that Judge Carswell had remanded the cases to the State court. The psychological impact of this on the prisoners can readily be imagined, particularly when it is remembered that they had already been placed on a road gang pursuant to a sentence on a conviction which was patently unconstitutional because they had been denied the right of counsel. Their rearrest was made possible by the fact that Judge Carswell had not permitted his marshal to serve the writ, for the marshal would have been required to bring the defendants into the custody of the Federal court. Another factor, moreover, was evasion of the procedure prescribed in 28 U.S.C. 1447(c):

A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon procede with such case.

In this case, the State court was advised of the remand by telephone call from the marshal. There is testimony in the hearings that the marshal acted on his own accord rather than on instructions of Judge Carswell in making the call. But the Judge neither denies knowledge of the marshal's action, nor disowns it; nor, of course, is there any evidence that the judge insisted, as was his duty, that 28 U.S.C. 1447(c) be followed. Moreover, the marshal who made the call would have been serving the writ of habeas corpus on the State court officers if Judge Carswell had acted in obedience to 28 U.S.C. 1446(f). It was only because of this double violation of the removal statute that the State officials were enabled to rearrest the civil rights workers immediately after the writ of habeas corpus was served.

Seventh. Judge Carswell remanded the case to the State court without affording the defendants a hearing on the propriety of the removal. It is true that 28 U.S.C. 1447 does authorize the District Court to remand a case—

If at any time before the final judgment it appears that the case was removed improvidently and without jurisdiction • • •

But Judge Carswell is subject to serious criticism for taking this action without affording the defendants any hearing on whether removal was improvident, that is to say, whether the Wechsler defendants qualified for removal. That raised difficult questions concerning the meaning of 28 U.S.C. 1443 (1) and (2) which they had invoked.

Judge Carswell's supporters claim that he was later vindicated by the construction of those provisions by the Supreme Court in *Rachel* v. *Georgia,* 384 U.S. 784, hearings 378, and *Greenwood,* 384 U.S. 808, hearings at 407. As Dean Pollak observed, it is "a very subtle problem" whether the Wechsler case was closer to Rachel—where the Supreme Court approved removal—or Peacock—where the Supreme Court held that removal was improper. But like Dean Pollak, I do not believe that the real issue is whether Judge Carswell correctly or incorrectly anticipated the ultimate resolution of that question by the Supreme Court. What is significant, and bears very heavily against his confirmation, is that Judge Carswell disabled himself from making any reasoned determination of this issue because he failed to hold any hearing on the merits. The opinions of both the majority and the minority of the Supreme Court in Rachel and Greenwood reveal that the interpretation of 28 U.S.C. 1443 (1) and (2) presented extremely close complex problems. This is further illustrated by the divergence of views both among and within the courts of appeals which passed on the questions before they were resolved by the Supreme Court and the depth of analysis of the opinions in those cases. Compare *New York* v. *Galamison,* 342 F. 2d 255 (C.A. 2) (2–1 decision), *City of Chester* v. *Anderson,* 347 F. 2d 823 (C.A. 3) (4–3 decision), *Baines* v. *Danville,* 357 F. 2d 756 (C.A. 4) (3–2 decision), all rejecting removal, with *Rachel* v. *Georgia,* 342 F. 336 (C.A. 5), upholding removal. They entalled consideration of the text and legislative history of several statutes which had been enacted in the Reconstruction period, as well as understanding of precedents of the Supreme Court.

Congress itself recognized that the scope of 28 U.S.C. 1443 was a difficult question which should be resolved by the Supreme Court and amended the removal statute to authorize appeals from remand orders of cases which like Wechsler were removed under that section. This history is set forth in the Rachel opinion, 384 U.S. 780, 787 n. 7, hearings 385 n. 7. See also Peacock, 384 U.S. 808 at 835, hearings at 434. In short, the only thing that could be said with assurance about the issues presented by the removal in Wechsler, at the time that they were before Judge Carswell, was that there were strong arguments to be made on either side. But Judge Carswell ruled without giving counsel the opportunity to present any of them.

Instead, Judge Carswell disposed of the case on the basis of the fifth circuit's brief opinion in Dresner against Tallahassee, a case which did not even arise under 28 U.S.C. 1443 and therefore could not possibly have any bearing on the propriety of removal under that statute. Since these opinions are reprinted in the hearings, I invite the Senators to compare the opinion of the court of appeals in Dresner—hearings 172—with those of the Supreme Court in Rachel—hearings 378—and Greenwood—hearings 407. I am confident that each Senator, whether or not he is a lawyer, will agree that the Dresner opinion gave no guidance to the proper disposition of the Wechsler case, as the attorneys for the Wechsler defendants could also have pointed out if Judge Carswell had held a hearing before issuing his remand order. Plainly, an indispensable qualification for a justice of the Supreme Court of the United States is a willingness to hear and consider the legal arguments of counsel.

Eighth. It may well be asked, at this point, why was Judge Carswell in such a hurry to remand the Wechsler case? The State's attorney had made no motion to that effect. Indeed, he had shown disinterest, if not disdain, for the proceedings in Judge Carswell's court, and declined an invitation to appear—hearings 141 and 177. The explanation seems to be that which appears from Mr. Knopf's description—which Judge Carswell did not refute—of the proceedings in chambers. After the judge was forced to acknowledge that 28 U.S.C. 1446(f) absolutely required him to grant habeas corpus—

He then said but he did have discretion with regard to removal, and he would remand the removal petition back to the state court, and Mr. Lowenthal argued that there had been no request from the county prosecutor, no one had showed up to ask for this remanding, and the judge said that he had the power to do it himself, and that he would do it without a request. So on his own motion he remanded." (Hearings 178)

This damaging interpretation is confirmed by Judge Carswell's final action in this proceeding, his denial of a stay pending an appeal from his order of remand.

Since the defendants had been rearrested, the purport of his order was to subject them to retrial in State court before the higher Federal courts could have determined the validity of the remand order. This tended to frustrate the provision of the 1964 Civil Rights Act which, as I have noted, amended the removal statute to allow appeals from orders of remand in cases like Wechsler. I particularly invite the attention of the senior Senator from Connecticut to this point, for he was one of the sponsors of this provision.

Judge Carswell expressed no reasons for his action and none of the usual grounds for the denial of a stay were present. One significant factor in determining whether such relief should be granted is the likellhood of the success of the appeal. If the recent congressional action in allowing an appeal on this narrow class of cases was insufficient to establish its substantiality, counsel could have presented additional reasons why the appeal might be successful. But Judge Carswell never permitted counsel to be heard on this issue. Another factor normally considered is whether the defendant may flee or create a danger to the community if released. There was no serious possibility that the civil rights workers who had voluntarily come to Florida to help Negroes register would abandon their efforts if they were released; it was, moreover, clear from the papers before Judge Carswell, including the spurious character of the charge that the State had brought against them, that the civil rights workers were not likely to engage in violence or to commit other crimes. Indeed, the only danger which these workers presented to the community was that they would interfere with its racist policies which, in the words of a pro-Carswell witness, were "a little bit to the right of Louis XIV"—hearings 107. Thus, Judge Carswell's denial of the stay was in direct contravention of the admonition of the Court of Appeals in Lefton:

> In civil rights cases, however, Congress has directed the federal courts to use that combination of federal law, common law, and state law as will be best "adopted to the object" of the civil rights laws. (333 F. 2d at 284, Hearings 464).

Judge Carswell having denied a stay pending appeal, the same rellef was sought from a judge of the court of appeals. This was promptly granted. It is rare for a judge of the court of appeals to reverse the action of a district judge in granting or denying a stay pending appeal. By doing so in the Wechsler case, the court of appeals judge demonstrated his view, which I submit was entirely justified, that Judge Carswell's denial of the stay in Wechsler was a gross abuse of discretion.

In sum, the deficiencies in judicial performance, which a study of Judge Carswell's record has made clear to so many of us, are presented in sharp focus by the Wechsler case:

First, there is Judge Carswell's unwillingness to follow controlling authority—be it the precedent of a higher court, as the then-recent precedent of Lefton against City of Hattiesburg—or an unambiguous act of Congress—such as 28 U.S.C. 1446(f) of 28 U.S.C. 1447(d). Second, there is his misunderstanding or disregard of settled principles, such as the special nature of habeas corpus on removal, the right of parties to file court papers on the signature of their attorneys, and the standards governing stays pending appeal. Further, there is his refusal to accord to litigants in his court the fundamental requirement of due process of law, namely, the opportunity to be heard. This, perhaps, is Judge Carswell's most pervasive fault as a judge. It appears to represent a habit of thought which will be difficult if not impossible for him to shake at his present age. This alone would, in my view, disqualify him from appointment to the Supreme Court, even if he had justified the confidence that he has abandoned the even more pernicious habit of thought which his 1948 white supremacy speech reflects. Regrettably, however, the Wechsler case counts heavily against Judge Carswell on this great moral issue as well.

Mr. MURPHY. Mr. President, I wish to state that I am pleased that my distinguished colleague from Kansas has set the record straight on the matter of the report, printed, I believe, in the Baltimore Sun, that I had decided to vote to recommit the nomination of Judge Carswell. There is absolutely no truth whatever to that report. To my knowledge it has never been discussed. The report was without any foundation whatever. I intend to speak on this matter on Thursday.

LAOS

Mr. MURPHY. Mr. President, I rise today as a result of the renewed public concern over the presently confused situation in Laos, and I wish to express my amazement at the attempts of some alleged experts to further complicate an already overcomplicated situation, which began back in the middle 1950's and had its roots in a desire out of the Russian and Chinese Communists to subvert and capture the entire area formerly known as Indochina and particularly the Southeast Asian nation of Laos.

It has been suggested by some who must certainly know the facts that Laos might become the Vietnam of the 1970's. I do not share this point of view, nor do I understand the reasoning which suggests it. I have gone back into the records and find without question that Laos is and always has been an important part of the Vietnam of the 1960's and the continuing efforts of the Communists from Hanoi aided, advised, and supplied by the Communists from both China and Russia. It comes as no particular surprise to my colleagues, particularly those who have been considered experts in these matters for a number of years.

On March 23, 1961, President Kennedy told a press conference that the SEATO agreement made specific reference to aggression against Laos and to the commitments which the United States had assumed in that part of the world.

President Kennedy said:

> It is quite obvious that if the Communists were able to move in and dominate this country, it would endanger the security—and the peace of all of Southeast Asia. As a member of the United Nations and as a signatory of the SEATO Pact, and as a country which is concerned with the strength of the cause of freedom around the world, that quite obviously affects the security of the United States.

Almost precisely 9 years later, on March 6, 1970, President Nixon issued a major policy statement on the situation of Laos. I want to quote from that statement:

> I hope that a genuine quest for peace in Indo-China can now begin. For Laos, this will require the efforts of the Geneva Conference Co-Chairmen and the signatory countries. But most of all it will require realism and reasonableness from Hanoi. For it is the North Vietnamese, not we, who have escalated the fighting. Today there are 67,000 North Vietnamese troops in this small country. There are no American troops there. Hanoi is not threatened by Laos; it runs risks only when it moves its forces across borders.

The President concluded that the United States, as it has for all of history, stands ready to cooperate with other countries in every way in its diligent search for peace. He said this country desires nothing more in Laos than to see a return to the Geneva agreements and the withdrawal of North Vietnamese troops, leaving the Lao people to settle their own differences in a peaceful manner.

Mr. President, I commend the President of the United States for cutting through the confusion, some of it obviously contrived, and some of it coming through inattention. He has said clearly that the United States is resolutely seeking only peace.

Now I urge my colleagues in the Senate not to add to that confusion. Certainly, those of us in this body who have closely observed the continuing developments in Southeast Asia should not be surprised by recent events.

The war in Laos and the war in Vietnam are substantially elements of the same conflict. The troops bent on aggression in Laos are not the indigenous Communists, the Pathet Lao. They are playing a minor, almost insignificant role. The enemy in Laos is North Vietnam.

Let me recall for you today the words of Ho Chi Minh, the Viet Minh leader, in an interview published in the Belgian Communist paper, Red Flag, in July 1959:

> We are building socialism in Vietnam but we are building it in only one part of the country, while in the other part we still have to bring to a close the middle class democratic and anti-imperialistic revolution.

To do this—to import communism into South Vietnam, required the approval, tacit or enforced, of the adjoining nations—Laos and Cambodia—for supplying the troops needed to fight the war in the South.

jection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senator from Ohio be recognized without prejudicing the rights of the able Senator from Indiana (Mr. HARTKE) under the previous order.

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

REGARDING CARSWELL

Mr. YOUNG of Ohio. Mr. President, we have heard in the Senate comments by some who advocate the confirmation of Judge Carswell to the Supreme Court, that mediocrity is a desirable trait. Mediocrity, these proponents claim, would help provide balance on a Supreme Court too heavily weighted with judicial brilliance.

James C. Paradise, a highly respected lawyer in Cincinnati, in my home State of Ohio, addressed himself to the subject of mediocrity in a very amusing poem. Mr. Paradise has expressed a serious concern. We all might do well to consider this message conveyed in a humorous way by my constituent James C. Paradise.

The poem reads:

When I went to the Bar as a very young man,
Said I to myself, said I,
I'll be just as dull as I possibly can,
Said I to myself, said I,
I'll climb to the heights of success at the bar,
By leaving no doubt that I'm just below par,
And avoiding the stigma of being a star,
Said I to myself, said I.

When I got to the Bench as a Federal judge,
Said I to myself, said I,
I ll not be a student of law—that's a drudge,
Said I to myself, said I,
I'll write my opinions without style or wit,
When they are reversed it won't faze me a bit,
For that is the way I will prove that I'm fit,
Said I to myself, said I.

I'll establish a record for Nixon to see,
Said I to myself, said I,
Of utterly clear mediocrity,
Said I to myself, said I,
With Mitchell and Thurmond I ll play on the team,
You'll not hear me saying "I have a dream,"
And that's how I'll get on the court that's supreme,
Said I to myself, said I.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may be recognized for not to exceed 10 minutes pending the arrival of the distinguished Senator from Indiana (Mr. HARTKE).

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

AN INTERVIEW WITH THE PHYSICIAN TO MEMBERS OF CONGRESS

Mr. MANSFIELD. Mr. President, it was my good fortune to read in the current issue of U.S. News & World Report, an article entitled "Interview With Physician to Congress."

I have an extremely high regard for the individual interviewed in that article—Dr. R. J. Pearson, the Physician to the Congress. I think Dr. Pearson is an outstanding individual. He has attained the rank of admiral in the U.S. Navy, He is a man of great integrity, steadfast dedication, and deep devotion. He is a man who has excelled immensely in his present position.

I think that the Congress is extremely fortunate to have a man of such outstanding caliber heading up the health corps which looks after the needs of this body. In saying that, I am confident that I speak—at least—for every Member on this side of the Capitol and certainly for all Congressmen who have had need of the services of Dr. Pearson.

Mr. President, I commend the remarks of Dr. Pearson to all of my colleagues and ask unanimous consent to have the text of the interview printed in the RECORD.

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

INTERVIEW WITH PHYSICIAN TO CONGRESS. HOW TO STAY HEALTHY

For members of Congress, life in Washington is often a test of strength and stamina. How do they keep fit? Can private citizens profit from the advice Congressmen get from their attending physician? Dr. R. J. Pearson, a rear admiral in the Navy Medical Corps, discusses the subject in an interview held in the conference room of "U.S. News & World Report."

Q. Dr. Pearson, in general, are members of Congress healthy people?

A. I think you would be surprised to find a group in their age bracket as healthy and vigorous as members of Congress really are. They've got many minor ailments, and some that would seem to be major. Yet they go on in spite of this and perform rather miraculously, actually.

Q. What is the average age in Congress?

A. Average age of members of the 91st Congress is 53.

Q. Is this average going up or down?

A. I think it is going up over the years. And the older members are staying in office longer, according to the younger members. Average age of the 90th Congress was 52.1.

Q. Have you found any occupational disease for Congressmen?

A. I think the one occupational disease is overeating—and its resultant obesity.

Q. Is tbat dangerous?

A. Yes. I don't think you can equate it on an exact ratio, but certainly the increased weight represents one of the factors that make members more susceptible to heart attacks.

Q. Do many Senators and Representatives have heart attacks?

A. I can't give you figures on this. But there are a number. Almost none of them have kept it quiet, incidentally. I would remind you that two recent Presidents—Eisenhower and Johnson—also had heart attacks.

Q. Do many Congressmen try to keep their weight down with diets?

A. Well, they've got a lot of my diet booklets. I wouldn't say how many follow them. A popular thing now is a quick-weight-loss, all-protein diet. They can lose weight on this in a hurry.

Q. What other health problems do members of Congress have?

A. In short-term problems, we have two that are very high on our list. I've never seen as much respiratory disease as we've had this year.

Q. Flu?

A. We have not identified it. At least, so far as I know, we haven't had any member direly ill. But it's been a respiratory ailment that's lasted a couple or three weeks It's been pretty rough on a lot of people on Capitol Hill.

Bone and joint problems also are very common among members. They get sprains. Many of them bave been physically active—athletes—before coming to Congress. They turn up with swollen joints here, there and yonder.

And we're discovering that among the older population of tbe United States, including members of Congress, gout is a very common disease. Contrary to common belief, gout is not, so far as I know, related to alcoholic intake and not greatly related to overeating. It's a common disease due to an inherent defect in the patient's ability to metabolize protein.

Q. Did you say many members of Congress have gout?

A. Yes. That's a pretty common disability on Capitol Hill. I hesitate to say this because of the public's image of what a gouty patient is. But that's a mistaken image.

Q. Is there anything to the idea that gout is a disease of geniuses?

A. There are studies to indicate that people with elevated uric acids and gout have an increased cerebral capacity.

Q. Dr. Pearson, as the physician of Congress, do you think Congressmen ought to retire at a certain age?

A. I used to think that. But you know, if you were to take all those people who have passed 75 and say they'd have to retire, you'd lose a great many good brains and good service to the nation.

There ought to be some means whereby those who are no longer their active mental selves could be asked to retire. I've had the question asked of me several times. Just the other day, one of the senior members asked me how he was physically—was he all right to run again? And I said: "Well, I answered that for you two years ago when you asked me that question."

"Yes," this member replied, "but I just want to make sure that, if something makes me appear not to be my usual competent self, there will be an outside agency that will remind me of it—because once we are really incompetent, then we lose our desire to retire."

I think the idea of a mandatory retirement age, such as many big corporations have, is worthwhile. But I would still maintain that it won't work well in Congress. Some people are senile at 60, and some are not at 85. Determining one from the other in advance is pretty difficult.

Q. Is the age structure of Congress such that, one of these days, you're going to have quite a few members dying in office or retiring suddenly?

A. I don't think you could deny that is a possibility. The leadership is pretty advanced in age. Yet, I have no solution. Those members of advanced age have such vast experience and wisdom—they truly do—that to try to find some way of legislating them out and somebody else in who had equal abilities would be very difficult.

Q. Should physical fitness be a qualification for a seat in Congress?

A. I don't think it's practical. Many members come to mind who would not meet the usual standards. One is Representative Charles E. Bennett of Florida. He has had several fractures of his lower extremities. At the time of his last fracture, he called me from North Carolina and asked if I could make arrangements to get him into Walter Reed General Hospital immediately and meet him at the plane. He didn't want to miss a roll call in the House And he didn't. He made

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

MAYNARD J. TOLL,
President.

RESOLUTION ADOPTED BY NLADA EXECUTIVE COMMITTEE JANUARY 26, 1970

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

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

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

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

SOCIAL SECURITY BENEFITS TENNESSEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I intend to support the nomination of Judge Carswell.

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

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

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

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

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

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

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

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

the postal employees and inconvenience to the American people.

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

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

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

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

The Houston Post quite correctly said:

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

The Houston Post editorial concluded:

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

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

Mr. President, I believe the Houston Post editorial of March 25, 1970, to be one of the best statements on the recent events involving the Post Office Department. I ask unanimous consent that it be printed in the RECORD.

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

AN UNFORTUNATE ACTION

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

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

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

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

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

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

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

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

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

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

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

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

THE CARSWELL NOMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The most persuasive testimony to this point was presented by Prof. William van Alstyne of the Duke University Law School, who had been a strong supporter of the earlier nomination of Judge Haynsworth. Opposing Judge Carswell, Professor van Alstyne told the committee that his decisions reflected "a lack of reasoning, care, or judicial sensitivity overall. There is, in candor, nothing in the quality of the nominee's work to warrant any expectation whatever that he could serve with distinction in the Supreme Court of the United States."

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

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

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

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

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

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

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

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

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

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

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

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

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

In conclusion, they have emphasized to us that—

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

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

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

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

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

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

I beg to disagree.

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

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

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

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

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

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

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

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

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

"To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the president, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connections, from personal attachment, or from a view of popularity."

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

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

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

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

REPORT ON AMERICAN POW'S

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

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

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

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

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

[From the Army Magazine, February 1970]

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

(By Eric C. Ludvigsen)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

personnel, the lag is still a year between arrest and trial.

These corrections can be made by (1) improvements in judicial administration, and (2) expenditure of enough money to make the system of justice work expeditiously.

We urge national resolve to achieve these improvements certain to enoble the law rather than the perilous proposals for preventive detention which will erode confidence and respect in the administration of justice. As a first step, we ask members of the Congress to reject pending legislation to permit preventive detention.

LOOSE TALK ABOUT SLANTED NEWS

Mr. McINTYRE. Mr. President, ever since the Vice President's public questioning of the objectivity of the communications media last fall we have heard a great deal of talk about "slanted" news presentations.

Recently one of the most respected weekly editors of my State, Mr. Edvard DeCourcy of the Newport, N.H., Argus-Champion, addressed himself to this matter in a most eloquent and thoughtful column.

Because I believe Mr. DeCourcy's analysis deserves widespread consideration, I ask unanimous consent that his column be printed in the RECORD.

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

IS NEWS UNIVERSALLY SLANTED?

(By Edward DeCourcy)

Loose talk about "slanted" news is becoming almost as commonplace as long hair.

Much of it is coming from persons who do not consider themselves "liberal," but claim that the news is being given a "liberal" slant.

I'm not sure just what that means. It probably means that some news is being published about events that show the critic in a poor light, particularly if he is a public official and does not want the public to know about his peccadillos.

If I understand today's idiom, a "liberal" is someone who sees an evil and tries to correct it, and an "unliberal" is someone who sees an evil and thinks it will go away if we leave it alone.

If that is so, nobody should be surprised if a great many newspapermen are "liberals." In their jobs they have to see too much evil in the raw, and no matter how tough they may pretend to be, it gnaws at their hearts. Moreover, newspapermen have to learn to think. Easy as it may appear, writing a news story demands thought. First there is the effort to gather accurate information, often an enormously difficult task. Then there is the even greater effort to put that in orderly words, accurate words, so that the reader will understand, all in the hope that what goes into the reader's mind will be truth.

So, the newspaperman who must witness so much stark evil and who must learn to think is likely to become a "liberal."

The assumption, however, that simply because a great many newspapermen are "liberal" they distort the truth, would be both difficult to prove and a nasty insult.

Some 40 years ago I watched a four-year old girl die on an automobile running board. I can still see those blond curls matted with blood and vomit as the broken little body convulsed to stillness. She had been run over by a drunken driver.

I still see those curls every time I cover the trial of a drunken driver. I always will. I have an abiding conviction that drunken driving is a serious crime, one that our society takes entirely too lightly.

But in the four decades since then, I have never knowingly twisted the news of a single drunken driving trial.

This is not to say that no newsman has ever twisted a story to fit his prejudice. Obviously some have, and probably no day goes by without somebody somewhere being guilty.

It is to say, however, that a newspaperman can be "liberal" or "unliberal' and still be both honest and competent.

I claim that most of those who charge that news is being universally slanted don't know what they are talking about. They can't There are 1,752 daily newspapers, 8,000 weeklies, 7,249 radio stations and 662 television stations in the United States. Who could read, listen to or watch even one per cent of them?

Like nearly all newspapermen, I make a reasonable effort to keep abreast of the news. I read seven daily newspapers (less than one-half of one per cent), about 40 weeklies (less than one-half of one per cent), and spend about an hour a day watching news broadcasts. With such scant observation I surely can't prove whether newspapers, radio or television generally are slanting the news or not.

I just don't know. And neither do some of the loudest voices making the claim. If they don't read the papers, they don't know what the papers are saying.

The New York Sun was a great newspaper. It got a lot of mileage out of the story about a man who told his little boy, "Willy, if you see it in the Sun, it's so, even if it ain't so."

Mileage or not, the Sun died some 20 years ago.

The truth was then that just because something appeared in the Sun it was not necessarily true, and the truth is now that just because somebody, however exalted he may be, says something it is not necessarily true, either.

In fact, the more exalted he is, the greater is his temptation to slant his own statements

THE CARSWELL NOMINATION

Mr. GOODELL. Mr. President, I invite the attention of Senators to an excellent statement by the Association of the Bar of the City of New York on the nomination of Judge Carswell.

The association numbers among its members many of the most distinguished lawyers in New York City and, indeed, in the Nation. The fact that this distinguished group is urging the Senate to reject the nomination of Judge Carswell is highly significant.

The statement cogently reminds us once again that Judge Carswell lacks the professional qualifications and the sensitivity to civil and human rights that is required for a Justice of the highest court in the land.

I ask unanimous consent that the text of this statement be printed in the RECORD.

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

MARCH 31, 1970.

Senator CHARLES E. GOODELL,
Washington, D.C.:

The executive committee of the Association of the Bar of the City of New York respectfully requests the Senate to reject the nomination of Judge G. Harrold Carswell for the United States Supreme Court or to recommit his nomination to the Committee on the Judiciary. Service on the United States Supreme Court requires that a Justice have exceptional qualifications of integrity, professional distinction, legal learning and proven sensitivity to human and civil rights. In our considered opinion, the public record demonstrates that Judge Carswell lacks these essential qualifications for a Justice of the highest court in the land. We join with other lawyers and bar associations and with law school teachers in urging the Senate to insist on excellence on the Supreme Court.

FRANCIS T. P PLIMPTON,
President
D NELSON ADAMS,
Chairman

PECOS GROUP URGES 100,000-ACRE BIG THICKET NATIONAL PARK

Mr. YARBOROUGH. Mr. President, many years have passed and many trees have fallen in the Big Thicket since I first introduced a bill in 1966 to establish a Big Thicket National Park. My present bill on this important proposal is S. 4. The establishment of a 100,000-acre Big Thicket has received numerous endorsements from groups and individuals throughout the Nation.

Texas' only Indian reservation is located in the Big Thicket. The Alabama-Coushatta Indian Reservation is located on the U.S. Highway No. 190 about 17 miles west of Woodville in the range of the "upper thicket" forest type. The reservation is home for a modest but foresighted group of Indians who are determined to improve their economic situation through tourism. The establishment of the Big Thicket National Forest would benefit this hardy group of original Americans as well as all other Americans who love beauty and nature.

Mr. President, I ask unanimous consent to have printed in the RECORD the resolution of the Merry Wives Club of Pecos, Tex., endorsing a 100,000-acre Big Thicket National Park.

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

RESOLUTION ON BIG THICKET NATIONAL AREA

Whereas, the Big Thicket is a beautiful area, not yet viewed by thousands of Texans and other Americans; and

Whereas, new species of trees and shrubs are still being discovered in the Big Thicket, and are of value to the botanical knowledge of mankind; and

Whereas, the Alabama-Coushatta Indian Tribes have lived in this area for many generations and need a large undisturbed homeland; and they need to spread to tourists who visit them the knowledge of their tribal ways and skills; therefore,

Be it resolved that the Merry Wives Club of Pecos, Texas urges the preservation of at least 100,000 acres containing the most unique areas of the Big Thicket, these areas to be connected by environmental corridors; and

Be it resolved that the Interior and Insular Committees of the Senate of the United States be requested to set immediate hearings of S. 4 which would create a Big Thicket National Area.

FRANCES M MANNEL,
President.
GLADYS BURKHOLDER,
Secretary
MARJORY L. BLACKWELL,
Corresponding Secretary.

ing at the East Coast. The only previous experience was two years ago, when DOD shipped 170,000 tons of prefabricated housing overseas which had been manufactured in the Midwest. The material was shipped via the Lakes-Seaway route precisely because it was cost favorable.

5. The *letter* states that:

While the shipping service to the Great Lakes ports may be described as a test program, surely economic feasibility studies were available to indicate what the actual results would in fact be.

The *fact* is that:

Such a study *was* made by the Pentagon in 1962, and concluded that significant cost savings could be achieved by shipping cargo out of Great Lakes ports and encouraging American flag shipping to go after it. The 1962 report also concluded that if private shipping did not seek out this cargo then the military should use its own ships for Great Lakes-Seaway carriage.

Moreover, in 1968 the Defense Department sought the advice of the U.S. Comptroller General on how the military could take advantage of the cost savings that would result from Seaway routings. The Comptroller General advised that in the absence of private shipping the Pentagon ought to use its own control ships to pick up military cargo at Great Lakes ports.

The present test program is designed precisely to test out—and take advantage of—these economic forecasts.

6. Finally, the *letter* states that:

The Defense Department is operating a shipping service to the Great Lakes ports contrary to economic good sense, and urges DOD to review the situation and discontinue this MSTS operation.

The *fact* is that:

Although some money was lost on the first shipment, due to the inevitable costs of initiating any new program, estimates show that $5000 in costs was saved on the 2nd shipload, and as the program hits its stride, about $10,000 should be saved on each shipload. Overall, in its first year, it is estimated that the test program will save the taxpayer more than $100,000 in shipping costs.

Sincerely,

WILLIAM PROXMIRE,
Chairman,
Great Lakes Conference of Senators.

PHILIP A. HART,
Vice Chairman,
Great Lakes Conference of Senators.

PRESIDENT NIXON'S CARSWELL LETTER

Mr. McGOVERN. Mr. President, yesterday the President of the United States released an extraordinary communication in regard to his position on how the Senate should act on his nomination of Judge Carswell to the Supreme Court.

The President asserted that he and only he had the constitutional authority to appoint judges to the highest court in the land, that the Senate had no right to substitute its judgment on these matters for his, and that the issue in the Carswell case was no longer the qualifications of the judge himself but the constitutional authority of the President.

I find the President's interpretation of his prerogatives and those of the Senate to be a strange construction indeed.

One commentator said yesterday that the President was essentially right, that the Senate has not traditionally given Presidents such difficult times over their nominees and that, in this case, the Senate should follow political custom and approve the man the President says he wants.

I find this point of view totally unacceptable.

I agree with the President that there is something much greater at stake over the Carswell nomination than the judge himself. But that something is not the President's constitutional prerogatives.

The greater issue at stake here is the question of respect for the highest judicial body in the land at a time when respect for the law is at a seemingly low ebb in the land. The greater issue at stake is the question of maintaining the legitimacy of the Supreme Court in the eyes of millions of Americans of minority races who feel their rightful place in this Nation threatened.

The President's assertion that approval of his nominee is due him because he is President does not speak to that issue.

There are several further comments to be made on the President's not-so-strict construction of our various constitutional prerogatives in regard to nominees to the Supreme Court.

First, and most important, Judge Carswell is the President's choice, nobody else's. Nobody forced the President to seek out and finally decide on Judge Carswell as his nominee.

Nobody forced him to choose a nominee who at the mature age of 28 made a racist speech that even the nominee now says is "obnoxious" to him in retrospect.

Nobody forced him to choose a nominee who knowingly or unwittingly—either is equally damning—actively participated in subverting the law of the land by transferring a public golf course into a private and segregated hands for a financial pittance.

Nobody forced him to nominate a judge who was openly hostile to civil rights lawyers appearing before him to defend the rights of black Americans because it was his judgment that they were simply making trouble in his part of the country.

Nobody forced the President to nominate Judge G. Harrold Carswell.

And the Senate of the United States has no obligation to approve Judge Carswell in opposition to its own best judgment.

The Senate has only one obligation. To do its true constitutional duty, to advise and consent or not consent on this nomination, to represent all the people that make up this great nation.

I, for one, am sure the Senate will fulfill its obligation.

Mr. President, the editor of the Washington Post has treated this issue most thoughtfully in today's issue of the Post. I ask unanimous consent that this superb editorial be printed in the RECORD.

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

[From the Washington Post, Apr. 2, 1970]

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

George Washington, August 8, 1789: ". . . as the President has a right to nominate without giving his reasons, so has the Senate a right to dissent without giving theirs."

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

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

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

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

"To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the president, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connections, from personal attachment, or from a view of popularity."

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

It is against that background—an attempt by the men who wrote the Constitution to keep the President from filling offices with

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

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

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

THE PRESIDENT'S STATEMENT ON VETERANS' MEDICAL CARE

Mr. SCHWEIKER. Mr. President, I highly commend President Nixon for announcing today that he would seek $65 million in additional funds from Congress for the Veterans' Administration medical program—$15 million for the remainder of this fiscal year and $50 million added to the budget request for fiscal year 1971.

The President and his able Administrator of Veterans' Affairs, the Honorable Donald E. Johnson, are to be congratulated for their review of the problems facing the VA hospital system, and their action in response to what they learned from studying the system.

The Subcommittee on Veterans' Affairs, of the Committee on Labor and Public Welfare, has itself been reviewing this situation extensively and intensively since last November. As ranking minority member of that subcommittee, I have been taking a deep personal interest in this matter. The veterans returning today from Vietnam, who have made such great sacrifices in this war, must continue to have the finest in medical care and services. Yet, as the President notes in his statement today:

As a result of past decisions, the ability of the VA hospital system to meet future needs has been seriously impaired.

The President's fine statement outlines not only the need for additional funds from Congress for VA hospitals but also other steps which have been taken to improve medical care and management in these hospitals.

I look forward to joining with the President in supporting increased funds for VA hospitals. I ask unanimous consent that his statement be printed in the RECORD.

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

STATEMENT BY THE PRESIDENT ON VETERANS MEDICAL CARE

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

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

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

I am pleased that the Administrator and his new management team have taken a number of immediate administrative steps to improve the quality of the veterans medical care program. However, his review shows that additional funds are required immediately if the VA is to meet its obligations to veterans requiring medical attention. *Therefore, I have approved an increase of $50 million in the VA's medical care budget request for fiscal year 1971—which makes it $210 million more than the approved appropriation for fiscal year 1970—and have authorized the VA to seek from Congress an additional appropriation of $15 million for the remainder of this fiscal year.* These requests will enable the VA to improve medical care for all eligible veterans, particularly for those suffering from battle injuries.

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

BACKGROUND OF THE PROBLEM

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

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

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

THE VIETNAM ERA VETERAN

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

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

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

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

SPECIALIZED MEDICAL PROGRAMS

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

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

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

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

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

FLOYD IVERSON—A FINE PUBLIC SERVANT

Mr. BENNETT. Mr. President, Floyd Iverson, regional forester of the Forest Service intermountain region in Ogden, Utah, since March 1957, has announced his retirement, effective today, after nearly 40 years of duty with the Forest Service.

It has been my pleasure and privilege to work closely with Floyd during the past 13 years, and I have been delighted and sometimes amazed at the way he has smoothed out problems that have come along from time to time. I suppose this is the real key to what I know has been a most successful career.

During his years with the Forest Service, Floyd has served with distinction in many varied assignments from forest ranger to regional forester. His outstanding leadership in resource management and administration of the 19-forest intermountain region was recognized with a Superior Service Award in 1962 and with the coveted Bridger Award of Utah State University in 1964.

He will be succeeded by Vernon O. Hamre, a Forest Service employee of more than 25 years, serving since early 1969 as deputy regional forester of the Pacific Northwest region.

I take this opportunity to welcome Mr. Hamre to Utah and to extend to Floyd Iverson my sincere thanks and my best wishes as well as those of my staff for a pleasant and rewarding retirement.

THE CARSWELL NOMINATION

Mr. GURNEY. Mr. President, on March 18, 1970, the distinguished Senator from California (Mr. CRANSTON) publicly accused Judge G. Harrold Carswell of "bias and hostility against civil rights attorneys who argued cases in his court, in violation of canons 5, 10, and 34 of the canons of judicial ethics."

The Senator based this most serious charge on the statement of Mr. Theodore Bowers, an attorney of Panama City, Fla.

I was very much disturbed by this most serious allegation, and I inquired into the matter further. On the basis of my inquiry, I must conclude that my distinguished colleague, through no fault of his own, has been seriously misled by Mr. Bowers.

I ask unanimous consent to have printed in today's RECORD a letter dated March 24, 1970, from Mr. Julian Bennett who has had some experience in dealing with Mr. Bowers and with Judge Carswell.

Mr. Bennett served as attorney for the Panama City School Board during the controversies Mr. Bowers referred to in his statement. I think his letter is self-explanatory.

Mr. Bennett has also furnished me with a photograph, which cannot of course be reproduced in the RECORD. It shows the cocaptains of this year's Bay High School football team after their election by their squad. One is white, Mr. President, and the other is black.

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

LOGUE, BENNETT & WILLIAMS,
Panama City, Fla., March 24, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR GURNEY: I apologize for the late letter concerning Judge Carswell, but I have been wading through the mass of orders and documents in the file in order to try to present a comprehensive report to you.

First of all, let me say that the matters you reported to me attributed to Attorney Bowers and quoted by Senator Cranston in the debate on Judge Carswell, are completely false. I am shocked that a brother member of the bar would, at this late date, make the *first* complaint about Judge Carswell's conduct. Particularly is this true since a glance at the record since the case commenced by the serving of the first desegregation complaint, November 16, 1963, reveals that Judge Carswell ruled with Attorney Bowers and the individual negro plaintiffs far more consistently than he ruled with the defendant School Board.

For example, in the early days of this litigation when "free transfer" was the permitted method of desegregation, Attorney Bowers, on September 8, 1966, sought an order transferring 115 negro children from an all-negro school to a predominantly white school; the Board took the position that these students had not made a timely application as called for in a previous desegregation order; Judge Carswell ruled promptly and swiftly that these children must be enrolled immediately and excused their lack of timely application altogether. This order appears in the record as the Order of Judge G. Harrold Carswell September 15, 1966. Of course, we accepted his order and enrolled the children accordingly. No appeal was made.

I am astounded that Attorney Bowers would attack a Judge that ruled so consistently with him througbout this six years of litigation.

As I mentioned to you in my telegram, in the six years the Judge probably averaged entering at least two orders a year on matters relating to this desegregation case. The first and only orders of Judge Carswell that were appealed by either side of this litigation from the date it commenced, November 16, 1963, was the most recent appeal of the order of April 3, 1969 as supplemented by the order of April 10, 1969, both by Judge Carswell.

Basically, the substance of the appeal was the simple, stralght-forward statement by the Negro plaintiffs that there would be three schools (two elementary schools and one junior high school) out of the total of 26 schools in the County, that would have an all Negro student body. All faculty would be integrated with each school having Negro and white faculty on each staff equal to the ratio of Negro faculty members to white faculty members in the County as a whole. There has never been any complaint in any appeal at any level that the faculty was not desegregated properly.

There was no issue on appeal concerning any conduct by Judge Carswell at the trial court level creating any unfair or biased position with regard to any desegregation order. The simple point that if there is any all black schools in any County in the South, the school system is unconstitutional. As we now know, the famous decision in the Orange County, Florida case has indicated that strict neighborhood zoning, eliminating the dual school zones, can be a constitutionally permissible school system even with some all black student bodies, provided there is integration of all other activities, particularly faculty, athletics, extra-curricular activities, etc. With that in mind, I enclose a photograph and news article taken from Sunday, March 22, 1970, issue of the Panama City News-Herald showing that two co-captains for the Bay County High School football squad for the 1970 season. One is a young Negro athlete, Ricky Lockhart, and the other a white athlete, Mike Faile.

As I stated to you in my telegram, the high schools have been integrated since 1967. The County School Board voluntarily closed the only all-Negro high school at the urging of Judge Carswell and even without Judge Carswell entering an order to that effect. He made the Board see their duty and they did it and this is the result. The community has accepted integration in athletics and elsewhere, and it is unfair for Judge Carswell to be branded anticivil rights when, to a large degree, he played a major part in helping the Board turn away from segregation toward integration, as Judge Carswell knew and consistently ruled throughout the six years of litigation, that segregation was no longer constitutionally permissible.

Judge Carswell has accomplished far more with his chambers meetings between counsel on all sides than any argument Theodore Bowers has ever made on the law. The fact that he has only been appealed one time and reversed on that occasion because the Supreme Court of the United States had only subsequent to his decision, rendered the famous *Alexander v. Holmes County Board of Public Instruction* in Mississippi, which introduced the new requirement that all school systems must commence immediately to operate on a unitary basis and then litigate subsequent thereto.

I might add that it is not fair to Judge Carswell, or for that matter any other southern United States District Judge, to judge these good men on yesterday's record with today's law. Desegregation law is constantly shifting, though never deviating from the principle that "segregation is dead".

To illustrate, in desegregation litigation we have gone under various higher court pronouncements along the following successive legal routes:

1. Free transfer of any student to any school he desires to go to.

2. Mandatory free choice wherein all students must choose once a year which school he will attend.

3. Abolition of free choice and substitution of zoning, pairing, and the like.

4. Neighborhood school zones drawn with impartial zone lines ala Orange County, Florida decision.

Even the liberals in the United States Senate must understand, as has been echoed by no less an authority than President Nixon, that much is left to be desired in Supreme Court decisions on the subject of desegregation requirements. In some cases they have been explicit; in other cases they have been vague; in other cases they have said nothing; for example, whether the Constitution requires bussing or pairing to accomplish racial balance. No less an acknowledged authority than Frank Johnson, United States District Judge in Montgomery County, Alabama, issued an order filed February 25, 1970, in which Judge Johnson, who is the idol of many of the liberals in the North and among the news media, said:

"Plaintiff's objections and the few proposals made by the Office of Education, Department of Health, Education and Welfare, that differ from the plan as proposed by the Montgomery County Board of Education appeared to be based *upon a theory that racial balance and/or students ratios as opposed to the complete disestablishment of the dual school system is required by the law. Such is not this court's concept of what the law requires. Complete disestablishment of the dual school system to the extent that it is based upon race is required. While pairing of schools may sometimes be required to disestablish a dual system, the pairing of schools or the bussing of students to achieve a racial balance, or to achieve a certain ratio of black and white students in school, is not required by the law.*" Arlam Carr et al and National Association, Inc., plaintiffs v. Mont-

gomery County Board of Education et al, defendants, USA amicus curiae, Civil Action No. 2072-N, U.S. District Court for the Middle District of Alabama, Northern Division, Opinion dated February 25, 1970.

Judge Carswell, to my knowledge, has ruled that the law requires no less and he is consistent with Judge Johnson in not requiring any more.

I, again, sincerely thank you for the opportunity of expressing my views. I am a former democratic officeholder in Bay County, Florida, and still a registered Democrat. Politics has nothing to do with this matter as far as I am concerned. Until Judge Carswell was nominated for the United States Supreme Court, I have never heard any attorney, black or white, that has practiced before him, either at the District Court level or on the Appellate level, that has complained of the type of conduct complained of by Attorney Theodore Bowers.

I hasten to add that the pressure to defeat this good man has caused a member of my profession to make what could be labelled, at best, unkind, untrue and unfair statements. For him I apologize, and to Judge Carswell I know that I speak for all the other lawyers who have served before him, black and white and wherever situated, in wishing him good luck.

Very truly yours,

JULIAN BENNETT.

"TRUTH IN POLITICS"—REMARKS BY SENATOR EDMUND S. MUSKIE AT THE JACKSON DAY BANQUET IN SPRINGFIELD, MO

Mr. EAGLETON. Mr. President, Jackson Day in Springfield, Mo., is the occasion for one of the outstanding gatherings of Democrats in the Nation. Each year, Democrats from throughout the State congregate for a weekend of fellowship and discussion of the party's past achievements and future goals.

A national party leader addresses the Jackson Day Banquet each year. On March 21, over 1,700 Missouri Democrats heard a thoughtful and incisive address by the Senator from Maine (Mr. MUSKIE). I ask unanimous consent that his remarks be printed in the RECORD:

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

TRUTH IN POLITICS

(Excerpts from the remarks of Senator EDMUND S. MUSKIE)

As a Senator from Down East, I am glad to be in Missouri, the gateway to the West. It was once said of Missouri that you raise "corn and cotton and cockleburs and Democrats." From the enthusiasm here tonight, I think you are on your way to a bumper crop of Democrats in 1970.

You have two distinguished Senators, my good friends and colleagues, Stuart Symington and Tom Eagleton, and a great Democratic Governor, Warren Hearnes. You are making a fine contribution to the House of Representatives with your vigorous and able Democratic Congressmen, Clay, Symington, Sullivan, Randall, Bolling, Hull, Ichord, Hungate and Burlison.

Here in Springfield, in the beauty of the Ozarks, spring is hursting upon us and we have the makings of a great Democratic revival meeting—a revival founded on the belief of Missourians in candor and action. Missouri gave the nation that courageous President from Independence, Harry S. Truman. He is one man who has always told it like it is, before the Republicans learned to use that phrase as a slogan.

Last year the Attorney General of the United States, John Mitchell, picked up Missouri's "show me" motto. He urged that the people watch what the Republican Administration did instead of listening to what it said. I have watched and listened, and the only thing worse than what I have heard is what I have seen.

The public relations men working in the White House reflect a belief that the package and the label are more important than the product. They are lucky the Truth in Packagaing Act doesn't apply to the Republican Party. Of course, no one has ever accused the Republican Administration of being consumer oriented.

The problem goes beyond misleading labels The air is being fouled by attacks on our liberty and assaults on some of our most cherished institutions. The country is in danger of being smothered by a blanket of fear and confusion. Our economic environment is being undermined by a unique combination of continuing inflation and rising unemployment, which only republican economists seem to know how to achieve.

In America our greatest political tradition is not only that our elected officials are men of the people, but also that they will both lead the people and trust the people.

If the President would face up to the realities of America and the world we live in, he would know that the way to fight inflation is not by vetoing funds for health and education, but by ending the waste of war and of weapons that do not secure our future but jeopardize it. The spiraling costs which rob the pocketbook of every housewife are the direct product of our expenditures on war and weapons.

Millions of Americans are denied the opportunity to buy a home or to obtain even decent housing as rising interest rates and tight money strangle the housing industry. Marginal workers are pushed out of jobs, and new jobs are not available as one million Americans have been added to the rolls of the unemployed.

It may be the new Nixon in the White House, but it is the same old Republican economic policies.

The President's failure to control inflation and the threat of recession are paralyzing the Government in other areas where action is required. We are going through a period of great crises in the United States, crises of our schools and of our souls, crises affecting the streets we walk and the air we breathe.

If we do not reorder our priorities, redirect our efforts, and commit our resources today, we may not have the opportunity tomorrow.

Our children are a primary victim of our misordered priorities. The nation's educational systems are being torn apart, caught up in the adjustments of integration, trapped in traditional teaching methods, packed in overcrowded classrooms, and wracked by student dissent.

Our school systems desperately need help. Can they get that help when the Federal education budget is cut? Can another generation wait while the President appoints a study group?

If we are to avoid tragic incidents like that in Lamar, South Carolina, where little children were the victims of the fears and hates of adults, the President must seek to lead the American people away from their fears and hates

Last week a distinguished Republican colleague of mine, Senator Brooke of Massachusetts, commented on the tragedy of the Nixon-Agnew leadership on civil rights. They were following, he said, "a cold, calculated political decision" and while the President had promised to "bring us together," to date "everything he has done so far appears to be designed to push us apart."

Thoughtful Americans are deeply troubled by the tendency of the Administration—through the Vice President and the Attorney General—to link together those who protest peacefully with those who protest violently It appears to be a deliberate endeavor to incite suspicion and contempt for those who simply disagree with the White House, however lawful their point of view, however peaceful their actions. As they stifle difference and dissent today, they set the stage for upheaval tomorrow.

The President and Vice President are hiding their heads in the sand when they seek to isolate their Administration from the young and the young from middle America. They may succeed momentarily in avoiding direct confrontation, but what is needed is direct dialogue leading to mutual respect. There is no room for either student violence or police violence, and the way to avoid violence is to establish communication.

The young are telling us some very important things. Our colleges and universities have become too impersonal and unrelated to their students and their communities. In our affluence, we as a nation have become too self-satisfied and self-righteous and unwilling to see our own failures and inadequacies. In the race to bigger and better homes in suburbia, we have lost sight of our poor and underprivileged. In our haste to improve our technology, we have been destroying our environment.

And our political policies and practices have become unresponsive and inflexible. We Democrats were due for a shake-up, and we got one! One of the areas where I believe we can perform the greatest service is to help our young people make their way into the political process. The politics of protest can never be as effective or enduring as the politics of free election.

For those young people involved in the issues of our times, we must offer participation in our party. As adults, however, we are entitled to do a little shaking too. There has been a tendency among the young to scorn the established political parties, to fail to differentiate between them, and to demand total conformity to a single point of view. Thus, as we open our party to young people and their ideas, we must help them to see that great national political parties require accommodation as well as idealism, that great goals can be achieved far more readily by constant political support than by sporadic protest.

While we know why we are Democrats, we must justify to the young our belief in the vast difference there is between the institutions that comprise the Democratic and the Republican Parties. They can see how bad the Republican Administration is, but we must show them just how constructive we can be. They have a right to the "show me" attitude. A beginning step in that direction is for us to recognize that the greatest danger to America is not from those young people who are concerned and involved and who participate, but from those young or old who are apathetic and unconcerned.

We have an opportunity this year to go to the people all over this land. When we go, we must cut through the political smog and arouse this nation. The Republican Administration in Washington is an Administration of apathy.

The Administration has succeeded in part in its endeavor to intimidate the television media and the press. I believe that there is even some popularity today in the Vice President's speaking loudly while the Attorney General carries a big stick and the President attends athletic events. But let us not as a party be intimidated, nor shirk our responsibilities.

The armaments race will not be ended until our people demand it. Our schools and cities cannot be saved unless the people are willing to pay for it. Pollution cannot be conquered unless all cooperate and share the cost. Hatreds cannot be overcome unless understanding is offered. We, the Democrats,

U.S. market has dropped from 21 per cent in 1960 to 12 per cent last year. Congress concurring, a way must be found, and soon, to help reverse this trend. Foreign trade accounts for less than 10 per cent of our gross national product (GNP), but for many Latin American countries it is their lifeline. No meaningful economic development can be expected without a substantial increase in exports.

By addressing himself to these issues in a low-key but forceful manner, the President may help usher in a new era in U.S.-Latin American relations. By eschewing pleasing but ineffectual pronunciamentos, Mr. Nixon may play a key role in closing the credibility gap and steer our cooperation with Latin America toward a more genuine partnership.

THE PRESIDENT'S STATEMENT ON THE NOMINATION OF G. HARROLD CARSWELL

Mr. JAVITS. Mr. President, the letter written by the President to the Senator from Ohio (Mr. SAXBE), and printed in yesterday's RECORD, raises a serious challenge to the authority and responsibility of the Senate.

The Constitution is clear that both the President and the Senate have responsibilities in the appointment of the U.S. Supreme Court Justices. Certainly the President proposes nominees, and I know of no Senator who has or would challenge his right to do so. The President may propose any number of them in succession; the Senate can propose none. I point out that this is the second nomination by the President for the same seat.

The President in his letter—and I have the greatest respect for him and speak with the greatest respect—implies that we who oppose the Carswell nomination—and I am one of them—have somehow assumed the right to substitute our own nominee for that of the President. This is clearly not so. I have heard not one single suggestion from any Senator in the opposition that any particular individual would be a better nominee than Judge Carswell. This is not our responsibility, nor have we attempted to assume it. We are simply performing the duty assigned to us by the Constitution—that of reviewing the credentials of a nominee of the President.

But equally clear, we have a responsibility—and a particularly grave one in cases of an appointment for life—to review those appointments and to advise and consent. This is one of the basic "checks and balances" of Federal power under the Constitution. We would be abdicating our responsibility if we were to rubberstamp all Presidential appointments on the theory that we are not to—and I quote the President—"substitute—our—own subjective judgment for that of the person entrusted by the Constitution with the power of appointment." The Constitution does not entrust that power entirely to a single American—the President. On the contrary, it specifically directs 100 other elected Americans—the Senators—to exercise their judgment as well on the wisdom of the appointment.

Indeed, we as Senators cannot be all that threatening to the President's appointive power in view of the thousands of his nominees whom we approve routinely. It is our constitutional duty to assert our rights to advise and consent with conviction—and not to be held only to a test of "name, rank, and serial number" of the President's nominee when we feel that we are being asked to approve an unqualified candidate to a lifetime place in the judiciary. Our constitutional duty to assert this prerogative is equal to that of the President's to assert his prerogative in making appointments.

The President's letter begs the question by conceding that "if the charges against Judge Carswell are supportable, the issue would be wholly different." Of course, we—and I use the word editorially because I do not attempt to speak for any other Senator—believe the charges are supportable.

We are not convinced that the charge of "lack of candor" is baseless simply because Judge Carswell changed his testimony on the golf club issue under vigorous questioning and after being confronted with written documents which contradicted his earlier testimony.

We do not dismiss this same charge because it was not mentioned in the committee report, because information about the ABA Committee's meeting with Judge Carswell the very night before his testimony was not available to the committee.

We are not as impressed with Judge Carswell's role as a founder of the law school at Florida State University when nine of 15 members of that faculty have publicly opposed his appointment to the Supreme Court.

We are concerned about his, at least, unwitting reservations at his confirmation hearing regarding his repudiation of his 1948 speech, when his judicial and private actions since 1948 show no real commitment to the equal rights for all Americans.

Mr. President, again I use the word "we" editorially. I do not speak for any other Senator.

In summary, the President should accept the fact that we must perform our constitutionally mandated duty, and that he is not the first President whose nominees to high office have failed of confirmation, including the President's immediate predecessor and even including Dwight D. Eisenhower, venerated and revered as he was in this country. Nor will he be the last.

And finally, witness the swift and nearly unanimous confirmation of Chief Justice Burger for whom practically every Senator who now opposes Judge Carswell voted. The President may rest assured that he will have the votes for a qualified nominee, even from those of us who may differ with him philosophically.

AMENDMENT OF THE RURAL ELECTRIFICATION ACT OF 1936, AS AMENDED

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 644, S. 3387.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 3387) to amend the Rural Electrification Act of 1936, as amended, to provide an additional source of financing for the rural telephone program, and for other purposes.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. TALMADGE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. TALMADGE. Mr. President, it was my privilege on February 4 to report for the Committee on Agriculture and Forestry an original bill (S. 3387) to amend the Rural Electrification Act to provide an additional source of financing for the rural telephone program.

This bill is a revised version of S. 1684, introduced by the Senator from South Dakota (Mr. MCGOVERN), and S. 2202, introduced by the Senator from Kansas (Mr. DOLE). Senators MCGOVERN and DOLE are to be commended for their efforts in securing passage of legislation to improve rural telephone systems. Senator DOLE has been engaged in the support of such legislation since 1966 when, as a member of the House Agriculture Committee, he supported a bill to create a rural electric and rural telephone bank. I am happy that the Senate Agriculture Committee was able to agree upon a bill which resolves the major problems involved in establishing a source of supplemental financing for rural telephone systems.

The rural telephone program came into being with the enactment of an amendment in 1949 to the Rural Electrification Act. At that time, only 39 percent of America's farms had telephones. Service was being provided generally in rural areas by hundreds of small telephone companies that had their beginnings earlier in the century. By 1949 most of them were using plants that were no longer providing satisfactory service and required extensive replacement and modernization. In attempting to find the financing required to do the job, these small companies learned that banks and insurance companies were not interested in lending substantial sums to small companies with equity interests largely represented by telephone facilities that would have to be junked in the modernization process.

In passing the telephone amendment to the Rural Electrification Act, Congress stated:

It is hereby declared to be the policy of the Congress that adequate telephone service

again down the disastrous road of escalation that was traveled in Vietnam.

It recognizes that the interests of the United States in Cambodia cannot conceivably justify the commitment of American forces and the loss of American lives there.

It affirms that the war in Vietnam can be brought to an end only if it can be contained—and that a widening of the war inevitably means its escalation.

It signals to all interested parties the intention of the United States to continue to support the neutrality of Cambodia—a neutrality that cannot be preserved by outside force.

It places the new government of Cambodia upon notice to keep its military initiatives within the bounds of its own military capacities.

Above all, it is the ounce of prevention. It permits Congress and the President to make the rational choice before any commitments have been made that limit that choice. It would prevent another Vietnam disaster before that disaster is upon us.

The commitment of American troops in a foreign conflict is a responsibility that, under the Constitution, the President shares with the Congress. The enactment of this bill would assure that this responsibility is thus shared. Should the President, as a result of new developments, wish to present further proposals for utilization of any American military personnel in Cambodia, he would be required to obtain the specific authorization of Congress before taking such action.

The Nixon Administration has expressed its determination to prevent the Vietnam war from engulfing Cambodia. I respect that determination and I support it. I believe this legislation will be a commitment by Congress and the President for achieving this essential end.

THE NOMINATION OF G. HARROLD CARSWELL

Mr. BAYH. Mr. President, during the past several hours, I admit quite frankly to having given considerable and deep thought to the propriety of my speaking in the Senate this afternoon.

I have finally come to the conclusion that personal tragedies, unexplained as they may be, once they have happened are unrecallable.

If there ever was a truism, it is that the past is prolog. What is facing the U.S. Senate, and what will be before this Senate for a vote on Monday, is not prolog.

Indeed, it is my considered judgment that the decision to be made by the Senate on Monday could well determine a great deal of the future in this country. We are living in trying times. There is not one of us in the Senate who has not referred to that fact repeatedly. I think it should not pass unnoticed that large numbers of people, either rightly or wrongly, are beginning to lose faith with much that many of us consider fundamental as far as our governmental system is concerned.

I mention this merely because it seems to me from talking to large numbers of people on the campuses and at various other types of meetings over the past several months that those who have the deepest concern, and perhaps the greatest degree of lessening of faith in the ability of this democratic system of ours to meet the problems of this age, are those who have the highest respect for the Supreme Court of the United States as an institution. Because of this feeling and because of my deep concern that the Senate not follow a course of action on Monday which would lessen the faith that the citizens of this country have in the Supreme Court, I ask my colleagues to bear with me if my joining in debate at this moment might seem to some to be callous and hard and out of place.

Mr. President, I was deeply concerned over what appeared in this morning's newspaper relative to the Carswell nomination. It appeared to me that, unable to make a convincing case on the merits that the nominee might possess, the supporters of Judge Carswell are now making a concerted effort to shift the focus of the debate from the central issue—the qualifications of the nominee.

Mr. President, I would like to say before proceeding further that the letter which was sent from the President of the United States to our friend, the distinguished Senator from Ohio (Mr. SAXBE) appears to be couched in terms designed to let the fate of the Supreme Court nominee disintegrate into what we would call an old-fashioned political donnybrook. And if that is the intention, let me say as forthrightly as I know how that I do not intend to become embroiled in this type of chicanery. But I am concerned.

In recent days, various administration spokesmen have made statements impugning the motives of us in the Senate who oppose the nomination of Judge Carswell and even questioning the propriety of this body exercising its constitutional right to advise and consent. Yesterday, as I mentioned a moment ago, my esteemed colleague from Ohio, Senator SAXBE, made public a letter written by President Nixon in support of Judge Carswell. Because the President's letter arrives at some highly unusual conclusions, I ask unanimous consent to print the letter in the RECORD at this point so that those who read this letter can draw conclusions for themselves as to whether the analysis of the Senator from Indiana is accurate or inaccurate.

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

THE WHITE HOUSE,
Washington, D.C., March 31, 1970.

Hon. WILLIAM B. SAXBE,
U.S. Senate,
Washington, D.C.

DEAR BILL: Your letter of March 30 provides me a welcome opportunity to reaffirm my confidence in Judge Carswell.

First, let me dispel any thought that I am less committed to Judge Carswell than to any prior nominee. He has my total support.

I have consistently stated my determination to appoint to the Supreme Court competent, experienced men who are sensitive to the role of the judiciary in interpreting the Constitution and the laws of the land. My first appointee, now the Chief Justice, had 13 years previous experience in the Federal judiciary. Judge Carswell has had longer and more complete judicial service than any Supreme Court appointee in decades other than Chief Justice Burger. Judge Carswell was for 5 years a U.S. Attorney and for 11 years a U.S. District Judge. Appointment to both positions required Senate confirmation. Just a year ago the Senate again confirmed him, without a single opposing vote, for membership on the U.S. Court of Appeals for the Fifth Circuit, which is subordinate only to the Supreme Court in the Federal Judicial System. The American Bar Association Committee on the Federal Judiciary found Judge Carswell qualified as to integrity, judicial temperament and professional competence. The Committee met a second time after attacks were mounted against the Judge and unanimously agreed to adhere to its earlier conclusion.

The charges against Judge Carswell are specious. He is accused, for example, of "lack of candor." The record shows that during his testimony before the Senate Judiciary Committee, Judge Carswell erred in commenting on an incident that had occurred 14 years earlier. During the same hearing, only minutes later, he corrected his own statement. The Committee, in reporting the nomination, did not suggest that Judge Carswell had intended to deceive or mislead the Committee in any way.

It is also charged that Judge Carswell is a "racist." In the Committee record a letter appears from a shipmate of Judge Carswell, who served with him aboard the USS Baltimore for two years during World War II, a period when the military services were racially segregated. The shipmate describes Judge Carswell's attitude as "truly humanistic and liberal" and reports that he reacted to people without bias, regardless of race or color. Two men, together under the tension of combat, come to know one another as few others do.

In other testimony before the Committee, the eminent Professor Moore of Yale Law School describes Judge Carswell's key role in establishing an integrated, highly successful law school at Florida State University.

Those who charge that Judge Carswell is a racist should examine the entire record, not just those parts which taken out of context support the conclusion that they wish to reach. His own repudiation of his 1948 campaign statement was eloquent and unequivocal, and no decision he has rendered can be fairly labeled "racist" in any respect.

What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment. The question arises whether I, as President of the United States, shall be accorded the same right of choice in naming Supreme Court Justices which has been freely accorded to my predecessors of both parties.

I respect the right of any Senator to differ with my selection. It would be extraordinary if the President and 100 Senators were to agree unanimously as to any nominee. The fact remains, under the Constitution it is the duty of the President to appoint and of the Senate to advise and consent. But if the Senate attempts to substitute its judgment as to who should be appointed, the traditional constitutional balance is in jeopardy and the duty of the President under the Constitution impaired.

For this reason, the current debate transcends the wisdom of this or any other appointment. If the charges against Judge Carswell were supportable, the issue would be wholly different. But if, as I believe, the charges are baseless, what is at stake is the preservation of the traditional constitutional relationships of the President and the Congress.

Sincerely,

DICK.

Mr. BAYH. This letter makes a number of points which I believe merit detailed discussion and close analysis. In fact, the very points raised by the Presi-

dent, serve to highlight the deep concern some of us feel over the Carswell nomination.

Let me hasten to interject at this time that any President of the United States should feel committed to a nominee that he sends to the Hill and should wage as effective an argument as he can muster to support his nominee.

But my concern goes to the fact that the President's letter seems to miss the point. It touches on the central issue, but never really gets down to the cardinal principles that are before us in this nomination.

I would like, as respectfully as I know how—because although our President is a member of the other political party, he is my President and I have respect for his office as well as for him as an individual—to look at the letter and to try to analyze it to see if this is the best argument that can be made by the chief proponents of the nominee. We as Democrats or Republicans, as well as Members of the U.S. Senate, want to advise and consent to the nomination of G. Harrold Carswell to be a justice of the Supreme Court of the United States.

So if the Presiding Officer and my colleagues will bear with me, I would like to look at the provisions of the letter.

The President writes of his determination to appoint to the Supreme Court competent, experienced men who are sensitive to the role of the judiciary in interpreting the Constitution. It is true that Judge Carswell is an experienced attorney and jurist. He served, as the President points out, for 5 years as a U.S. attorney and for 11 years as a U.S. district judge.

One might indeed expect a judge to grow in competence and sensitivity and experience through interpreting the Constitution. That would be one of the valid reasons for appointing a man who had served on the district court and on the Fifth Circuit Court of Appeals for a short period of time.

I think when we look at the way one determines the experience and competence of a judge, it is fair to say that a judge's expertise and competence in interpreting the law of the land are accurately reflected in the number of reversals a man receives from the Highest Court. Does Judge Carswell's record show an adequate awareness as he sat there on the bench and looked at the factual situations that came before him and applied first the law and then the constitutional principles to each case? Has he been able to determine what the law is as it is interpreted by the higher courts of the land and, thus, by the Nation? The record shows Judge Carswell suffered an increasing number of reversals the longer he sat on the bench. Twenty-five percent of his first 30 appeals were reversed, 33 percent of his next 30 appeals were reversed, 48 percent of his next 31 appeals were reversed, and 53 percent of his last 31 decisions appealed were reversed. Of the 67 district court judges in his own Fifth Circuit between 1958 and 1969, 60 judges, or 90 percent were reversed less frequently than Judge Carswell.

This record does not merely indicate declining competence and sensitivity to the role of the judiciary in interpreting the Constitution. The record actually shows that Judge Carswell was an activist seeking to make new law by failing to follow precedent, not a "strict constructionist" as his supporters have said. And a more detailed analysis reveals another activist trend, the eagerness of Judge Carswell to terminate judicial proceedings without even granting hearings on allegations at issue with his personal views.

The President, in his letter to our distinguished colleague, the Senator from Ohio (Mr. SAXBE) writes that the American Bar Association Committee on the Federal Judiciary found Judge Carswell qualified as to integrity, judicial temperament, and professional competence. It is significant, I believe, that although 11 members of the ABA Committee on the Federal Judiciary found Judge Carswell qualified, literally hundreds of eminent attorneys and legal scholars have opposed his nomination citing his lack of qualifications and undistinguished record.

I will not bother the Senate with a detailed listing of all these prominent men who have had the courage and the intestinal fortitude to speak out in a matter as distasteful to them as it is to those of us who find ourselves compelled to oppose the nominee. However, it is appropriate to point out that last month 456 prominent members of the bar publicly announced their opposition to Judge Carswell's nomination in newspaper ads because they were convinced of his lack of qualifications.

Mr. DOLE. Mr. President, will the Senator yield at that point?

Mr. BAYH. I am glad to yield.

Mr. DOLE. I do not have the exact figures with me but I referred to them a couple of days ago. I would like to point out certain other figures. What was the number the Senator said? Was it 454?

Mr. BAYH. 456 in one newspaper ad.

Mr. DOLE. I think 126 of those were practicing attorneys. The others were law professors. There are 300,000 practicing attorneys in America and 4,500 or more law professors. So that figure represents about three-tenths of 1 percent of the total attorneys in America.

Mr. BAYH. That is very interesting. I do not profess to have been in this body as long as some members and I do not claim it as a badge of honor to have been personally involved in actively opposing two Supreme Court nominations.

I endorsed Chief Justice Burger's nomination without any reluctance.

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

Mr. BAYH. I will yield to the Senator, but first I would like to finish this point. Having gone through two nominations and having compared the concern expressed by the legal community—lawyers, scholars, and deans—over the nomination of Judge Haynsworth, who was turned down by this body by a vote of 55 to 45, with the overwhelming opposition to this nomination by members of the same community, it seems significant to me that the people charged with teaching or practicing law are trying to tell us something.

I am glad to yield to the Senator from California. I do not want to shut off my friend from Kansas. I will be glad to pursue this matter further.

Mr. CRANSTON. Mr. President, first I wish to express my thanks to the Senator from Indiana (Mr. BAYH) for his remarkably effective leadership on this issue. I am glad that he has brought his mind to bear on the implications of the President's letter of yesterday.

I would like to join in questioning certain aspects of that letter. The particular aspect I would like to touch on at this time is the President's challenge of the right of the Senate to differ with him on his right to make appointments to the Supreme Court. He said in that letter:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment. The question arises whether I, as President of the United States, shall be accorded the same right of choice in naming Supreme Court Justices which has been freely accorded to my predecessors of both parties.

He also said:

> The fact remains under the Constitution it is the duty of the President to appoint and of the Senate to advise and consent. But if the Senate attempts to substitute its judgment as to who should be appointed, the traditional constitutional balance is in jeopardy and the duty of the President under the Constitution impaired.

The distinguished assistant minority leader, the Senator from Michigan (Mr. GRIFFIN), who is now in the Chamber, last year spelled out in great and articulate detail on this floor the right, the obligation of the Senate to decide in its own wisdom whether it wishes to confirm or not to confirm a Supreme Court nominee.

President Nixon, who served in the Senate for 2 years, exercised this right himself. No Supreme Court appointments came before this body during that time, but there were confirmation votes in which then Senator Nixon participated.

On October 9, 1951, Chester Bowles was confirmed Ambassador to India by a 43 to 33 vote. Senator Nixon was paired against Ambassador Bowles.

On February 25, 1952, in a vote on the confirmation of Harry A. McConald, to be administrator to the Reconstruction Finance Corporation, then Senator Nixon voted against that nomination.

More importantly, on May 20, 1952, President Nixon, when a Member of this body, was one of 18 Senators who voted against James P. McGranery to serve as Attorney General of the United States. Mr. McGranery was confirmed by a vote of 52 to 18.

Mr. President, at this point, I ask unanimous consent to have printed in the RECORD the rollcall vote on that particular nomination.

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

Yeas—52: Aiken, Anderson, Benton, Bridges, Butler of Nebraska, Case, Chavez, Clements, Connally, Douglas, Duff, Eastland,

Ellender, Frear, Green, Hayden, Hennings, Hill, Hoey, Holland, Humphrey, Hunt, Johnson of Colorado Johnson of Texas, Johnston of South Carolina, Kilgore, Lehman, Long, Malone, Martin, McCarran, McClellan, McFarland, McKellar, McMahon, Monroney, Morse, Mundt, Murray, Neely, O'Mahoney, Pastore, Robertson, Russell, Saltonstall, Smathers, Smith of New Jersey, Sparkman, Stennis, Thye, Tobey, Welker.

Nays—18: Bennett, Cain, Capehart, Cordon, Dworshak, Ferguson, Hickenlooper, Ives, Kem, Knowland, Millikin, Nixon, Schoeppel, Seaton, Smith of Maine, Taft, Watkins, Williams.

Not voting—26: Brewster, Bricker, Butler of Maryland, Byrd, Carlson, Dirksen, Ecton, Flanders, Fulbright, George, Gillette, Hendrickson Jenner, Kefauver, Kerr, Langer, Lodge, Magnuson, Maybank, McCarthy, Moody, O'Conor, Smith of North Carolina, Underwood, Wiley, Young.

So the nomination of James P. McGranery to be Attorney General of the United States was confirmed.

The VICE PRESIDENT. Without objection, the President will be notified forthwith.

Mr. CRANSTON. Mr. President, I do not seek to judge the wisdom or the folly of that particular vote by then Senator Nixon. I do not seek to judge the merits or the demerits of Mr. McGranery. I merely note that then Senator Nixon exercised the very right he would now, as President, deny to those now serving in the Senate.

I would like to point out, just as an incidental matter, that I now serve in the Senate seat, in the same class of Senator from California, that President Nixon once held. In opposing the pending nomination, I am now exercising the very right Senator Nixon exercised when he opposed the nomination of an Attorney General.

Mr. President, I would like to add one further thought quite relevant to what we are discussing.

On September 4, 1968, commenting on Justice Fortas' nomination as Chief Justice, President Nixon, then a candidate, said:

> When the appointment was up for confirmation in the Senate, my position was that it is the Senate's responsibility and that I would not interfere.

I believe President Nixon should follow his own advice during the debate on Judge Carswell's nomination.

The Senators who oppose Judge Carswell's nomination are not trying to usurp the President's constitutional function; they are, rather, exercising their constitutional obligation. The President can nominate a man with racist philosophy to sit on the Court if he wishes to do so. But this Senator will exercise his constitutional and moral responsibility by opposing the nomination of a racist to the highest court of the land.

I would like to ask the Senator from Indiana if he does not join in my feeling that this is an obligation we must meet within our own consciences as Members of the Senate.

Mr. BAYH. I certainly concur in what my distinguished colleague from California has said. We cannot just be totally naive about this matter. Nobody in this body can do his duty and fulfill his responsibility if he does not realize facts as they are. We live in a political world. Fortunately, we have good Democrats and good Republicans. I hope this discussion of the nomination does not head in the direction in which the President appears to be heading, which is that if one is a good Republican he has to be for the nomination and if one is going to be a good Democrat he has to support the President's nominee.

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

Mr. BAYH. I am glad to yield.

Mr. BROOKE. The Senator raises a very important point, and one which has troubled me deeply in the last few days. I have been troubled about the direction in which this debate has been going and has been moving.

The President is not a candidate for the Supreme Court. G. Harrold Carswell is the candidate for the Supreme Court. I greatly respect the President, as does the distinguished Senator from Indiana. He is my party chief, and it has been a very painful experience to me to have to disagree with him on the nomination.

Mr. BAYH. Mr. President, if the Senator will permit an interruption for just a moment, let me say that having had the privilege of sitting on the other side of the aisle and having listened to the Senator from Massachusetts give his first speech with respect to the Carswell nomination, in the course of the colloquy between us I do not think we could have been closer in a community of feeling. Perhaps I should not speak for the Senator from Massachusetts, but after having gone through the ordeal of the Haynsworth nomination, I was hoping and praying I would not have to go through another. I confessed—and I discussed this publicly, so it is a matter of record—that I was reluctant, hoping all the things that had been said would be laid at rest.

But the longer it went, the more I became convinced.

I salute the Senator from Massachusetts for the determination and raw courage he has evidenced. I would suppose—not having been in his position, I would have to suppose—it would be much more difficult to oppose a nomination from a President of his own party.

Mr. BROOKE. I thank the Senator from Indiana for that kind expression. On occasion the question has appeared to be not whether one is opposed to the qualifications of G. Harrold Carswell, but rather whether one is opposed to the President of the United States.

Most certainly, I am not opposed to the President of the United States. The distinguished Senator from Indiana has said he is not opposed to the President of the United States. He has said that, as a Democrat, he respects the President, who is his President as much as he is my President or the President of any other American. But I think it is unfortunate that the issue now is, Are you going to back the President and vote for G. Harrold Carswell, or are you going to live up to your obligation and responsibility as a U.S. Senator and make a judgment and decision based upon the qualifications of G. Harrold Carswell?

The President's qualifications are not at issue. G. Harrold Carswell's qualifications are. Our duty and our obligation is to examine those qualifications and to make a decision.

We are not supposed to make a decision based upon whether one is a liberal or a moderate or a conservative, a Republican or a Democrat, but based upon our individual responsibility as U.S. Senators. Each of us, in his own mind and conscience and heart, must ask is this a man to sit on the Supreme Court? There is nothing else.

A vote against G. Harrold Carswell should not be interpreted in any form or fashion as a vote against the President of the United States. And a vote by a Republican U.S. Senator should not be interpreted in any form or fashion as an act of disloyalty to his party chief, the President of the United States.

I think it is shameful that the issue is taking this turn in the waning days of the debate. It is getting so now that the question is not, "Are you going to vote for or against Carswell?" The question is, "Are you going to vote for or against the President?" That is most unfortunate. It troubles me. It is a misleading, and indeed an untrue, distortion of the issue.

I certainly want to commend the distinguished Senator from Indiana for giving us the opportunity to discuss this specific issue. I want to commend him for his leadership and his courage. He has had a great personal family tragedy, and I think he comes back to the Senate at this time not because he wants to defeat G. Harrold Carswell, not because he wants to oppose President Richard Nixon, but because he has such dedication to his responsibility as a U.S. Senator and such great reverence for the high tribunal of the Supreme Court of the United States that he could do nothing less. I think nothing else would have brought him back here today to stand on the floor and to work for what he believes is in the best interest of this country.

I think that is also true of those of us on this side of the aisle who are in opposition to this nomination. Some Senators have said, "Well, the President's nominee was rejected once, and therefore it would be an act of supreme disloyalty for a member of the President's own party to vote against the second nominee."

Mr. President, when men and women are elected to this body, it is presumed we are all intelligent men and women. Certainly we know that our responsibility is a joint responsibility with the President for the creation of a third coequal branch of the Government; namely, the judicial branch of government. This matter goes far beyond any loyalty to party, far beyond any loyalty to any particular ideology or philosophy. It is a question that should be decided on the merits of the case, and the merits of the particular case alone.

So those of us on this side of the aisle who painfully find it necessary to vote in opposition to the nomination of G. Harrold Carswell do so purely on the merits of the case, based upon our view that this man lacks the legal compe-

tency, the judicial temperament, which many of us in this body and across this land believe is essential for a man to sit on the Supreme Court of the United States.

No man should sit on the Supreme Court of the United States if he harbors ideals and ideas which are repugnant to the Constitution of the United States, which prescribes equal justice for all our citizens.

We are here discussing a motion to recommit. The debate has been directed primarily to the confirmation of this nominee. Serious questions have been raised. The credibility of this candidate has been raised. The credibility of some of the affidavits and witnesses has been raised.

Certainly, these are all valid matters to consider before contemplating a favorable vote upon a motion to reconsider.

Mr. President, in the waning days of this debate, I am again most hopeful that we will discontinue discussions of anything not germane to the business which is before the Senate, that we will no longer talk about loyalties to President, to parties, or to philosophies, but will direct our attention, as good lawyers should, to the central and dominant issue which is before this body: that is whether this body should send the nomination of G. Harrold Carswell back to the Senate Judiciary Committee, so that that committee, in its wisdom and its judgment, can conduct further hearings and resolve the grave questions and doubts that have been raised concerning this particular candidate.

I think it is regrettable that the President, in his exchange of letters with our distinguished colleague from Ohio (Mr. SAXBE), raised the question as to separate responsibilities of the executive branch of the Government and the legislative branch of the Government. We must never view the nomination and confirmation process, as Constitution has prescribed, as anything less than a joint responsibility, and one which we must take most seriously. The late distinguished Senator from Ohio, Mr. Taft, made an eloquent speech on this subject when he served in this august body. Separation of powers does not mean the domination of one branch over another, but rather—in this case in particular—a shared, coequal responsibility.

Mr. President, before I conclude—and I certainly thank my distinguished colleague from Indiana for his indulgence—another matter has come to my attention which I think should be discussed. I trust that some Senators here, be they proponents or opponents, may have some light to shed upon it. That is the issue that has been raised relative to the extent of the investigation made by the Federal Bureau of Investigation into the background and qualifications of the candidate.

Government procedure calls for an investigation by the FBI of potential candidates for high Federal office; and perhaps the most important investigation that they conduct is the investigation of prospective nominees for high judicial posts. It is my understanding that it has been the practice and procedure of the FBI, in conducting such investigations, to make inquiries into the racial attitudes of prospective candidates. The reason for that, Mr. President, is simply that no one should be allowed to sit on the Supreme Court of the United States, or on any court—certainly any Federal court—if that person harbors a racial view which would be repugnant to the Constitution of the United States. I think this is a good practice and a good procedure, and it is my understanding that it had been followed in the past.

It is my further understanding, Mr. President, that when the question was raised as to why the FBI had not come across the now somewhat infamous statement of G. Harrold Carswell made in 1948, in which he declared his very strong and profound belief in racial superiority, the FBI said that it did not look into the newspaper morgues, and had not looked into the racial beliefs or attitudes of this particular candidate, Carswell.

I ask the question: Was this a change in practice and procedure in the FBI? Was there some reason why the FBI, in this particular case, did not adhere to what apparently is an established practice and procedure? And if they did not do so, then why not?

I think this is an important point, Mr. President, because certainly the members of the Committee on the Judiciary and of the Senate relied upon the FBI investigation, as they should be able to do. If in this case the FBI did not do its job thoroughly, exhaustively, and intensively, and some part of the routine investigation was omitted, either by oversight or by design—and I do not make such charge, for I do not know—then it would seem to me——

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. GRIFFIN. Mr. President, is the Senator making a charge or not?

Mr. BROOKE. No, I said I do not make a charge.

Mr. GURNEY. Mr. President, I raise this question: Is there some doubt in the Senator's mind?

Mr. BROOKE. I am asking what was done. I think the Senator understands me.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. EAGLETON). The Senator from Indiana has the floor. He has yielded to the Senator from Massachusetts.

Mr. GURNEY. Will the Senator from Indiana yield briefly to me?

Mr. BAYH. I am glad to yield, with the understanding that I do not lose my right to the floor.

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

Several Senators addressed the Chair.

Mr. MURPHY. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from California will state his point of order.

Mr. MURPHY. Is it not proper that after a Senator has obtained the floor, he yield for questions only?

The PRESIDING OFFICER. The Senator is correct.

Mr. MURPHY. It seems to me we have been hearing a speech. It seems to me that if the Senator from Massachusetts wishes to make a speech, then perhaps the floor should pass to the Senator from Massachusetts; otherwise, the distinguished Senator from Indiana should be permitted to continue unencumbered.

Mr. GURNEY. I think the Senator from Indiana has yielded to me for the purpose of asking a question.

Mr. BAYH. Mr. President, I certainly appreciate the fact that my friend from California has my best interests at heart.

Mr. MURPHY. I am very much interested, because I have been sitting here for 3½ hours, hoping to get the floor myself.

Mr. BAYH. I yield to the Senator from Florida, provided that I may do so without losing my right to the floor.

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

Mr. GURNEY. Mr. President, my question is directed to the distinguished Senator from Massachusetts. Since the question and the point that he raised is a very important one, and I might say in all candor a very insinuating one, it seems to me that the question ought to be directed to the FBI, and not to the Senate here on the floor. The question should first be asked of the FBI, and then, if there is some indication that they have not done their work, then the Senate should be informed.

My question is, Has the Senator asked the FBI, and if not, why not, before he brings it up here on the Senate floor?

Mr. BROOKE. Mr. President, I think the distinguished Senator from Florida understood what I was saying. I raised the question, and I again raise it, as to whether or not, first, there is such an established practice and procedure in the FBI. Second, if there is, was it followed in this case? Third, if it was not, why not?

I think it is certainly proper for me to raise that question on the floor of the Senate, and I so raise it.

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

Mr. BAYH. I yield, with the understanding that I will not lose my right to the floor.

Mr. GURNEY. I can reply to that question of my own personal knowledge in connection with the investigation of a U.S. marshal appointment in Florida last year. They did, indeed, look into the question of racial bias of the particular candidate, and they gave an answer. I know that for sure. I can tell the Senator that of my own personal experience. So I think it is a custom.

I still say that this question should be directed to the FBI and not raised on the floor of the Senate.

Mr. BROOKE. Mr. President, the Senator from Florida has performed a very useful service. I am very grateful. I asked the proponents or opponents of this nomination alike if they had any information that might be helpful. The information that the distinguished Senator from Florida has given is very helpful. He has stated that, of his own knowledge, in the investigation of a U.S. marshal in the State of Florida this year,

the FBI did make an inquiry into the racial attitude of the prospective candidate.

Mr. GURNEY. Last year, not this year.

Mr. BROOKE. I stand corrected.

He says further, that it is established practice and procedure, and he knows that to be true. That is one of the questions I asked, and I thank the distinguished Senator for his answer.

Now I ask, if that is true in the case of a U.S. marshal, did the FBI follow the same established practice and procedure when they investigated G. Harrold Carswell? If they did then why is it that the FBI did not come up with the statement which was made by G. Harrold Carswell in the State of Georgia in 1948, which clearly indicates a racial bias, the worst I have ever heard.

If they had that practice and procedure, then why did not the FBI come up with the statement and report it to the Senate Judiciary Committee?

Does the Senator from Florida have any information that would be helpful to us on that?

Mr. GURNEY. If the Senator will yield, I think the answer is obvious.

The PRESIDING OFFICER. Does the Senator from Indiana yield?

Mr. BAYH. I yield, with the understanding that I will not lose my right to the floor.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. GURNEY. I think the answer is quite obvious. Any investigation, no matter how thorough it might be, would not necessarily reveal the statement that was made obscurely in a rural Georgia area 22 years ago. I would think that any investigation into these matters might omit some facts that if investigators knew where they ought to go to find them, they might have gone. I think that is the obvious answer.

Mr. BROOKE. Mr. President, I think that is a rather serious indictment of the FBI. They are able to find out things that certainly are more obscure—if that is the word we are going to use—than a statement made by a prospective Supreme Court Justice in a political campaign before an American Legion forum in the State of Georgia. It did not seem to be obscure to the newspaper reporter who found out about it. Does the Senator mean there are things that the FBI cannot find that a newspaper reporter can find about a candidate for the Supreme Court of the United States? I just cannot believe that our FBI is this inadequate. I shudder to think that that is true.

Mr. TYDINGS. Mr. President, will the Senator from Indiana yield to me to address a question?

Mr. BAYH. I yield, with the understanding that I will not lose my right to the floor.

Mr. TYDINGS. Is the question which the Senator from Massachusetts is raising one perhaps a little bit broader than that we are discussing; namely, first, whether or not when conducting screenings of judicial candidates for the Federal bench, including Justices of the Supreme Court, there was within the Department of Justice a regular custom and procedure, which included surveillance of newspaper morgues and the questioning of lawyers and others who might be apprised of the racial attitudes of the individual nominee, and second was this practice set aside and not used by the Department of Justice and the Federal Bureau of Investigation in this case? Is that the question?

Mr. BROOKE. That is certainly one of the questions I raised.

As I said in response to the Senator's question, it is my understanding that for some time there had been an established practice and procedure in the FBI which required them, in the normal conduct of their business of investigating judicial appointments and others, to make inquiries into the racial attitudes of prospective nominees. That I understand to be the practice. That practice has been supported, or at least established, by the distinguished Senator from Florida, who says he knows that is an established practice and, in fact, it had applied last year to a U.S. marshal in his own State of Florida.

If that is true, I ask: Was the same practice used in the investigation of G. Harrold Carswell? If it was used, does it mean that they did not do their work as extensively as they should have and could have? Or, if they did not, why not? Did they change the practice, or did they just disregard the practice?

Those are my questions, and I am earnestly looking for some answers to those questions.

Mr. DOLE. Mr. President, will the Senator yield to me?

Mr. BAYH. Perhaps it would be a little easier for our colleagues to follow the debate in the RECORD if the Senator from Indiana could proceed, and then I am sure that my colleagues and I would be more than happy to join in colloquy about some of the things that have been said. I think the Senator from Massachusetts raises a very good point.

Mr. DOLE. Will the Senator yield briefly, and I will not interrupt again.

Mr. BAYH. I yield.

Mr. DOLE. Let me observe that a number of questions have been raised about Judge Carswell, and that may be one way to call attention to some of those who oppose him.

First, he was a racist; then he was mediocre; then he lacks candor; and now the FBI has failed.

It is fine to raise those questions and leave them in the air and hope the press will take over from there.

Mr. BAYH. If the Senator from Kansas will bear with me, I intend, in about 30 minutes, to tell the Senator from Kansas why the Senator from Indiana thinks Judge Carswell is mediocre and is not qualified to sit on the Court. That is the very reason I am here, as much as I question whether I should be or not. I have been reading, from half a world away, stories emanating from the United States about what the issues are involving G. Harrold Carswell's competence. What are we deciding here? It is time we started putting our feet back on the ground and stopped the effort to direct our attention to eliminate things that do not amount to anything.

The degree to which the background has been indicated, the facts that have been thrown on the record, which were available when the Judiciary Committee considered this nomination—I think that is very pertinent to whether we feel the nomination should be sent back to that committee. I think that is why the Senator from Massachusetts raises the question.

I do not intend to get into this particular question in as broad a field as I think we should at a later date, after we have disposed of this nomination one way or another. But in following the question raised by the distinguished Senator from Maryland, I am deeply concerned that the past two nominations and the controversies that have arisen lead the Senator from Indiana to believe that whatever practice is followed is not thorough enough, does not establish a criterion that should be established and followed, if we are going to ferret out all the facts.

Mr. CRANSTON. I should like to raise another question about the nature of the investigation conducted of this nominee. At various times, when I have been seeking to fill a position which I thought was important, before employing someone I would learn whatever I could about his ability and all other information available to me, and then I would interview the individual. There was always one question I would ask: Is there anything about you of which we may not be aware that we should know, and that you should bring to my attention that we may not have discovered about you?

It would seem to me if that question were not asked by the FBI—we would not expect the FBI to ask it—but by someone with higher responsibilities such as the Attorney General, of Mr. Carswell, then there was dereliction in the process of investigating the nominee. I think it would be useful to know whether that question was asked of him. If it was not, then the investigation was faulty. If that question was asked, then there is the question, did Carswell answer that question and say "Yes, I made a speech that was a segregationist speech some time back when I was in a political campaign." If he did not make such a statement, then he was not truthful in answering the questions that were posed to him. If he did answer the questions truthfully with a, "Yes, I made such a speech long ago," then we have a further question, "Did whoever asked that question feel it was relevant to the nomination and should not be brought to the attention of the Judiciary Committee, or did whoever asked that question deliberately conceal the information?

It seems to me this is an additional reason for referring the matter back to the Judiciary Committee, so that we can learn whether that question was asked, and what the response was.

Several Senators addressed the Chair.

Mr. BAYH. I yield to the Senator from Massachusetts.

Mr. BROOKE. The Senator has been most indulgent. I do know that he has a speech to deliver, but I want to be sure I am clear in my own mind as to the

last remarks of the distinguished Senator from Indiana.

Certainly, we can all agree that after the Carswell nomination is history, we should look more closely at the practices and procedures of the FBI insofar as investigations are concerned.

But would not the Senator agree that prior to that time, and most relevant to the Carswell case, we should find out the extent of the investigation conducted by the FBI in the Carswell case, and the practices and procedures that existed in the FBI prior to the Carswell investigation, and whether there was any change in the practices and procedures in this particular case. If not, what did they do? If so, why did they not do it? Is that not a logical and relevant series of questions that should be answered?

Mr. BAYH. Mr. President (Mr. EAGLETON), I feel that this type of information would be helpful to the Senate.

Several Senators addressed the Chair.

Mr. GURNEY. Mr. President, on that very point, I would ask the Senator from Massachusetts to direct those questions tonight to the FBI, and have them delivered, and have the answer up here tomorrow, so that the Senate and the press can have the benefit of what they say, rather than a speculative question as to what they have done, or what they might not have done, which may throw a cloud upon their investigation.

That is the way we should treat this thing, open and above board, on the table, so that we will all know.

Several Senators addressed the Chair.

Mr. BAYH. Mr. President, I have the floor.

Mr. BROOKE. The Senator yielded to me, as I understood it.

The PRESIDING OFFICER Mr. EAGLETON). The Senator from Indiana has the floor. Does he yield to the Senator from Massachusetts?

Mr. BAYH. Mr. President, I had yielded to my friend from Massachusetts, with the understanding that I would not lose my right to the floor, so that he may answer as expeditiously as possible the question of the Senator from Florida.

The PRESIDING OFFICER. Without objection, the Senator from Massachusetts may proceed.

Mr. BROOKE. I thank the Senator from Indiana.

I think that the Senator from Florida, in his zeal—and I can understand that zeal, and respect it, has mislabeled my question as speculative. I think it is rather unfair to say that these are speculative questions. I want to impress upon the Senator from Florida the earnestness of those questions. I am concerned. I want to know the answers to those questions. The Senator was most kind and helpful in giving me one answer, when he knew and I did not know the answer to that question. I asked all my colleagues on the floor to give me these answers, if they had them. I certainly have no objection to asking the FBI what their investigation consisted of in the Carswell matter, and what the practices and procedures were, whether they have changed them in this case, and if they did, why they did it. I think when I asked the questions, I pointed out to the Senate that the FBI had already said in a public statement that it did not come up with this information concerning the statement made by Carswell in 1948 in Georgia. As I recall their statement, it was because they did not look into the racial attitudes which might be revealed among other sources, by the newspaper morgues.

If that is true, then it would appear to me that the questions, one of which has been answered already, if I am to believe the Senator from Florida, is that there is such an established practice and procedure. If I am to believe the FBI, that they did not look at the newspaper morgues for racial attitudes, then obviously there has been some change in procedure, or they failed to observe the practices and procedures that existed in the past.

But, my answer to the distinguished Senator from Florida is, Yes, I would be pleased to ask the FBI. I want to know the answer, but more important than my knowing the answer, is the Senate should know the answer, and the Nation should know the answer.

Mr. GURNEY. I thank the Senator. I agree with him on that score.

Mr. BAYH. Mr. President, I think, if I still have the floor, I shall yield——

Mr. MURPHY. Mr. President, will the Senator from Indiana yield for a question?

Several other Senators addressed the Chair.

Mr. BAYH. Mr. President, I think the Senator from California (Mr. MURPHY) has been very patient and I will be glad to yield to him for a question, and then the Senator from Maryland. Then I would appreciate a chance to proceed along the pathway which brought me here in the first place, to try, along with all of us, to look at some of the things which have been stated. We all agree they are relevant questions to ask of a man who is being proposed to sit on the Supreme Court.

Mr. MURPHY. I am so pleased that my colleague from Indiana said that. I wonder if the gentlemen concerned with the lengthy colloquy going on here which seems to question the FBI—which may be probably and properly taken up at another time—have read page 3 of the report in which it states:

> The "racist" charges stem from a speech which the judge gave in 1948 when a recent law school graduate seeking election to the Georgia State Legislature. Having been charged by his opponent with being too liberal, Judge Carswell gave a speech embodying then current southern notions of segregation and white supremacy. Reminded of the speech 22 years later, Judge Carswell unhesitatingly deplored and rejected "the words themselves and the ideas they represent. They're obnoxious and abhorrent to my personal philosophy."

Mr. President, those are the words of Judge Carswell. They are contained in the committee report. I think that maybe this should cut through some of what is becoming confusing to the Senator from California.

I thank my distinguished colleague from Indiana for his courtesy in allowing me to put this into the RECORD at this particular point.

Mr. BAYH. I am certainly glad that the Senator from California put that into the RECORD. I think we should perhaps make one slight addition, so that it is put in proper perspective, that that statement was made 22 years later, after Judge Carswell's name had been submitted to the Senate to sit upon the Supreme Court.

Now, if anyone can find for this Senator a statement half so bold a year before, or 2 years before, or years before, then I would say, we have something.

Now the Senator from Maryland has a question——

Mr. MURPHY. Will the Senator from Indiana permit me to answer. It was not my purpose——

Mr. BAYH. The Senator from California was not asking a question——

Mr. MURPHY. Yes, I did—I beg the Senator's pardon—I asked the question, as to whether my colleagues had read page 3 of the committee report. It was my purpose merely to read that segment of page 3 and have it in the RECORD, and not to enter the colloquy which, in my humble opinion, is being handled very well by the Senator from Indiana, the Senator from Massachusetts, and others.

Mr. TYDINGS. Mr. President, will the Senator from Indiana yield for a question?

Mr. BAYH. I yield.

Mr. TYDINGS. Mr. President, does the Senator from Indiana think the issue might be clarified if a letter were directed to the Attorney General of the United States propounding a number of questions, including those raised by the distinguished Senator from California (Mr. CRANSTON) and those raised by the distinguished Senator from Massachusetts (Mr. BROOKE) and by the Senator from Maryland, with respect to the policy, custom, and practice of the Federal Bureau of Investigation of the Department of Justice with respect to judicial nominations prior to the nomination of Judge Carswell, and the policy, practice, and actual conduct of the investigation with respect to Judge Carswell? Does the Senator think such a letter might be helpful?

Mr. BAYH. I think that such a letter and the answers that would be forthcoming would be helpful. I think it may be pertinent, particularly if we are talking about referring the nomination back to the Judiciary Committee.

I feel, whether by information supplied by the Department of Justice, the newspaper reports, or by individual Senators, we already have a number of answers to the questions that would be reasonably propounded. And the answers to these questions, as I see them, are matters of deep concern.

Mr. TYDINGS. The purpose of my question was to announce that the Senator from California (Mr. CRANSTON) and I are sending such a letter to the Attorney General of the United States. I think the significance of such a letter would be that if it turned out that the Department of Justice terminated its normal policy and initiated a new policy with respect to Judge Carswell which would tend to submerge or withhold vital information which should be available

about the background of Judge Carswell, then that information should be brought to the attention of the Judiciary Committee of the U.S. Senate and, indeed, to the attention of every Member of the Senate and the attention of the President of the United States.

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

Mr. BAYH. Mr. President, I yield to the Senator from Massachusetts with the understanding that I not lose my right to the floor.

Mr. BROOKE. Mr. President, I am very much pleased that the distinguished Senator from Maryland and the distinguished Senator from California are going to raise with the Attorney General the questions I have already propounded, and which continue to trouble me deeply.

I would be pleased to associate myself with the letter propounding those questions. It was for this reason that I brought them to the attention of the Senate. I would be very pleased to join with the distinguished Senator from Maryland and the distinguished Senator from California in sending such a letter to the Attorney General of the United States.

I think such a communication would be most helpful. And I trust that the Attorney General will reply as early as tomorrow—I do not see any reason why he could not do so—so that in the day and a half left before we vote on this very important issue, we will have the benefit of that information.

Mr. TYDINGS. Mr. President, I would be delighted to have the distinguished Senator from Massachusetts join with us in sending the letter.

Mr. BAYH. Mr. President, if I might ask the indulgence of the Senate, I am trying to deal with the points that had been raised by the President of the United States in the letter addressed to our friend the distinguished Senator from Ohio (Mr. SAXBE).

I ask unanimous consent at this time to have printed in the RECORD the very succinct editorial relative to this same matter appearing in this morning's Washington Post entitled "Judge Carswell: the President's 'Right of Choice.'"

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

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

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

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

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

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

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

"To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the president, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connections, from personal attachment, or from a view of popularity."

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

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

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

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

Mr. GRIFFIN. Mr. President, would the Senator from Indiana yield briefly to me?

Mr. BAYH. Mr. President, I yield to the Senator from Michigan with the understanding that I do not lose my right to the floor.

Mr. GRIFFIN. Mr. President, in view of the questions which were raised by the distinguished Senator from Massachusetts and the indication by the Senator from Maryland that he may join with others in writing to the Attorney General, let me say I believe I am in a position now to answer those questions.

After conferring with the Justice Department, I can say that the FBI does make a check as to the racial attitudes of nominees for judicial positions, and that the FBI did follow its usual practice and procedures in connection with the investigation of Judge Carswell.

Indeed, the question raised has already been answered by a press release issued by the Department of Justice on March 31.

As I received it over the telephone, the text of the press release read in part as follows:

The instructions issued to the FBI by Ramsey Clark in August 1965 were made a part of the Bureau's routine investigation of nominees. They are still in effect and are still a part of the routine.

Now, the question arises as to why, if the FBI followed its usual practice in this case, they did not uncover the newspaper report of a speech made by the nominee some 22 years before. I am informed that there is an answer to that.

The Irwinton Press, if I correctly remember the name of the newspaper in the little town, has been defunct for a number of years, and its files were not available.

Perhaps one can say, on reflection, that it could have been possible, nevertheless,

for an FBI agent to have discovered the report. It was possible because legal notices published in the defunct newspaper were preserved in the county courthouse. If the FBI had gone to that source, it would have been possible to have uncovered it.

However, it is difficult to criticize the FBI under such circumstances.

Obviously, later after an announcement was made about the nomination, there were hundreds of reporters, to say nothing of representatives of various special interest groups, who were busy digging everywhere they could possibly dig. It is not surprising that this item was later uncovered.

Under the circumstances, I do not think it is surprising that the FBI, in its normal investigation, did not happen to uncover it.

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

The PRESIDING OFFICER. The Senator from Indiana has the floor. Does the Senator from Indiana yield to the Senator from Maryland?

Mr. BAYH. I yield to the Senator from Maryland with the same stipulation.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The Senator from Maryland is recognized.

Mr. TYDINGS. Mr. President, I could understand how on a regular, normal clearance check, one speech made 22 years ago might be overlooked. But it is difficult for me to conceive how they could have overlooked the strong feelings of John Lowenthal, who is now professor of law at Rutgers University, and who was involved in many civil rights cases before Judge Carswell for many years, whose testimony is on page 139 of the hearings; or the strong feelings of Ernest H. Rosenberger, a member of the bar of the State of New York, who was involved in civil rights cases before Judge Carswell, and whose testimony is on page 149 of the hearings; or the feelings of Norman Knopf, an attorney for the Department of Justice, whose testimony is on page 174; or the feelings of Leroy Clark, chief attorney for the NAACP legal defense fund during that period of time. I do not understand how they overlooked two judges in the State of Florida, who are now sitting, one, a former Assistant Attorney General, Harold Graham from the city of Miami, who tried cases before Judge Carswell; or how they overlooked James W. Matthews, now a municipal judge from the city of Opa Locka and a former assistant U.S. attorney, or other members of the bar and lawyers throughout the area involved in civil rights litigation.

I am at a loss to understand how they failed to know it was common knowledge with lawyers who defended civil rights litigants that one could not get a fair trial before Judge Carswell.

I do not know how a normal check along the standards stated by the Senator from Michigan could have been made without some of that evidence turning up.

Mr. President, let me say further that I have the greatest confidence in the Federal Bureau of Investigation. I worked for them for 3 years when I was U.S. attorney. I know the type work they did. I cannot believe if they did a normal routine check they would not have come up with some of that information which the Senate hearings turned up, which individuals volunteered, and which was common knowledge among attorneys trying civil rights cases involving racial issues in that part of the country during his tenure as judge.

(At this point, Mr. TYDINGS assumed the chair.)

Mr. BROOKE and Mr. GURNEY addressed the Chair.

Mr. BAYH. I have the floor. I am willing to yield with the understanding I do not lose my right to the floor.

Mr. BROOKE. Mr. President, I regret that I was not in the Chamber and did not hear the entire statement of the distinguished assistant minority leader (Mr. GRIFFIN). But I did understand that he was answering some of the questions I raised. Is it his understanding that this practice and procedure which was instituted under the former U.S. Attorney General, Ramsey Clark, is the same practice and procedure which is used today? And further, that it is the same practice and procedure which was used in the Carswell case?

If I understand correctly, he said that in this particular case the town of Irwinton, Ga., is no longer in existence.

Mr. GRIFFIN. I do not know about the town but the particular newspaper in which this report appeared is no longer in existence.

Mr. BROOKE. Does the Senator know the extent to which this investigation was conducted by the FBI?

Mr. GRIFFIN. No, the Senator does not. The Senator merely sought the answers to the questions of the Senator from Massachusetts.

Mr. BROOKE. May I further ask if the Senator knows what was the report of the FBI relative to the racial attitudes on the part of Judge Carswell?

Mr. GRIFFIN. No, the Senator does not.

Mr. BROOKE. The Senator is also a member of the Committee on the Judiciary. I ask the Senator if there was anything in the report to the Committee on the Judiciary which would have indicated that the FBI did inquire into the racial attitudes of G. Harrold Carswell.

Mr. GRIFFIN. I cannot tell.

Mr. BROOKE. The Senator does not know, so the Senator would not know whether a report was given either favorably or unfavorably, or in any detail whatever as to the issue of racial attitudes in the FBI report which was transmitted to the Committee on the Judiciary.

Mr. GRIFFIN. No, but I assume whatever adverse information that could be found was stated to the committee or is in the report for the Senate to consider.

Mr. BAYH. Mr. President, if the Senator would permit me to reclaim the floor temporarily, I think what the Senator from Maryland had to say a moment ago was pertinent here: That the information relative to the negative attitudes of the nominee was not uncovered by any examination or investigation of the FBI. It was brought out voluntarily by members of the press, individuals, members of the bar, and people who studied the civil rights movement in the South.

I would like to join in this letter and I might suggest to the distinguished Senator from Maryland, the distinguished Senator from California, the distinguished Senator from Massachusetts, and whoever may care to join in this letter, that in addition to asking the Department of Justice what type investigation was made, let them come forth with some of the information they found pursuant to asking some of these questions.

Mr. BROOKE. I think we ought to know the full extent of the investigation. The distinguished assistant minority leader has said that there was an investigation; that the FBI did follow the practice and procedure instituted by Attorney General Ramsey Clark. If this is true, what did the FBI find? I think we ought to know exactly what they found.

Mr. BAYH. It should be a part of the letter.

Mr. BROOKE. It should be a part of the letter. I think that is important to us. I think we ought to ask not only what their investigation consisted of, but we ought to find out why it is that they did not come up with the information which was found by some of the other people who, presumably, have nowhere near the investigative resources and talents of the FBI.

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

Mr. BAYH. I am glad to yield to the distinguished Senator from Florida, with the understanding that I do not lose my right to the floor.

Mr. GURNEY. Merely to answer briefly the argument made by the distinguished Senator from Maryland (Mr. TYDINGS), which I think needs answering, because it bears directly on the question of how rigorous and thorough the investigation was, I presume that the FBI, when it investigated the attitudes of lawyers who practiced before the judge in the northern district of Florida, went to lawyers who practiced before his court and who resided in the northern part of Florida.

As a matter of fact, I personally have gone to many of those lawyers and asked them about this very question—the racial attitude of Judge Carswell in civil rights cases. There are some letters which I placed in the RECORD. It seems to me that that would be the logical place the FBI would go to seek its evidence. It is true that this other testimony has been adduced, some before the committee and some later. But I suggest that most or perhaps all of those people are scattered throughout the country—the professor in the Yale Law School, as I recall; the professor from Rutgers; a professor who is now defending the Black Panthers in New York, having taken the place of Kunstler.

If the Senator will permit me to continue further—he is very patient and indulgent—the point I make is that these lawyers referred to by the Senator from

Maryland who appeared before Judge Carswell in civil rights cases were not from Florida, but were scattered throughout the country. The one or two who are in Florida are also now scattered and not in the northern district where Carswell sat. It is obvious why those people were not seen by the FBI.

Mr. BAYH. With all due respect, several, at least, of the individuals suggested by the Senator from Maryland are living in Florida today. As I recall, one or two are serving at present as municipal judges. So I do not think it is a fact that they are scattered like chaff before the wind.

I think we have determined that this letter will be sent. I hope we may reach some agreement that questions will be asked not only with respect to the type of investigation that was conducted, but also as to what information was obtained.

Mr. GRIFFIN. Mr. President, who is being confirmed here? The FBI or Judge Carswell?

The PRESIDING OFFICER (Mr. TYDINGS). The Senator from Indiana has the floor.

Mr. BAYH. I have enough respect for the distinguished Senator from Michigan to suggest that perhaps he does not need that information.

Mr. GRIFFIN. I think it is a question. I am beginning to wonder who is on trial. Who is it that we are trying to confirm? The information is here. The Senator is not saying he did not get all the information, I understand.

Mr. BAYH. If the Senator from Michigan had been listening to the Senator from Indiana, he would know the answer to that question also.

I do not want to appear to be trite to the distinguished minority whip, but I think the Senator from Indiana made it very clear that having the investigation and the information deduced therefrom is pertinent to whether the nomination is going to be sent back to committee.

What is of principal concern to the Senator from Indiana is that we already have substantial pages of information which has been disclosed by various means, most of which was not presented as a result of any report, but which is of deep concern to the Senator from Indiana. We have it in the RECORD now. It is not all in the volume of hearings, but it has been made public by insertion in the RECORD.

I hope, before morning, to have the opportunity to go point by point down the various issues raised by our distinguished President, because I think he hit these points, but, with all due respect to him, I think he apparently had not available all the information pertinent to the point; and I would like to have the chance to spread the rest of the information on the record so that then each Senator can look at what the President's judgment is relative to these important facts; look at the judgment of the Senator from Indiana, the judgment of the Senator from Michigan, the judgment of the Senator from Massachusetts, and that of any other Senator.

Mr. GOLDWATER. Mr. President, will the Senator yield for one question?

Mr. BAYH. I yield.

Mr. GOLDWATER. I would hope the letter that is written to the Justice Department relative to the FBI investigation is very carefully phrased, because I think every one of us in this room has, many times in his life, been questioned by the FBI relative to people who might be appointed to this job, that job, or the other job. If I am not mistaken, we are told that that information will be held in confidence.

I think we can skate on some rather thin ice here and destroy the effectiveness of the FBI in their investigations for all Government jobs, whether they be for courts or for just ordinary employment. I would hope they would be most careful in this.

While I know all the Senator wants to get is information on the questions that have been raised here, I think we could be getting into a serious situation, where we might destroy the effectiveness of FBI reports if we asked for full divulgence of everything people told the FBI with assurance that it would not be disclosed.

Mr. BAYH. I think the Senator from Arizona raises a good question. However, I think Members of the Senate would be able to get the pertinent information, either in a confidential manner or publicly, without violating the confidential nature of the FBI investigation.

If I may proceed, I was dealing with the point raised by the President when he suggested that the American Bar Association Committee on the Federal Judiciary found Judge Carswell qualified as to integrity, judicial temperament, and professional competence.

I think the Senator from Kansas and the Senator from Indiana had a little different opinion relative to the weight to be given to the large number of law school deans and some 200 prominent members of the bar, all former clerks to various Supreme Court Justices, and five or more faculty members from more than 30 law schools who have opposed the nomination.

A number of State and local bar associations have examined the nominee's record and found him lacking and announced opposition to his elevation to our highest court. This is of concern because the 11 members of the American Bar Association Committee on the Federal Judiciary are distinguished men, but I think we have to take their opinion of the nomination and compare it to the opinions of a vastly larger number of equally well qualified lawyers and scholars relative to the nominee's qualifications.

Unquestionably, the vast majority of those members of the bar who have taken a public position on the qualifications of Judge Carswell to sit on our highest court have been in disagreement with the American Bar Association committee that found him qualified. I think it is a fair assessment, as I said a moment ago, or perhaps it has been longer than a moment ago—when the Senator from Kansas raised this point—to note that never before has such overwhelming opposition to a Supreme Court nominee been evidence at the grassroot level and at the academic level of the legal profession. Certainly it was not raised in the previous discussion relative to the qualifications of Judge Haynsworth.

The President has attempted to make it appear that Judge Carswell's qualifications are demonstrated by the fact that 11 of his colleagues on the Fifth Circuit Court of Appeals support his nomination. Here again I ask the Senate's indulgence, because I intend to go down the letter of the President directed to our distinguished colleague from Ohio. He mentioned that 11 of Judge Carswell's colleagues on the Fifth Circuit Court of Appeals support his nomination.

One would normally expect all of a judge's colleagues to support his nomination to the highest court. Certainly the fourth circuit judges were unanimous in their support of Judge Haynsworth. I really think the significant thing that must be spread on the record and must not be overlooked is the fact that seven of Judge Carswell's 18 colleagues have chosen not to support his nomination publicly, including such distinguished jurists as John Minor Wisdom, Elbert Tuttle, and Chief Judge John R. Brown.

The Senator from Maryland raised a question as to the Tuttle matter earlier. I think that is in the RECORD, but it should be taken into consideration when we are studying this matter.

The President attempts to dismiss evidence of Judge Carswell's misstatements to the Judiciary Committee as merely insignificant and unintentional errors resulting from the passage of 14 years since he signed as an incorporator of a segregated private golf club in Tallahassee.

Mr. President, I want to dwell at some length on this matter, because I happen to be a member of that Judiciary Committee. We sat there for a number of hours and listened to this testimony, and I think the rest of the Members of the Senate need to compare the record of what was said there with the President's effort to dismiss it.

Mr. TYDINGS. Mr. President, will the Senator yield at that point for a question with respect to his statement of fact that only 11 of the Judges of the Fifth Circuit signed a letter supporting his nomination?

Mr. BAYH. I yield.

Mr. TYDINGS. Does the Senator from Indiana know of any Justice nominated to the Supreme Court of the United States in this century, who was a sitting judge when he was nominated, who did not have the support of every judge on the bench on which he sat?

Mr. BAYH. That is a very good question. I must admit that the Senator from Indiana does not have all this information available.

I do recall that in connection with the nomination of Judge Haynsworth, the fourth circuit judiciary was unanimous. It is a pretty gutsy thing, let me suggest, for any circuit court judge to stand up in public and say that he does not support or refuses to sign a petition of support for

a fellow circuit court justice he is going to have to continue to sit with if the man is not elevated to the highest court, or even if he is elevated to the highest court.

Mr. TYDINGS. Does the Senator recall, when Judge Burger was elevated to the position of Chief Justice, that every single member of the bench on which Judge Burger sat signed a letter of endorsement in behalf of Judge Burger?

Mr. BAYH. I am glad that the Senator from Maryland stimulated my memory. I do recall that, now he mentions it.

Mr. TYDINGS. I think the fact that five of his fellow judges who sat on the same bench with Judge Carswell declined to sign a letter of endorsement is one of the most telling indictments a man could receive. I know of no other instance of a judge nominated to the Supreme Court from the Federal bench in this century who did not have the full support of every judge on his bench.

Mr. BAYH. I appreciate the Senator from Maryland bringing this to our attention. I do recall the Burger nomination and the Haynsworth nomination, and certainly what the Senator from Maryland says relative to those nominations is accurate.

I am now going to look at this matter of what was said before the Committee on the Judiciary relative to the incorporation of the segregated private golf club in Tallahassee. I have said repeatedly in colloquy on this floor with some who have taken issue with me relative to this matter that if this fact stood alone, by itself, it would not be a matter of such significance to me. However, I think the existence of this involvement of the judge in the incorporation of this segregated golf club lends credence to the feeling that many have that the judge has really not changed the attitude that he expressed, significantly and exactly, relative to white supremacy back in 1948.

But of greater concern to the Senator from Indiana as a member of the Committee on the Judiciary is the way that the testimony evolved, as we sat there and listened to what Judge Carswell said relative to this information which had just come to the attention of several members of the Judiciary Committee.

The fact is that Judge Carswell testified under oath before the Senate Judiciary Committee that he was not an incorporator of the club, although his memory had been refreshed the preceding evening when two distinguished members of the ABA Judiciary Committee showed him the papers of incorporation and pointed out his signature as an incorporator.

I ask my colleagues to look at page 22 of the transcript, where the Senator from Nebraska (Mr. HRUSKA) is quoted as asking Judge Carswell:

> Were you an incorporator of that club as was alleged in one of the accounts I read?

I think there was an account in the morning paper, before the hearing that very day.

Judge Carswell replied: "No, sir."

Yet, the preceding evening Judge Carswell had held those incorporation papers in his hands; had acknowledged his signature on them as an incorporator in the presence of Charles A. Horsky and Norman P. Ramsey, two members of the ABA Judiciary Committee.

Mr. TYDINGS. Mr. President, will the Senator yield further at that point?

Mr. BAYH. I am glad to yield to my distinguished colleague from Maryland.

Mr. TYDINGS. Would the Senator from Indiana agree that integrity is a prime requisite for any candidate for the Supreme Court of the United States?

Mr. BAYH. There is no question about that. The Senator from Maryland is absolutely correct.

Mr. TYDINGS. At this time, in order to make the record complete, I ask unanimous consent that a memorandum addressed to Senators TYDINGS and KENNEDY, and signed by Charles A. Horsky and Norman P. Ramsey, members of the American Bar Association Committee on Judicial Nominations, be incorporated in the RECORD in its entirety; and if the Senator from Indiana will bear with me, I would like to read it.

Mr. BAYH. I yield to the Senator from Maryland for that purpose, with the understanding that in doing so I do not lose my right to the floor.

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

Mr. GURNEY. Mr. President, are there extra copies, so that we may have the benefit of the memorandum on this side?

Mr. TYDINGS. I intend to read it all, so Senators can listen as I read. That way, there will be no question.

The first page of the memorandum deals with the interrogation of Judge Carswell, but I shall read the entire memorandum so that there is no question, although the first part is not relevant to the question of the veracity of the judge before the committee with respect to the incorporation.

It reads as follows:

MEMORANDUM TO SENATORS TYDINGS AND KENNEDY FROM CHARLES A. HORSKY AND NORMAN P. RAMSEY

This memorandum is in response to your request of yesterday that we set forth the circumstances of the meeting we had with Judge Harrold Carswell on January 26, 1970.

We met with Judge Carswell, by appointment, at his hotel room in Washington, D.C. at about 6 p.m. on that date. We were met at the door by his brother-in-law, Mr. Simmons, whom we had met earlier, and who in turn introduced each of us to Judge Carswell. Our visit occupied between 25 and 30 minutes. Mr. Simmons was not present.

Mr. Horsky explained that the reason for the visit was the desire on the part of the Committee on Federal Judiciary to have further information with respect to two matters. He further stated that the Chairman of the Committee had requested Mr. Ramsey and himself to have this meeting in order to obtain first-hand information on these two matters. Judge Carswell stated that he would be glad to discuss any matters in which the Committee was interested.

The first topic mentioned by Mr. Horsky, who conducted most of the conversation, related to the reports that lobbying for a race track bill pending in the Florida legislature had occurred at a dinner party held at Judge Carswell's home in early 1969 at which several Florida legislators were present. Judge Carswell stated, as we had already learned from Mr. Simmons, that the dinner party to which the report referred had originally been arranged by Mr. Simmons and his wife as a small gathering. By reason of a "bring some of your friends" type of invitation, it had grown to include 40 or 50 people. When it became apparent that it had reached that size, Mrs. Simmons decided, because of the very recent tragic death of two of the Simmons' children, that she could not go on with it. Judge Carswell's wife, her sister, upon learning of her decision, volunteered to have the party at her home, which she did. Judge Carswell was late in arriving, although he was there during most of the evening. Contrary to the press reports, he said, there was no receiving line. He stated that, so far as he was informed, the dinner was not intended as an occasion for lobbying and that he had certainly had no part in any lobbying activity. He emphasized that the whole affair was held in his home only as an accommodation to the Simmons.

Page 2 of the memorandum contains the matter relevant to the debate and the issue concerning whether or not Judge Carswell conducted himself in a manner consistent with the integrity required of a Supreme Court nominee, when he answered certain questions before the Senate Committee on the Judiciary the following morning.

The memorandum continues:

Mr. Horsky then asked Judge Carswell about his connection with the Capital City Country Club. Judge Carswell stated that he had been asked by someone to contribute $100 to help build a new clubhouse, and that he had done so. He had been a member of the club for two or three years thereafter, but had found, since he did not play golf, that the membership was not worth the cost, and had resigned. Some years later, when his son became a golfer, he rejoined the club, but again soon decided that he could better pay greens fees for his son at other golf courses, and resigned again. He stated, in answer to a question by either Mr. Ramsey or Mr. Horsky, that at no time had he spoken of, or heard discussed, the idea that the purpose of the information of the new club was to prevent the use of the golf course by Negroes. In answer to another question, he stated that he had personal knowledge that Negroes had attended meetings at the club, because he recalled a conversation with a Mr. Kershaw, a Negro legislator, at a meeting at the club. He stated also that his wife, who was a member of the local Red Cross board, which was integrated, had told him of Red Cross board meetings held at the club.

Mr. Horsky, who had brought to the meeting photostatic copies of a number of papers having to do with the corporate organization of the club, then showed Judge Carswell the papers from the Certificate of Incorporation on which the names and signatures of the incorporators of the club appeared, showing him as an incorporator. Judge Carswell responded that, as he recalled it, anyone who was willing to put up the $100 which was being solicited could have had any title he wanted—vice president, director, incorporator or whatever. He said he had never attended any meetings. He then examined the list of names, in order, as he said, to see if he could recall who had asked him for the $100. After going down the list and identifying several of the persons whose names were listed, he commented that many of the men were bankers, and concluded, although not with certainty, that it had been one of the bankers, Julian Smith, who had solicited his contribution. The pages were then returned to Mr. Horsky.

When we were about to depart, we informed Judge Carswell that our Committee would inform the Judiciary Committee that he was qualified for the Supreme Court, and Judge Carswell expressed his gratification.

We have conferred so that we might refresh each other's memory on the circumstances of the meeting. The above constitutes our best joint recollection.

Mr. BAYH. If the Senator will permit me, this visit, then, preceded the testimony that took place 12, 13, or 14 hours later, the following morning, when, on page 12—I think I mentioned page 22 earlier—Senator HRUSKA said:

Were you an incorporator of that club as was alleged in one of the accounts I read?
Judge CARSWELL. No, sir.

Mr. TYDINGS. Under oath.

Mr. BAYH. Under oath.

Mr. TYDINGS. Judge Carswell said to the Senate Judiciary Committee, the morning after he had been interrogated and shown the corporation papers, "No, sir."

I ask the Senator from Indiana to look at page 13:

Senator HRUSKA. Are you or were you at that time familiar with the bylaws or the articles of incorporation?
Judge CARSWELL. No, sir.

The morning after he had seen the articles of incorporation, the list of the incorporators.

Mr. BAYH. I am glad the Senator brought this up, because in the letter to Senator SAXBE, the President suggests that Judge Carswell corrected his lapse of memory only a minute later, by the testimony that the Senator from Maryland is now pursuing.

Mr. TYDINGS. Let me go on.

At the time, I recall that my personal recollection was that Judge Carswell was a very impressive witness, that obviously he had no recollection of anything about this incorporation, that he had read something in the newspapers, he said, the night before; he had no idea.

Senator HRUSKA continued:

My safe deposit box has some of those country club stocks certifications, too. One of them has a very fancy designation on it, "incorporator." I paid my fee. I am sorry to say it was much more than $100, and it was an honorary thing. I could have gone along just as well without the honor, because I don't play golf either. Could the stock you received on this occasion have borne the label, "incorporator," indicating that you were one of the contributors to the building fund for the clubhouse?

Judge Carswell replied, under oath, to our committee:

Perhaps, I have no personal recollection.

Mr. BAYH. The night before, he had seen the papers. It was not a matter of something that had happened several years ago. But these very papers that he denies knowledge of had been given him in his hotel room the evening before by Mr. Horsky and Mr. Ramsey.

Mr. TYDINGS. Not only that—Horsky and Ramsey had interrogated him specifically and showed him the papers, and he went over the list of incorporators.

In the latter part of the afternoon Senator KENNEDY interrogated him on the same topic, at page 30.

Senator KENNEDY actually had photostatic copies of the corporation papers. Finally, at page 30, it will be seen that Judge Carswell admitted that he was an incorporator.

Here is a man under oath, before the Senate Judiciary Committee, who the evening before had seen the papers, knew he was an incorporator, who deliberately—there is no other way to take it—on three different occasions, on pages 12 and 13, denied he was an incorporator, and he did it in such a way as to mislead the members of the committee. Indeed, if Senator KENNEDY had not pinned him down, we never would have known whether or not he was an incorporator, although he knew it the entire time; because when you are interrogated by members of the judicial nominating committee of the ABA, you do not forget what they came to interrogate you about.

Mr. GRIFFIN. Mr. President, will the Senator yield briefly for a correction?

Mr. BAYH. I am glad to yield.

Mr. GRIFFIN. I know the Senator from Maryland would not want to leave an error in the RECORD. He said that it was late in the afternoon when Senator KENNEDY asked the question. If the Senator will look at page 32 of the record, he will see that the question was asked by Senator KENNEDY in the morning session before the noon recess.

Mr. TYDINGS. I stand corrected.

Mr. GRIFFIN. And was before the noon recess. I think that is of some significance.

Obviously, a reading of the entire record indicates—and the memorandum substantiates it—that Judge Carswell did not consider himself to be a promoter or an organizer of that corporation. He contributed $100. Technically, he was an incorporator and his first answer was in error.

Mr. TYDINGS. And he knew he was an incorporator.

Mr. GRIFFIN. And he corrected it. The President of the United States recognized that he made an error when he answered the question in the first instance. But during the same morning session, when the question was raised by Senator KENNEDY, the matter was clarified.

Mr. BROOKE. Mr. President, will the Senator yield at that point?

Mr. GRIFFIN. I yield.

Mr. BROOKE. Would not the error have stayed in the record had not Senator KENNEDY asked the question?

Mr. GRIFFIN. I cannot answer the question.

Mr. BROOKE. Mr. Carswell at least did not volunteer a correction of that error, did he?

Mr. GRIFFIN. As the record stands, that is correct.

Mr. TYDINGS. I think it would be helpful if we put in the RECORD at this time—and I ask unanimous consent—the full dialog between Senator KENNEDY and Judge Carswell, appearing on pages 31 and 32 of the record of the hearings, to note that it was not voluntary. Senator KENNEDY had to draw it out of Judge Carswell.

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

Senator KENNEDY. Earlier today, you responded to the inquiries of the Senator from Nebraska on the golf course down at Capital City Country Club. This was, as I understand it, in regard to a newspaper report that was in this morning's paper, and you responded to him, to the question of the Senator from Nebraska, that you thought it was principally an effort to build a clubhouse.

Judge CARSWELL. My sole knowledge of that matter had to do with a conversation with a friend named Julian Smith in Tallahassee who approached me and virtually anyone else, as I recall. He was trying to get the $100 apiece from anyone to build a new country club. I gave him $100. I then received some kind of message that I had a share or stock in this thing. I did receive it, and some several months later, as I have already stated, I sold it and got out of the thing entirely and got $75 back. That is my sole connection with that. I have never had any discussion or never heard anyone discuss anything that this might be an effort to take public lands and turn them into private hands for a discriminatory purpose. I have not been privy to it in any manner whatsoever.

Senator KENNEDY. By receiving that share, you became either a director or subscriber of that club?

Judge CARSWELL. No, sir; I never became a director, Senator Kennedy, at all. I don't know how it appears in the label there, but I never attended a meeting with anybody. I don't think I ever talked to anybody about it but Julian Smith. I don't think there was ever even one other human being with whom I ever had a conversation about it.

Senator KENNEDY. Did you in fact sign the letter of incorporation?

Judge CARSWELL. Yes, sir. I recall that.

Senator KENNEDY. What do you recall about that?

Judge CARSWELL. That they told me when I gave them $100 that I had the privilege of being called an incorporator. They might have put down some other title, as if you were potentate or something. I don't know what it would have been. I got the one share and that was it.

I found later, since we were not golfers, neither my wife nor me, that at that point, our four children were preschool age or school age, the club meant very little to us. It meant virtually nothing to us. It was only a privilege of going there to get a meal. So we dropped out very shortly thereafter, although we rejoined after an interval of time when my boys got up to 14 or so and wanted to play golf. Then we dropped out of that after a while and I haven't been a member since 1966.

Senator KENNEDY. Did you generally read the nature of your business or incorporation before you signed the notes of incorporation?

Judge CARSWELL. Certainly I read it, Senator. I am sure I must have. I would read anything before I put my signature on it, I think.

Senator KENNEDY. Do you remember that it talked about the purchasing and leasing and acquiring and operating a golf course and tennis courts and swimming pool, clubhouse, club facilities, lake; maintain and operate the same; purchase lease, and represent all or any real or permanent property necessary for said purposes, to do all the things incident to and in furtherance of a private country club, for the recreation, health, amusement and pleasure of the members thereof, to operate any business or facility incident to or in pursuit of these objectives? Would this lead you to believe that their only interest was just in the building of a clubhouse?

Judge CARSWELL. Oh, no. I certainly was aware that there would be things going on around the clubhouse that normally do. I didn't mean to imply that. If I did, I correct it.

Senator KENNEDY. You weren't, at least in your—

The CHAIRMAN. Let's recess now until 2:30.

(Whereupon at 12:30 p.m., the hearing was recessed to reconvene at 2:30 p.m. of the same day.)

Mr. TYDINGS. I think the issue is really not how Judge Carswell pictured himself but the fact that Judge Carswell was willing to deceive the Judiciary Committee of the U.S. Senate. That is what troubles me.

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

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

Mr. BAYH. I want to make one observation, because I happened to be seated next to Senator KENNEDY at the time this interrogation was going on.

It seemed to me that when Senator KENNEDY asked the question on the bottom of page 31:

By receiving that share, you became either a director or a subscriber of that club?

Judge Carswell said:

No, sir; I never became a director . . .

Then Senator KENNEDY made it evident that he, indeed, had a Thermofax copy of the articles of incorporation. Then Judge Carswell said:

Yes, sir. I recall that.

He either recalled it or he did not recall. I can see how it is possible for a fellow to give $100 to a club for one purpose or another and forget about it. But it is difficult for me, as hard as I try, to envision, in light of the Horsky-Ramsey disclosure, that all this took place in the hotel room the night before and then get the type of answers we had the following morning.

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

Mr. BAYH. I yield.

Mr. CRANSTON. In the effort to straighten out this tangled record, I asked the Senator from Indiana when this exchange occurred in the sequence. This colloquy appears in the hearing record at some point:

Senator BAYH. Since you have looked at the documents, I suppose——

Judge CARSWELL. Senator, I have not looked at the documents.

The documents referred to were the documents of incorporation. When did that particular conversation occur?

Mr. BAYH. The Senator from California knows—I guess the Senator from California has a reason for asking the question—that I said that Senator KENNEDY was to my right. So the questioning between the nominee and the Senator from Indiana took place immediately following. The discussion which has previously been alluded to by the Senator from Maryland related to Judge Carswell and Senator KENNEDY.

Mr. CRANSTON. Judge Carswell denied at that point having seen the document he had seen the night before?

Mr. BAYH. That is accurate. The Senator from Indiana would like to put that in proper perspective. The judge came back a second day, and the interrogation proceeded. The Senator from Indiana had an opportunity to ask questions of Judge Carswell on the second day as well as on the first day. I think that to be totally accurate I should read the quotation directly from the hearing record, as alluded to by the Senator from California, who read:

Senator BAYH. Since you have looked at the documents, I suppose——

Judge CARSWELL. Senator, I have not looked at the documents.

That occurred the next day; it did not occur the first day.

Mr. GRIFFIN. Mr. President, will the Senator further yield for a question?

Mr. BAYH. I yield.

Mr. GRIFFIN. The Senator did not complete the answer of Judge Carswell, who went on to say:

I didn't mean to leave that impression with you. The documents speak for themselves. I couldn't begin to tell you what the documents say.

Obviously, when he saw the papers the night before, he recognized his signature. He recognized that he had subscribed to some stock.

The question the Judge was answering, as it appears on page 68 of the hearings, sought to get from him in detail what the documents contained, and he did not know, which is not surprising.

Mr. BAYH. If the Senator will permit me to repeat, the English language is specific:

Senator BAYH. Since you looked at the documents, I suppose—

Then there was an interruption by Judge Carswell:

Judge CARSWELL. Senator, I have not looked at the documents. I didn't mean to leave that impression with you. The documents speak for themselves.

We were trying to find out what relationship the Judge had to the corporation—whether he knew it or not. Now we have learned that he had, indeed, looked at the documents the night before. But then he said he had not.

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

Mr. BAYH. I yield.

Mr. DOLE. Let me correct the Senator from Maryland. He has made serious charges of a lack of candor. I think the Senator said the memorandum was signed by Ramsey and Horsky. I think it was signed by Horsky, the same Horsky who occupied a position of importance in the White House in the last administration. But I do not see the signature of Ramsey. Is that correct?

Mr. TYDINGS. The signature is not on it, but this is the Ramsey statement.

Mr. GURNEY. Will the Senator yield for an observation?

Mr. BAYH. I yield.

Mr. GURNEY. I think this is most important. I think this particular testimony is troubling some Senators, as well as the Senator from Indiana and the Senator from Maryland. If we will recall, the Senator from Florida was present also during the hearings that first day, both morning and afternoon. In fact, all the time that Judge Carswell was before the committee. The Senator from Florida never heard of this country club either. It was as fresh to him as it was to the Senator from Indiana and the Senator from Maryland.

Let me say what the impression was of the Senator from Florida. Listening carefully to all the testimony as it was adduced by the Senator from Nebraska (Mr. HRUSKA) and the Senator from Massachusetts (Mr. KENNEDY), it was quite obvious that there were two country clubs involved, a first one, the one that Judge Carswell signed as an incorporator, and a second one. This was rather confusing at first, because it was hard for me to understand what actually went on.

Then as the colloquies and the questions and answers developed among the Senators and Judge Carswell testifying, it was quite obvious that the first corporation which was incorporated was incorporated, as I recall, as a corporation for profit, never really functioned or did any business at all so far as taking over the country club was concerned; but that later a corporation not for profit was organized which actually did the taking over of the country club and ran it.

Now let us look at specific dates. The first corporation which Judge Carswell signed as an incorporator is dated, as I recall it, April 24, 1956. That was actually the date of the articles of incorporation. Let me see if that is correct.

Mr. TYDINGS. Is the Senator referring to the Capital City Club?

Mr. GURNEY. That is right. I think I am correct on that. April 24, 1956, is the date. Right. Yes, here it is. There was the signature of Judge Carswell on that.

Then the other organization, which was a corporation organized not for profit, a charitable corporation, as we call it in Florida, which is done by quite a different method, by a petition to a circuit court and then an order by a judge, rather than by articles of incorporation filed by the secretary of state. That was instituted and it appears on page 360 of the record, the petition for the club by order——

Mr. BAYH. Will the Senator yield there?

Mr. GURNEY. Let me finish first and then I will be through.

Mr. BAYH. I believe the Senator is getting confused on this. He has not studied it, perhaps, as carefully as some others; but go ahead.

Mr. GURNEY. Perhaps if I am confused, the Senator can correct me later on. However, I think I have it right.

Then, later on, on January 29, 1957, that was about 7 months later as I recall it here, the new corporation, not for profit, the charitable corporation, was organized by petition and order of a circuit court. In that petition, on page 363, there is a list of the officers and directors of the corporation—both corporations, as a matter of fact.

Here is what it says.

Mr. TYDINGS. Is the Senator referring to page 357?

Mr. GURNEY. No. Page 363 of the record:

The present officers and directors of Capital City Country Club, Inc., . . .

That was the first one, a corporation for profit that Judge Carswell was a signatory to on the charter—

and the directors and officers of this corporation—

That was the one organized not for profit—

hereby designated to serve until the first election shall be—

Then it has a list, if Senators will examine it carefully, and Judge Harrold Carswell's name is not there. He was not a member of that second corporation. Mind you, now, this petition was in January, the first part of the next year, and it says in the petition:

The present officers and directors—

That is very important—

of Capital City Country Club, Inc.,—

That was the one he signed—

and the officers and directors of this corporation hereby designated to serve until the first election shall be—

This backs up the judge's testimony and his understanding that, yes, he was a part of this initial one but he was never a part of the second corporation.

Mr. BAYH. The Senator from Florida is really stretching the imagination of the Senator from Indiana. He tells us that two different corporations were involved. The judge was an incorporator of one and he said he was not an incorporator——

Mr. GURNEY. No, he did not.

Mr. BAYH. Well, it is either right or wrong.

Several Senators addressed the Chair.

Mr. BAYH. Mr. President, I should like to pursue my point, if I may. I have the floor.

The establishment of the country club, by all the evidence we have been able to adduce, was directed to the effort to circumvent the Supreme Court decision which made it illegal to have a public, segregated golf facility. They started out with a profit-making corporation and then found out that they could not make any money. That was not a technicality to change the two corporations, but part of the same pattern designed to be able to remove the country club from a public to a private one so that they could violate the Supreme Court decision and limit it to white people.

Mr. GURNEY. I am not arguing that one way or the other. The Senator can have one opinion on that and I can have another opinion on it. The point I make is that there were two corporations and he was the signatory to one corporation but had no part of the other corporation. The Senator has not answered that question at all in the context of the testimony adduced in the hearing. It bears out what the judge testified——

Mr. TYDINGS. What was the name of the second golf club?

Mr. GURNEY. Capital City Country Club.

Mr. TYDINGS. Inc., Tallahassee, Fla.?

Mr. GURNEY. That is right.

Mr. TYDINGS. What was the name of the first one?

Mr. GURNEY. Same name.

Mr. BAYH. There is no mystery about the corporations, or whether they are two entirely different corporations, other than the fact that they are on different sets of legal paper.

Mr. GURNEY. I certainly will say that they are two entirely different corporations, one organized under the Secretary of State of Florida, and the other organized under a circuit court order. The evidence is right there in the hearing on page 363, that Judge Harrold Carswell was not a part of that second corporation.

Mr. BAYH. Well, the Senator from Florida just said——

Mr. GURNEY. That is the whole point of the controversy.

Mr. BAYH. Not at all. That may be the point of the Senator from Florida but it is not the point of the Senator from Indiana. Is not the Senator from Florida trying to find some common ground here?

Mr. GURNEY. I am trying to find some facts. [Laughter.]

Mr. BAYH. I am sure that my good friend from Florida is——

Mr. GURNEY. Believe me, facts are being ignored around here by the opposition.

Mr. BAYH. It must be nice for the Senator from Florida to have the sole ability to determine fact and fiction. The Senator from Indiana regrets——

Mr. GURNEY. The Senator from Florida is able to read.

Mr. BAYH. If the Senator from Florida will let the Senator from Indiana finish, I will be glad to yield further, and if not, I shall proceed with my speech.

Mr. GURNEY. The Senator has the floor. The Senator has the floor.

Mr. BAYH. The whole issue here is the fact that there was a golf course and that the judge's signature was affixed to the incorporation papers. He saw the papers one night and he told the U.S. Senate Committee on the Judiciary in hearings the very next morning that he was never a member, was never an incorporator of this particular corporation. I do not care if there were a dozen different corporations, which there were not. It so happens that the Senator from Indiana believes those two corporation are closely related and that they are the same entity, except for form.

They were designed to accomplish the same purpose.

Mr. TYDINGS. It was on the same property and for the same purposes.

Mr. BAYH. What concerns me is that after seeing these papers, we had testimony from Judge Carswell contrary to the actual circumstances.

In the hope that we might try to find some common ground, does the Senator from Florida agree that Judge Carswell did sign one of the corporation papers?

Mr. GURNEY. The Senator from Florida has already pointed that out.

Mr. BAYH. Does the Senator from Florida admit that the judge saw his signature affixed to these papers the night before he testified?

Mr. GURNEY. The Senator from Florida will say that he has heard an affidavit read that was signed by one man. He points out that the other man, Mr. Ramsey, appeared at the second meeting of the bar association, after he had read his testimony regarding the formation and being one of those present at the hotel meeting that night. Having reported to the bar association on how he viewed what transpired in the hotel room, he must have reported the same set of facts that I am reporting. And that is, if I may finish my thought, that Judge Carswell did not consider that he had a part of the second corporation which actually carried on the business of the country club. And that is the point I am making

Mr. BAYH. Who was carrying on the business of the country club at the time it was operating under the first of the corporation papers which were signed by Judge G. Harrold Carswell?

Mr. GURNEY. I said to the Senator that the impression I got from hearing the testimony before the Judiciary Committee—the same testimony that the Senator from Indiana heard—was that the main thrust of carrying on the business of this country club was that of a corporation organized, not for profit, but a charitable corporation, and that Judge G. Harrold Carswell was not a part of it.

Mr. BAYH. I think the Senator is entitled to his opinion.

Mr. GURNEY. I think that is true. And that is the other side of the coin.

Mr. BAYH. The Senator from Florida is entitled to form a judgment in his own mind. Each of us can construe the facts as we see them.

The Senator from Indiana believes that Judge Carswell signed these corporation papers. They are not made out of the thin air. We saw them. And when he was queried by the members of the committee, he suddenly denied that he had signed them.

I do not think this is to be taken lightly.

Mr. President, I yield briefly to the Senator from Michigan who has been trying to get the floor.

Mr. GRIFFIN. Mr. President, I appreciate this opportunity to indicate that the situation is even further complicated by the fact that there were not two corporations. There were actually three corporations involved.

On page 108 of the testimony, it is clear that originally this country club was owned by the Tallahassee Country Club, and that in 1935 it was turned over to the city of Tallahassee. There was a reservation in the deed providing that if at any time the city of Tallahassee did not wish to continue to operate it, it was to be leased back to the original corporation.

Now, on page 255, Mr. Proctor, who was a witness concerning the details of this transaction, testified that beginning in 1952 the shareholders of this original corporation that owned the country club began discussions and negotiations with the city trying to get the city to turn it back.

The city had let it run down. The golf course was in bad shape, and there were not the appropriate facilities.

Mr. TYDINGS. Mr. President, is the Senator speaking from his own knowledge?

Mr. GRIFFIN. That is the testimony in the record. In 1956, according to the testimony on page 255, the city turned the country club back to the original corporation, the Tallahassee Country Club, which was not the corporation to which Judge Carswell subscribed.

So, there are really three corporations involved. And I think that fact ought to be kept in mind as we are trying to evaluate this testimony.

Mr. TYDINGS. Mr. President, can the Senator tell us where on page 255 he is reading from? I think he might read the whole page.

Mr. GRIFFIN. It reads:

Senator KENNEDY. Then you said in 1956, February 14 of 1956, it was actually transferred back to this group, is that correct?

Mr. PROCTOR. That is correct.

Senator KENNEDY. And was the group that it was transferred to in 1956 the same group of stockholders that met in 1952? Were there others who were added to that group?

Mr. PROCTOR. There were others who were added to that group, and they formed a new club. This same group combined with a group of other interested citizens, and formed the Capital City Country Club, Inc. They filed for a certificate of incorporation on April 24 of 1956.

Mr. TYDINGS. Is that not the country club which we are referring to?

Mr. GRIFFIN. At another point in the record, it is clear that it was turned back and then the lease was assigned by the original corporation.

Mr. TYDINGS. Mr. President, what part is the Senator referring to? Can we have the specific part?

Mr. GURNEY. Mr. President, while the Senator is looking for that, will the Senator yield?

Mr. BAYH. May the Senator from Indiana proceed with his speech until the Senator from Michigan finds the place?

Mr. GURNEY. This bears directly on the speech of the Senator. It might shed some light on the matter.

Mr. BAYH. We are talking about two different things. The second is equally important to the Senator from Indiana.

At one point, we seem to have some disagreement as to whether Judge Carswell signed anything, whether he was an incorporator of the corporation, or whether this information was made available to him the night before he told the Senate he had not signed such a document.

Mr. GURNEY. Mr. President, my question to the Senator from Maryland (Mr. TYDINGS) would be what papers were shown to Judge Carswell—the first or the second incorporation papers, or both?

Mr. BAYH. Mr. President, did he sign them?

Mr. GURNEY. That is not the question. I am directing a question to the Senator from Maryland. We have two corporations. His signature was not on one.

Mr. TYDINGS. Mr. President, I now refer to page 11 of the record of hearings before the Judiciary Committee, and I read from that page the questions asked by Senator HRUSKA of Judge Carswell and I think we can clear the matter up by the record.

The question by Senator HRUSKA and the answer by Judge Carswell are as follows:

Now, this morning's paper had some mention that you were a member of a country club down in Tallahassee. I am confident that you read the account. I would be safe in saying all of us did. You are entitled to tell your side of the story and tell us just what the facts are.

Judge CARSWELL. I read the story very hurriedly this morning, Senator, certainly. I am aware of the genuine importance of the facts of that.

Perhaps this is it now. I was just going to say I had someone make a phone call to get some dates about this thing.

This is not it. (Noting a paper on the desk.)

I can only speak upon my individual recollection of this matter.

I was never an officer or director of any country club anywhere. Somewhere about 1956, someone, a friend of mine—I think he was Julian Smith—said, we need to get up some money to do something about repairing the little wooden country club, and they were out trying to get subscriptions for this. If you gave them $100, you would get a share in the stock in the rsbuilding of the clubhouse. I did that. Later—I have had this confirmed; I do not have the records with me, but it can be confirmed, without a doubt—I was refunded $75 of that $100 in February of the following year, 1957. We were not even members of the country club. I am not a golfer. It is a golf-playing organization.

So years later, when my elder son, George, became quite interested in golf, his mother suggested primarily, and I concurred with the thought, that it would be a fine thing for him, a young boy, to play golf. So we rejoined the club on a family basis and were active members of this club—I say active members; dues-paying members. I don't think I went there more than twice a year, but my son went there frequently and played golf until, I—I am advised and the records show, and I have no reason to question them, that we resigned in 1966 entirely from this club. That concludes the matter. I do not know any more that I could say about this.

Now, listen to this:

The import of this thing, as I understand it, was that I had something to do with taking the public lands to keep a segregated facility. I have never had any discussion with any human being about the subject of this at all. That is the totality of it, Senators. I know no more about it than that.

We now have this, on the heels of a letter or statement from Ramsey and Horsky, signed by Charles A. Horsky, but a joint statement of the two concerning a meeting they had with Judge Carswell the night before he testified on this point before the Judiclary Committee.

Let me read the first paragraph:

We met with Judge Carswell, by appointment, at his hotel room in Washington, D.C., at about 6 p.m. on that date.

That was January 26, 1970.

Mr. Horsky, who had brought to the meeting photostatic copies of a number of papers having to do with the corporate organization of the club, then showed Judge Carswell the papers from the certificate of incorporation on which the names and signatures of the incorporators of the club approved, showing him as an incorporator.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD pages 348, 349, 350, 351, 352, 353, and 354 of the hearings.

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

SECRETARY OF STATE, STATE OF FLORIDA

I, Tom Adams, Secretary of State of the State of Florida, Do Hereby Certify that the following is a true and correct copy of Certificate of Incorporation of Capital City Country Club, Inc., organized and existing under the Laws of the State of Florida, filed on the 24th day of April, A.D., 1956; Resident Agent Certificate filed on the 23rd day of May, A.D., 1956; Capital Stock Tax Report for part year 1956 and 1957 filed on the 9th day of August, A. D., 1957; Petition to Leon County Circuit Court changing corporation from a profit corporation to a non-profit corporation approved by the Honorable Hugh M. Taylor, Judge of the Circuit Court, in and for Leon county, pursuant to Chapter 57-90, Laws of 1957, filed on the 9th day of August, A. D., 1957; Exempt Tax Report filed on the 20th day of January, A. D., 1960; Exempt Tax Report filed on the 17th day of May, A. D., 1963; Exempt Tax Report filed on the 24th day of September, A. D., 1964; Exempt Tax Report filed on the 28th day of July, A. D., 1965; Exempt tax Report filed on the 12th day of July, A.D., 1966; Exempt Tax Report filed on the 21st day of June, A. D., 1967; Exempt Tax Report filed on the 18th day of September, A. D., 1968, as shown by the records of this office.

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the 30th day of January, A.D. 1970.

TOM ADAMS,
Secretary of State.

CERTIFICATION OF INCORPORATION OF CAPITAL CITY COUNTRY CLUB, INC.

We, the undersigned, hereby associate ourselves together for the purpose of becoming a corporation under the laws of the State of Florida, by and under the provisions of the Statutes of the State of Florida, providing for the formation, liability, rights, privileges and immunities of a corporation for profit.

ARTICLE I. NAME OF COMPANY

The name of this corporation shall be:—Capital City Country Club, Inc.

ARTICLE II. GENERAL NATURE OF BUSINESS

The general nature of the business and the objects and purposes proposed to be transacted and carried on, are to do any and all of the things herein mentioned, as fully and to the same extent as natural persons might or could do, viz:—

To purchase, lease, acquire, layout, and operate a golf course, tennis courts, swimming pool, club house and club facilities, and the like, and to maintain and operate the same; to purchase, lease, or rent any and all real or personal property necessary for said purposes; to do all things incident to and in the furtherance of a private country club for the recreation, health, amusement and pleasure of the members thereof, and to operate any business or facility incident to and in the furtherance of said objectives.

To borrow money and to negotiate loans for the purpose of carrying into effect the objectives of this corporation; to execute promissory notes, bonds, debentures, and other negotiable instruments of whatsoever nature, and to secure the same by mortgage on its property or otherwise.

Generally to make and perform contracts of any kind and description for the purpose of attaining any of the objects of the corporation; to do and perform any other acts and things, and to exercise any and all powers which a co-partnership or natural person could do and exercise, and which now are or hereafter may be authorized by law, and generally to do and perform any and all things necessary or incident to the performing and carrying out of the powers hereinabove specifically delegated or implied.

ARTICLE III. CAPITAL STOCK

The authorized Capital Stock of the Corporation shall be: Fifteen Hundred (1500) shares of common stock which shall have a par value of $100.00 per share.

All of said stock shall be payable in cash, property, labor or services at a just valuation

to be fixed by the Board of Directors at a meeting called for that purpose; property, labor or services may be purchased, or paid for with the Capital Stock at a just valuation to be fixed by the Board of Directors at a meeting called for that purpose.

ARTICLE IV. AMOUNT OF CAPITAL TO BEGIN BUSINESS WITH

The amount of Capital with which this corporation shall commence business shall be Five Hundred Dollars.

ARTICLE V. CORPORATE EXISTENCE

This corporation shall have a perpetual existence unless sooner dissolved according to law.

ARTICLE VI. PRINCIPAL PLACE OF BUSINESS

The principal place of business of said corporation shall be at Tallahassee, Leon County, Florida, with the privilege of having branch offices at other places within or without the State of Florida and within or without the United States of America.

ARTICLE VII. NUMBER OF DIRECTORS

The number of directors of this corporation shall be not less than five (5) nor more than twenty-five (25).

ARTICLE VIII. DIRECTORS

The name and post office address of the first officers of this corporation who shall hold office for the first year or until their successors are chosen, shall be:

Blair C. Stone, President, Tallahassee, Florida.

Paul H. Brock, Jr., Secretary, Tallahassee, Florida.

B. Cheever Lewis, Treasurer, Tallahassee, Florida.

ARTICLE IX. SUBSCRIBERS

The name and post office address of each Director and subscriber and the number of shares of stock which each agrees to take are:

Sidney D. Andrews, Tallahassee, Florida, 1 share.

Charles S. Ausley, Tallahassee, Florida, 1 share.

C. H. Belvin, Tallahassee, Florida, 1 share.

Paul H. Brock, Jr., Tallahassee, Florida, 1 share.

Wilson Carraway, Tallahassee, Florida, 1 share.

Harrold Carswell, Tallahassee, Florida, 1 share.

M. R. Clements, Tallahassee, Florida, 1 share.

Howell Collins, Tallahassee, Florida, 1 share.

Hilton Cooper, Tallahassee, Florida, 1 share.

Ernest Daffin, Tallahassee, Florida, 1 share.

B. Cheever Lewis, Tallahassee, Florida, 1 share.

William L. Moor, Tallahassee, Florida, 1 share.

Robert C. Parker, Tallahassee, Florida, 1 share.

C. R. Phillips, Tallahassee, Florida, 1 share.

Julian Proctor, Tallahassee, Florida, 1 share.

Godfrey Smith, Tallahassee, Florida, 1 share.

Julian C. Smith, Tallahassee, Florida, 1 share.

Julian V. Smith, Tallahassee, Florida, 1 share.

Sidney V. Steyerman, Tallahassee, Florida, 1 share.

Blair C. Stone, Tallahassee, Florida, 1 share.

J. Edwin White, Tallahassee, Florida, 1 share.

ARTICLE X. SPECIAL CHARTER PROVISIONS

The original incorporators of this corporation shall have the right to, and will after the organization of the same, assign and deliver their subscriptions of stock herein to any other persons who may hereafter become subscribers to the Capital Stock of this Corporation, who upon acceptance of such assignment, shall stand in lieu of the original incorporators and assume and carry out, all of the rights, liabilities and duties entailed by said subscriptions, subject to the laws of the State of Florida, and the execution of this power.

In witness of the foregoing, we have hereunto set our hands and seals this 24th day of April, A.D. 1956.

Sidney D. Andrews, Charles S. Ausley, C. H. Belvin, Paul H. Brock, Jr., Wilson Carraway, Harrold Carswell, M. R. Clements, Howell Collins, Hilton Cooper, Ernest Daffin, B. Cheever Lewis, William L. Moor, Robert C. Parker, C. R. Phillips, Julian Proctor, Godfrey Smith, Julian C. Smith, Julian V. Smith, Sidney V. Steyerman, Blair C. Stone, J. Edwin White.

STATE OF FLORIDA,
County of Leon:

I hereby certify that on this the 24th day of April, A.D. 1956, personally came and appeared before me, the undersigned authority, Sidney D. Andrews, Charles S. Ausley, C. H. Belvin, Paul H. Brock, Jr., Wilson Carraway, Harrold Carswell, M. R. Clements, Howell Collins, Hilton Cooper, Ernest Daffin, B. Cheever Lewis, William L. Moor, Robert C. Parker, C. R. Phillips, Julian Proctor, Godfrey Smith, Julian C. Smith, Julian V. Smith, Sidney V. Steyerman, Blair C. Stone and J. Edwin White, all to me well known, and well known by me to be the persons of that name described in and who severally acknowledged to me that they executed the foregoing "Articles of Incorporation" as their free and voluntary act and deed and for the uses and purposes therein set forth and expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal on the day and year above written.

BARBARA R. WHITE,
Notary Public, State of Florida at Large.
My Commission Expires: June 23, 1959.

Mr. TYDINGS. Mr. President, I call attention to the name and signature of Mr. Harrold Carswell on the certificate of incorporation of the Capital City Country Club, Inc., dated April 24, 1956.

Now, I shall return to reading the statement of Mr. Horsky and Mr. Ramsey, which is signed by Mr. Horsky. The statement further states:

Judge Carswell responded that, as he recalled it, anyone who was willing to put up the $100 which was being solicited could have had any title he wanted—vice president, director, incorporator or whatever. He said he had never attended any meetings. He then examined the list of names, in order, as he said, to see if he could recall who had asked him for the $100. After going down the list and identifying several of the persons whose names were listed, he commented that many of the men were bankers, and concluded, although not with certainty, that it had been one of the bankers, Julian Smith, who had solicited his contribution. The pages were then returned to Mr. Horsky.

Now, I ask unanimous consent to have printed in the RECORD the full text of the hearings found on pages 12 and 13.

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

Senator HRUSKA. Judge Carswell, it was sought to make of you a director in that country club. Did you ever serve as a director?

Judge CARSWELL. No, sir; nor in any other official capacity.

Senator HRUSKA. Did you ever attend any of the directors' meetings?

Judge CARSWELL. Never.

Senator HRUSKA. Were you an incorporator of that club as was alleged in one of the accounts I read?

Judge CARSWELL. No, sir.

Senator HRUSKA. The stock certificate which you got, how was that designated, do you remember?

Judge CARSWELL. I really do not remember, Senator. It was one share of stock. I just really don't have any independent recollection of this, in 1956. We paid $100 for it and when we saw we were not going to continue to be active because it was primarily a golf club—the only privilege you got otherwise was going there for a meal and frankly, it wasn't commensurate with what we thought was sound policy for us at the time. So we dropped out of the club. That is all there was to it.

Senator HRUSKA. Have you from time to time used the facilities of the club by way of public meetings or board meetings or anything of that type?

Judge CARSWELL. Have I?

Senator HRUSKA. Yes.

Judge CARSWELL. I have been there, Senator, as guest of other people on many occasions, yes, sir, but not for any functions of my own, no.

Senator HRUSKA. Not for any functions of your own?

Judge CARSWELL. No, sir.

Senator HRUSKA. On occasions when you were a guest, was there any indication of segregation within the meetings that you attended?

Judge CARSWELL. Well, I didn't attend any meetings, Senator, as such.

Senator HRUSKA. Well, the social functions?

Judge CARSWELL. There are a number of functions there. Tallahassee is the capital of Florida. It is practically the only facility where one may have a large entertainment function. I have been there on many occasions where the president of the State senate, for example, or the speaker of the house would have a party, or other friends. I have been there many times. There has certainly been no racial discrimination among the guests. I have personally attended there several times when there were integrated functions.

Senator HRUSKA. And were there members of the Negro race present on any of these occasions?

Judge CARSWELL. Yes, sir, I specifically recall one or two. I don't recall any details.

Senator HRUSKA. Has Mrs. Carswell attended any functions or social activities or other activities in the country club?

Judge CARSWELL. Of course, I can't speak exactly where she has attended on any specific date, but she has been a member of the Leon County, which is the Tallahassee City, Board of Red Cross, which is an integrated board and they have had functions or meetings of some activities of such nature that I really don't know, because I wasn't privy to them, but I know that has occurred at the club.

Senator HRUSKA. Did you participate in the management of the club or the writing of its bylaws or any of the background concerning the corporation?

Judge CARSWELL. None whatsoever.

Senator HRUSKA. Are you or were you at the time, familiar with the by laws or the articles of incorporation?

Judge CARSWELL. No, sir.

Senator HRUSKA. My safe deposit box has some of those country club stock certifications, too. One of them has a very fancy designation on it, "incorporator." I paid my fee. I am sorry to say it was much more than $100, and it was an honorary thing. I could have gone along just as well without the honor, because I don't play golf either. Could the stock you received on this occasion have borne the label, "incorporator," indicating

that you were one of the contributors to the building fund for the clubhouse?

Judge CARSWELL. Perhaps. I have no personal recollection.

Senator HRUSKA. Do you still have the stock certificate?

Judge CARSWELL. No, I don't have it at all. I don't remember or have any personal recollection of any such thing as a piece of paper saying it was such a stock.

Senator HRUSKA. Judge Carswell, you filed with the committee a financial statement and copies of your income tax returns. Were those individual returns, or were they joint with Mrs. Carswell?

Judge CARSWELL. They were joint returns.

Senator HRUSKA. That is the way you file your income tax returns. Is it also the way you reflected your property statement?

Judge CARSWELL. Yes, sir.

Senator HRUSKA. Would you mind telling the committee so we in turn, can inform the Senate, in general what your property holdings consist of, to the best of your recollection, of course?

Judge CARSWELL. I don't have that right before me here. I can get it if somebody would give me my briefcase, but I believe I can speak without it, because it is a rather simple story.

I own three-sixteenths interest in approximately 1,290 acres—this is not 12,000 acres as has been reported somewhere—of unimproved land, which was owned by my grandfather and in turn hy my father, who died in 1955. I have one sister who owns a fourth interest in this. Another sister has deeded her portion to her three children. That gives them a 12th each in interest in it. And I have deeded one-fourth of my one-fourth—that is, one thirty-second—each to my two sons, George Harrold, Jr., and Scott Carswell. This is located in Wilkinson County, Ga. The best offer we have ever received for it on a firm basis is about $100 an acre on a total, outright sale. It is difficult, however, to put a fair market value upon this property because of one factor: Within that area of the State, there is a vein of kaolin and other bauxitic ores which permeate the hillsides, and surrounding property owners have had a good deal of luck in mining clay. From time to time, my father, and since his death, through my lifetime, we have tried to get people to come in and prospect this thing, hoping it would be worth something. We went through quite a bit of this. Recently, we had one collapse on us, as a matter of fact, December 1, 1969.

Mr. TYDINGS. Mr. President, I wish to note that three additional statements which Judge Carswell made, misled the committee or at least misled me to the point where it was thought he had no prior knowledge of whatever he had been an incorporator, director, or what have you, of the Capital City Country Club.

I shall now read from the top of page 12 of the hearings.

Senator HRUSKA. Judge Carswell, it was sought to make of you a director in that country club. Did you ever serve as a director?

Judge CARSWELL. No, sir; nor in any other official capacity.

Senator HRUSKA. Did you ever attend any of the directors' meetings?

Judge CARSWELL. Never.

Senator HRUSKA. Were you an incorporator of that club as was alleged in one of the accounts I read?

Judge CARSWELL. No, sir.

Then, on page 13 of the following appears:

Senator HRUSKA. Are you or were you at the time, familiar with the laws or the articles of incorporation?

Judge CARSWELL. No, sir.

He had seen them all the night before.

Then, down further on page 13 the following appears:

Could the stock you receievd on this occasion have borne the label "incorporator" indicating that you were one of the contributors to the building fund for that clubhouse?

Judge CARSWELL. Perhaps. I have no personal recollection.

Now, I would like to turn, with the indulgence of the Senate, to page 255—my recollection was refreshed in this matter by the Senator from Michigan—on the manner in which the incorporators were picked.

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

Mr. TYDINGS. I would like to put all this material in the RECORD and then yield to the Senator.

Mr. GRIFFIN. The Senator will recall that at an earlier point I did not have the quotation or citation from the record to substantiate a point I made. If the Senator from Maryland will give me enough time, I would like to point out for the RECORD where it occurred. Would the Senator yield to me for that purpose?

Mr. TYDINGS. Very well. But I ask unanimous consent at this point in my remarks that there be printed in the RECORD pages 256 and 257 of the hearings, with specific reference to my interrogation of Mr. Proctor, a witness for Judge Carswell who, as I recall, returned to testify in Judge Carswell's behalf. The thrust of his testimony was that Judge Carswell's name just happened to be one of the 21 names picked from a hat and had nothing to do with the fact that he was U.S. attorney. It is an interesting dialog of questions for anyone who is interested in this debate.

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

Senator KENNEDY. Now do you have a list of the directors of the old country club and the incorporators of the new Capital City Country Club? Do you have that information available?

Mr. PROCTOR. I have. It is available and I will make it available to the committee.

Senator KENNEDY. Could it be made a part of the record?

The CHAIRMAN. Oh, sure.

(The documents referred to appear in the appendix.)

Senator TYDINGS. Before you leave that point, as I understand it, you had several hundred subscribers when you decided to——

Mr. PROCTOR. Correct.

Senator TYDINGS. And you picked from those subscribers 21 persons to use as incorporators?

Mr. PROCTOR. As subscribing incorporators, correct.

Senator TYDINGS. One of those 21 names was the name of U.S. attorney for the district of northern Florida, was it not?

Mr. PROCTOR. Judge Harrold Carswell, or Harrold Carswell, right.

Senator TYDINGS. How did you happen to pick him as one of the 21 incorporators?

Mr. PROCTOR. Senator, I cannot answer that question. It is just we took 21 out of the group. I happened to be one of the 21. Why did they pick me?

Senator TYDINGS. Were you trying to pick prominent people in the community to show community support?

Mr. PROCTOR. Not necessarily. Many of them were prominent. I would not consider myself particularly prominent, and I happened to be one.

Senator TYDINGS. Did you just pick them out of a hat? How did you do it?

Mr. PROCTOR. No, we just picked out a group of 21.

Senator TYDINGS. You just did it at random? You did not particularly want to have a U.S. attorney's name in that group of subscribers and incorporators?

Mr. PROCTOR. No.

Senator TYDINGS. It was just happenstance?

Mr. PROCTOR. It just happened.

Senator TYDINGS. You just happened to pick him?

Mr. PROCTOR. Absolutely, right.

Senator KENNEDY. Were there any blacks who were incorporators or invited to participate?

Mr. PROCTOR. It was open to the public.

Senator KENNEDY. Were there any blacks who were asked to participate?

Mr. PROCTOR. I did not ask any.

Senator KENNEDY. Do you know from your own knowledge whether any were?

Mr. PROCTOR. I do not know.

Senator KENNEDY. Were there any in fact included in that list?

The CHAIRMAN. His answer was he did not know.

Mr. PROCTOR. I do not know.

Senator KENNEDY. You have the list of the 21?

Mr. PROCTOR. I have a list of the 21. I also have a list of about 400 people.

The CHAIRMAN. Ask him the questions but give him time to answer the questions.

Mr. PROCTOR. In addition to the 21 subscribers, there were about 400 other subscribers who had decided to join the country club, of which I can provide tbe list to the committee.

Senator KENNEDY. You are familiar with the 21 incorporators?

Mr. PROCTOR. I am.

Senator KENNEDY. Were any of those black?

Mr. PROCTOR. No.

Senator KENNEDY. To your knowledge do you know whether any of the 400 members of the club were black?

Mr. PROCTOR. I do not know.

Senator KENNEDY. Would you know if there were some black members?

Senator TYDINGS. Do you really want us to believe that you do not know whether any of the subscribers were black?

Mr. PROCTOR. There are one or two names that I would not know, and I would not answer that they were black or white.

Senator KENNEDY. Were there any blacks that played on the golf course prior to the time that it became the Capital City Country Club, that is while it was the municipal club?

Mr. PROCTOR. Wait a minute, repeat the question, please.

Senator KENNEDY. Were any black citizens permitted to play on the municipal golf course?

Mr. PROCTOR. When the city was operating it?

Senator KENNEDY. When the city was operating it.

Mr. PROCTOR. I do not know. It was a city golf course. It was open to the public. It was not a private country club. It was operated by the city, and for city revenue. The pros were hired by the city. I cannot answer that question because I am maybe a 1-day-a-week golfer.

Senator KENNEDY. What was the pattern or the practice at this time in municipal country clubs either in Tallahassee or in that area? Were the blacks permitted to play?

Mr. PROCTOR. Senator, I was not familiar with the other country clube in that area.

Senator KENNEDY. Actually the Florida A&M golf team, which as I understand it was all black, was allowed to play there?

Mr. PROCTOR. Was allowed to play? They could have been.

Senator KENNEDY. Were you familiar with that?

Mr. PROCTOR. I am not familiar with it.

Senator KENNEDY. As I understand it they were allowed to use the course before 8 a.m. every morning.

Mr. PROCTOR. Also the Florida State University Golf Club were able to use. They could have played. I would not necessarily know.

Senator KENNEDY. At some time then in 1956 this course was turned over to a group of incorporators?

Mr. PROCTOR. That is right, May 4, 1956. Now may I bring out a point here?

Senator KENNEDY. Yes, I wish you would.

Mr. PROCTOR. You mentioned the fact about Judge Carswell's name being one of the original subscribers, and on the 21 subscribing original directors. It just happens that I was among the original 21. To my knowledge Harrold Carswell never participated during that time, never attended a meeting to my knowledge, and I attended about 93 percent or more of them.

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

Mr. BAYH. I yield to the Senator from Michigan with the same understanding.

Mr. GRIFFIN. Mr. President, I would like to read page 254 of the hearings. Mr. Proctor was testifying.

In September of 1952, the stockholders of club because of dissatisfaction with the op- the original old Tallahassee Country Club reorganized and requested the return of the eration of the club.

It will be recalled there was a provision in the deed it would be returned if it were not used by the city.

I shall continue to read from page 255:

Senator KENNEDY. When was that? That was in what year?

Mr. PROCTOR. September of 1952 when it originally began.

Senator KENNEDY. What happened in September?

The CHAIRMAN. Let him answer the question. Did you finish your answer?

Mr. PROCTOR. That continued until February 14 of 1956. At that time the city leased the golf course back to the original Tallahassee Country Club.

This is confirmed again later on page 255:

Senator KENNEDY. It was actually transferred back to this group; is that correct?

Mr. PROCTOR. That is correct.

On page 109 the story is completed in the middle of the page. Mr. Proctor testified as follows:

Then we began operating on May 4 of 1956. The old Tallahassee Country Club assigned its lease from the city to the Capital City Country Club, Inc.

I think that should pretty clearly establish there were really three corporations you were talking about and that the city, when it ceased operating the country club, turned it back to the original country club organization, of which Mr. Carswell was not a member and they assigned their lease.

Mr. TYDINGS. It is not a fact that it was the new Capital City Country Club of which Judge Carswell was an incorporator and that was in the newspapers and that is what was before our committee?

Mr. GRIFFIN. The Senator is drawing conclusions. Of course, the Senator is entitled to draw conclusions. I am trying to get the facts on the table.

Mr. BAYH. Mr. President, I would like to interpose myself here one more time. I would be glad to ask, on behalf of the Senator from Maryland, that page 255 of the hearings be printed in the RECORD.

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

Senator KENNEDY. What happened in September?

The CHAIRMAN. Let him answer the question. Did you finish your answer?

Mr. PROCTOR. That continued until February 14 of 1956. At that time the city leased the golf course back to the original Tallahassee Country Club.

Senator KENNEDY. What happened in September of 1952? Was there some kind of incorporation? Did the old stockholders get together? Was there some kind of meeting?

Mr. PROCTOR. There was a meeting of the old stockholde...

Senator KENNEDY. How many were there of them at that time?

Mr. PROCTOR. I do not know the exact number.

Senator KENNEDY. They got together and did they petition the city at that time?

Mr. PROCTOR. They got together and they discussed it with the city commission at that time, and petitioned the city to turn the club back over to them for their private operation.

Senator KENNEDY. Then you said in 1956, February 14 of 1956, it was actually transferred back to this group, is that correct?

Mr. PROCTOR. That is correct.

Senator KENNEDY. And was the group that it was transferred to in 1956 the same group of stockholders that met in 1952? Were there others who were added to that group?

Mr. PROCTOR. There were others who were added to that group, and they formed a new club. This same group combined with a group of other interested citizens, and formed the Capital City Country Club, Inc. They filed for a certificate of incorporation on April 24 of 1956.

Senator KENNEDY. As I understand it, one of those incorporators was the nominee, Judge Carswell; is that correct?

Mr. PROCTOR. One of the original subscribers was Judge Carswell. We had some 300-odd subscribers at that time.

Senator KENNEDY. Now this was an added membership over the 1952 meeting, was it not?

Mr. PROCTOR. That is correct.

Senator KENNEDY. Could you give us any idea of how many were added to it and how many were original stockholders?

Mr. PROCTOR. Original stockholders back in 1924, Senator? I do not know. It was 35 maybe.

Senator KENNEDY. The group that met in 1952 was approximately how large? Are you talking about two or three or 15 or how many?

Mr. PROCTOR. I do not know. I am talking about probably 15 to 20. They were heirs, and those members who had received this original stock.

Senator KENNEDY. And the club itself, of which the 1952 group had been stockholders, was a private country club, was it not? They had been former members or stockholders in a private country club?

Mr. PROCTOR. Some of them were original stockholders. Others were families of original stockholders.

Senator KENNEDY. And it had been a private country club?

Mr. PROCTOR. It had been a private country club from 24 to 35, at which time the city took it over and operated it at their request, and with their cooperation.

Mr. BAYH. Mr. President, we are all going to do the best we can to look at the facts and place what we feel is a correct interpretation on them. What concerns me, and in fact galls the Senator from Indiana, is that in his letter to the Senator from Ohio (Mr. SAXBE) of this week the President called charges of lack of candor as being specious. I suppose that applies to all of us who are a bit concerned.

Having sat through hearings, I am well aware of the fact that there was not just one country club corporation. But whether there was one, two, three, or four, the facts of the matter which really go to the heart of this situation, as far as I am concerned, are that the judge was informed of his signature on these corporation papers the night before; and in the interrogation we all heard discussed back and forth, he denied it. Why he did that I do not know but I think it is a matter of some concern.

The other point, in addition to whether he signed the articles of incorporation or not, was the whole purpose of the existence of this new corporation or corporations. Every Senator can form his own judgment, but the record will show, for anyone who cares to read it, that the time of this new corporation was immediately following the Supreme Court decision which said public facilities could not be segregated.

That public facility, I think undeniably, was segregated except for a very early period when members from a black college golf team could use it. So one has to be concerned whether the whole pupose of this new corporation was just to build a new swimming pool or club house, or more basic, to subvert the prohibition against segregation of public facilities that had recently been promulgated by the Supreme Court.

Mr. GURNEY. Mr. President, will the Senator yield at that point?

(At this point Mr. HART assumed the chair.)

Mr. BAYH. I will be glad to yield but I wanted to finish this one thought because this is what really concerns me when we go to this business of candor.

So there is a whole series of events that did in fact happen. I do not think anyone who wants to read the record can deny that they happened in this sequence. One could say it was mere circumstance or happenstance, but they did happen.

Mr. GURNEY. I wish we could get this in the RECORD at this point——

Mr. BAYH. The Senator from Indiana is going to continue. Then he will be glad to yield to his friend from Florida.

On page 69 of the hearings, I asked Judge Carswell the following question:

You had no personal knowledge that some of the incorporators might have had an intention to use this for that purpose?

That was after having dealt with the matter of the Supreme Court decision and the thrust on the part of some that the purpose was to thwart the Supreme Court determination.

Judge Carswell said, as appears on page 69 of the hearings:

I certainly could not speak for what anybody might have thought, Senator. I know that I positively didn't have any discussion about it at all. It was never mentioned to me. I didn't have it in mind, that is for sure.

I think it is a bit too much to ask Senators or the citizens of this country to expect that Judge Carswell—who was a prominent member of the community, who had been a Federal district attorney; there had been cases in the State of Florida at that very time; there was a case in Pensacola that was in the works at that very moment—would not have at least known of this effort. It strains credulity almost to the breaking point to believe that he would not have at least known of it, and thus would have been able to take steps to disassociate himself and not become involved.

I think it is interesting to note that the well-known columnist, James Kilpatrick, wrote that "He must have been the only one in north Florida who did not know."

Another Florida attorney, Neal P. Rutledge of Miami, was in Tallahassee for several months in late 1955 and early 1956. Mr. Rutledge in a telegram to me on March 19 said:

It was common knowledge in the community there at that time, and especially among members of the Bar, that the dominant motive for transferring the operation of the Tallahassee Golf Club from public to private club auspices was to prevent racial integration of the facilities. It is impossible for me to believe that any prominent member of the Tallahassee community at that time, such as then United States Attorney Carswell, was not fully aware of both this general, almost universal sentiment prevailing among the white citizens of Tallahassee in 1956 and the specific dominant motive for leasing the Municipal Golf Club to a private group.

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

Mr. GURNEY. I thank the Senator. I think we ought to complete the record, because it is extremely important. We have part of it.

As I view this matter, one can judge the answer of Judge Carswell to the first question during that whole day in light of the whole testimony.

I turn to page 257 of the hearings, to the testimony of Mr. Proctor, who was the Mr. Proctor who solicited $100 from Judge Carswell and was one of the main organizers of this venture, the Capital City Country Club. Starting at the bottom of page 257, Mr. Proctor said:

You mentioned the fact about Judge Carswell's name being one of the original subscribers, and on the 21 subscribing original directors. It just happens that I was among the original 21. To my knowledge Harrold Carswell never participated during that time, never attended a meeting to my knowledge, and I attended about 93 percent or more of them. He took no active interest at that time in the development of the Tallahassee Country Club.

On May 4, 1956, the Tallahassee Country Club assigned its lease to the new Capital City Country Club, Inc.

Senator KENNEDY. And Judge Carswell was an incorporator, was he not?

Mr. PROCTOR. He was one of the original incorporators.

Senator KENNEDY. And he actually signed——

Mr. PROCTOR. He signed as one of 21 subscribing members.

Senator KENNEDY. And he received a stock certificate, did he not?

Mr. PROCTOR. He did not.

Senator KENNEDY. He did not?

Mr. PROCTOR. No, because we were in the formative stage of the club. The dues were set, $300. We paid, some of us paid $100 at the time.

That is what the judge testified to, if the Senator will recall—

In order to have sufficient money on hand for the incorporation. Judge Carswell was one of those who paid the $100.

On September 1, 1956—

This is interesting, because it proves what I said, that this corporation did not do anything in the beginning—

On September 1, 1956, the Capital City Country Club, Inc., took the lease over from the Tallahassee Country Club. They still had not issued the stock.

On September 4, 1956, the Capital City Country Club, Inc., had its first annual stockholders' meeting. Forty-two names were proposed as the original stockholders of the new club. Harrold Carswell's name was among those 42. He was not elected to the board of directors. They elected 21 directors out of 42. He was not among those elected.

Senator KENNEDY. Now at some time did he receive a share of stock?

Mr. PROCTOR. No. It was on February 3 of 1957, before the stock had been issued, that Carswell withdrew, requested that he be withdrawn as a member and wrote a letter to that effect.

Just a moment ago the Senator from Indiana said he never gave any indication that he wanted to disassociate himself from that venture.

Mr. BAYH. The Senator alleges that the Senator from Indiana said something. When did I say he never made any effort to disassociate himself?

Mr. GURNEY. During the colloquy.

Mr. BAYH. He signed the document; did he not?

Mr. GURNEY. I am talking about disassociating himself from the venture; and here it is.

Mr. BAYH. The Senator from Indiana helped make that record. He did not sign the second document. He did sign the first document. I think it rather obvious that the first one was signed and then the second one in order for it to go defunct so that it would be established as a segregated club.

Mr. GURNEY. The Senator can argue all he wants, but I think the RECORD ought to be complete.

Mr. BAYH. I will be glad to yield again.

Mr. GURNEY. Mr. Proctor went on to say:

No. I say a letter. I do not know exactly if it was by letter for actually at that time we do not have the records so I stand corrected. He requested that his name be withdrawn. On February 12 of 1957; Carswell was refunded $76 of the $100. I do have a copy here of the date in which he along with that many who were refunded their money, which I will be happy to pass over to the committee.

Mr. President, I ask unanimous consent to include in the RECORD at this point the petition of the second country club, which appears on pages 360, 361, 362, 363, and 364 of the hearings.

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

[In the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida]

PETITION IN RE: MATTER OF CAPITAL CITY COUNTRY CLUB, INC.

Comes now Capital City Country Club, Inc., by Blair C. Stone, its President, subscriber to the following proposed charter and to this Petition and, presents this, its proposed charter, for the approval of the Hon. Hugh M. Taylor, Judge of the Circuit Court, in and for Leon County, Florida, respectfully saying:

1. That, heretofore, on the 24th day of April, 1956, Capital City Country Club, Inc., was incorporated, as a corporation for profit, under the Laws of the State of Florida.

2. That such corporation, from its inception, became engaged solely in carrying out the purposes and objects for which corporations not for profit and authorized under the Laws of Florida to carry out.

3. That, heretofore, on January 29, 1957, Blair Stone, Paul H. Brock, Robert C. Parker, Charles S. Ausley and Godfrey Smith who are all officers and/or directors of this Petitioner, acting on behalf of this Petitioner, Capital City Country Club, Inc., petitioned the Hon. W. May Walker, Judge of the Circuit Court, in and for Leon County, Florida, for approval of a proposed charter for Capital City Country Club, a non-profit corporation, which said charter, having been approved by the Court, was recorded in Corporation Book 6, page 87–90 on January 29, 1957, in the Public Records of Leon County, Florida.

4. That the purpose and intent of your Petitioner in seeking and obtaining a non-profit corporate charter for Capital City Country Club, was that such non-profit corporation should succeed to all of the rights, assets, duties and liabilities of your Petitioner, Capital City Country Club, Inc., the profit corporation.

5. That by Chapter 57–90, General Laws of 1957, Regular Session, which act became effective on May 13, 1957, the Legislature provided that any profit corporation which has transferred, or is in the process of transferring, its functions and assets to a non-profit corporation, shall, upon the recital of the facts, circumstances and intentions surrounding such transfer proceedings, in a petition filed before the Circuit Court, and the subsequent approval thereof, be deemed to have acted in a manner so that the non-profit corporation should succeed to the rights, liabilities and assets of its corporate predecessor, the same as if the original petition had been filed in accordance with the provisions of Chapter 617, which provides, in substance, that a corporation for profit engaged solely in carrying out the purposes and objects for which corporations not for profit are authorized, may change its corporate nature by the filing of a Petition before this Court.

6. That it is, and has been, the purpose and intention of this Petitioner to bring about the transfer of its functions and assets to Capital City Country Club, the non-profit corporation, within the terms, provisions and purview of Chapter 57–90, Laws of 1957 and Section 617.16, 617.17, 617.18 and 617.19, Florida Statutes, 1955.

7. The name of this corporation shall be Capital City Country Club, and its principal office and location shall be in Tallahassee, Lion County, Florida.

8. The purposes for which this corporation is formed are as follows:

A. To maintain a club house, grounds and other physical plant for the benefit of its members, to promote social intercourse and to further athletic sports and recreational activities, particularly the game of golf.

B. To solicit, collect, receive, hold, invest, reinvest, distribute and disburse donations, subscriptions, gifts, bequests and other funds for the purposes of this corporation.

C. To engage in any charitable, eleemosynary, educational or other activity which may be necessary to effect and carry out the purposes of this corporation, and the doing of any and all things necessary or incident thereto.

9. Any person shall be admitted to membership in this corporation subject to the requirements and limitations upon member-

ship as may from time to time be fixed and established by the by-laws of the corporation or by its Board of Directors.

10. This corporation shall commence on the 29th day of January, 1957, and shall have perpetual existence.

11. Names and residence of the subscribers to this proposed charter are as follows:

Blair C. Stone, President, Tallahassee, Florida.

Paul H. Brock, Jr., Secretary, Tallahassee, Florida.

12. The affairs of this corporation shall be managed by a President, Vice President, Secretary and Treasurer, together with a Board of Directors composed of not less than five (5) members, nor more than thirty-one (31) members, of this corporation who shall be elected by the membership thereof at each annual meeting of the corporation, for terms as provided by the by-laws, provided that, the number of members of the Board of Directors may, from time to time, be diminished or enlarged, within the above set forth limits, by a vote of two-thirds (⅔) of a quorum of the members present at any meeting.

13. Until the first election of officers and directors shall be held, the present officers and directors of CAPITAL CITY COUNTRY CLUB, INC., a corporation for profit, shall serve as the officers and directors of this corporation in the same respective capacities in which they serve in CAPITAL CITY COUNTRY CLUB, INC. The present officers and directors of CAPITAL CITY COUNTRY CLUB, INC., and the officers and directors of this corporation hereby designated to serve until the first election shall be Sydney D. Andrews; Charles S. Ausley; Paul H. Brock, Jr., Secretary; Wilson Carraway; Robert C. Parker, Vice President; Julian M. Proctor; Blair C. Stone, President; Mark Ahrano; Ernest C. Daffin; Ryals Lee; B. Cheever Lewis, Treasurer; Payne Midyette, Sr.; Godfrey Smith; Julian V. Smith; C. H. Belvin; M. R. Clements; Leo Foster; James M. Lee, Jr.; Frank Pepper; S. V. Steyerman; J. Edwin White.

14. The by-laws of this corporation shall be made, altered, amended or rescinded by the directors subject to the approval of a majority of a quorum of the stockholders.

15. The highest amount of indebtedness or liability to which this corporation may subject itself shall be $500,000.00, or two-thirds (⅔) of the value of the property of this corporation, whichever figure shall be the lesser.

16. This corporation may own real estate in the value of not more than $1,000,000.00.

17. CAPITAL CITY COUNTRY CLUB agrees to accept all of the property of the petitioning CAPITAL CITY COUNTRY CLUB, INC., and further agrees to assume and pay all its indebtedness and liabilities.

18. Attached hereto is a certified copy of the resolution duly adopted by the stockholders authorizing the change in corporate nature and directing an authorized officer to file this Petition before the Court.

WHEREFORE, your Petitioner prays that the Court will

1. Approve the proposed charter contained herein, and

2. Find that the Petitioner, CAPITAL CITY COUNTRY CLUB, INC., acted under the terms, provisions and within the meaning and purview of Chapter 57-90, Laws of 1957.

CAPITAL CITY COUNTRY CLUB, INC.
BLAIR C. STONE, *President.*

Attest: PAUL H. BROCK, JR.,
Secretary.

Mr. GURNEY. I simply wish to say that that petition of the second club—that was on January 29, 1957—sets forth the officers and directors of the first club, and Harrold Carswell's name is not a part of it.

Here, I realize how we can differ in our interpretation, but having read the record and the testimony, as I did, just as the Senator from Indiana listened to the testimony, and examining the record of the first incorporation and the second incorporation, it seems evident that he really never took part in the first corporation as a director. He had no part in the meetings. The testimony in the record shows that. It seems to me that, in all honesty, he might well have made an answer that he was not an incorporator of the country club, the main topic before it, as well as on the floor here today, being that the club was organized because of the problem of segregation.

The whole testimony, viewed in this Senator's interpretation, is that he was thinking of the second club, which actually did the business of running the golf course.

Mr. BAYH. The Senator from Florida is entitled to his own opinion.

Mr. GURNEY. I realize interpretations can differ.

Mr. BAYH. I guess that is what makes the Senate a great body. As we look at this thing, it reminds me of a story that used to be told by a great friend of mine who was an officer of our Indiana State Legislature when I had the great privilege of being there. At almost every session, he had the occasion to tell the same story. When there were great differences of opinion on what seemed to be a relatively simple state of facts, he would talk about asking a blind man to describe an elephant. It all depends, of course, on what part of the elephant the blind man touches.

We are just looking at these facts, I suppose, from a different standpoint. I think it is important, if we are going to look at the record, to point out, at the risk of being a pedant, that while all this was going on, and while the judge did sign the first incorporation papers and was an incorporator, this was a rather critical period relative to what the Supreme Court said was the law of the land, and how public facilities could be used.

I tried to find out whether the judge was really aware of these things going on, to support the suggestion that he really was not aware. But if you look at the record on page 69, it reads:

Senator BAYH. Were there problems in Florida relative to the use of public facilities and having them moved into private areas——

Judge CARSWELL. As far as I know, there were none there and then in this particular property that you are talking about.

Senator BAYH. You weren't aware of other cases in Florida——

Judge CARSWELL. Oh, certainly, certainly. There were cases all over the country at that time, everywhere. Certainly I was aware of the problems, yes. But I am telling you that I had no discussion about it. It was never mentioned to me in this context, and the $100 I put in for that was not for any purpose of taking property for racial purposes or discriminatory purposes.

Senator BAYH. You were aware that the Supreme Court had previously, sometime before that, come down with an order prohibiting this type of thing?

Judge CARSWELL. Yes, sir; I am aware of the decision of the Supreme Court.

Senator BAYH. Well, I don't want to dwell on this at length, but I think we need to nail down that Judge Carswell has, after that one intemperate statement, been involved in a steady sequence of events which tend to repudiate it; and it concerns me, very frankly, for you incidentally to be involved at the time you were district attorney in the incorporation of a club at least some of the members of which have made public allegations that the purpose of this was to avoid the integration order which had been previously set down by the Supreme Court of the United States and which, 1 month after incorporation, was ordered relative to another court in Pensacola, in your own State. This concerns me. You had no knowledge of this *Pensacola* case, because it came down a month afterward. But one has to wonder if the district attorney wasn't aware that this activity was going on in the State of Florida.

Judge CARSWELL. Certainly, I was aware, Senator, that these things were going on.

That is what concerns me.

Mr. TYDINGS. Mr. President, will the Senator yield at that point?

Mr. BAYH. I am glad to yield.

Mr. TYDINGS. Is it not a fact that the distinguished editorial writer, James J. Kilpatrick, endorsed Mr. Carswell for the Supreme Court?

Mr. BAYH. Well, I——

Mr. TYDINGS. The Senator can take it from me that he did.

Mr. BAYH. I quoted earlier from Mr. Kilpatrick.

Mr. TYDINGS. I am going to quote again from an article which appeared in the Washington Star of March 24, 1970, in which Kilpatrick endorsed Mr. Carswell, but, on the issue which is raised by the Senator from Indiana, he stated—and this is a pro-Carswell writer:

My own enthusiasm for Carswell is diminshed by his evasive account of his participation in the golf club incident of 1956.—

This, mind you, is a pro-Carswell writer in an article in which he endorsed Carswell.

He took an active role, not a passive role, in transfer of the Tallahassee municipal golf course to a private country club.

Forgive my incredulity, but if Carswell didn't understand the racial purpose of this legal legerdemain, he was the only one in north Florida who didn't understand it. But it was "never mentioned to me," and "I didn't have it in my mind, that's for sure."

Mr. President, I ask unanimous consent that the entire editorial be printed in the RECORD at this point.

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

CARSWELL PROVED TO BE AN ABLE DISTRICT JUDGE

(By James J. Kilpatrick)

Some of the attacks that are being made upon Judge G. Harrold Carswell, and some of the impressions being pumped up in the phony groundswell against him, prompt a few words of rejoinder by one of the judge's unenthusiastic supporters, namely me.

The charges have to do with his record as a U.S. district judge, and with the testimonials for and against his elevation to the Supreme Court.

Carswell served as a federal judge in the Northern District of Florida from 1958 to 1969. The complaint is made that he left an "undistinguished" record behind, that he was frequently reversed by his circuit court and that his written opinions in this period are the products of a mediocre mind at work.

Such an appraisal, it seems to me, is predi-

cated upon a fundamental misunderstanding of the function of a district judge. His duty is not to erect great landmarks of the law. He does not sit as a philosopher, innovator, or architect. His principal responsibility is to dispose efficiently of the great mass of routine litigation coming before him.

Viewed in this light, the Carswell record suggests a competent, no-nonsense practitioner on the bench. As a district judge, he tried some 2,000 civil cases and an estimated 2,500 criminal cases. He kept his backlog down. And if he fired off no Roman candles of obiter dicta, so much the better.

For an example of the absurdity of some of the criticism voiced against him, consider this heavy-breathing accusation from the Ripon Society: "Carswell's printed District Court opinions average 2.0 pages. The average length of printed opinions for all federal district judges during the time period in which Carswell was on the district bench was 4.2 pages."

These calculation were made, at heaven knows what tedious labor, "to the nearest tenth of a page." The analysis tells us more of the desperation of the Ripon critics than it does of the mediocrity of Judge Carswell.

The big push against the nominee last week had to do with testimonials pro and con. It is being made to appear that nobody—but nobody—has had a good word to say of him. Great weight is being attached to a full-page ad signed by 350 lawyers and law professors opposed to his confirmation. It is remarked, significantly, that Carswell's colleagues on the 5th Circuit, Judge John Minor Wisdom, has come out publicly against him.

By way of response, it may be suggested that most of the anti-Carswell crowd take one view of the law—a sort of flexible view—and they surmise, by the fact of President Nixon's sponsorship of the nominee, that Carswell on the high court would take a different view. They do not want such a judge confirmed; and that is their privilege. But their hostility to a Southern strict constructionist is not necessarily evidence of Carswell's unfitness.

As for Judge Wisdom, he is known to conservatives as a kneejerk liberal, and some say the appellation could be shortened. Carswell has the solid endorsement of the Florida State Bar Association, through its unanimous board of governors.

Professor James William Moore of the Yale Law School, who got to know Carswell closely in formation of the Tallahassee Law School, describes him as a man of "great sincerity and scholarly attainments, moderate but forward-looking, and one of great potential."

My own enthusiasm for Carswell is diminished by his evasive account of his participation in the golf club incident of 1956. He took an active role, not a passive role, in transfer of the Tallahassee municipal golf course to a private country club.

Forgive my incredulity, but if Carswell didn't understand the racial purpose of this legal legerdemain, he was the only one in north Florida who didn't understand it. But it was "never mentioned to me," and "I didn't have it in my mind, that's for sure."

Okay. Let it pass. On the whole record, Carswell is better qualified by experience than scores of nominees who have successfully preceded him. The high court is hurting for want of a ninth member. The sooner he is confirmed, the sooner he can get on with the business of building a new record to prove his critics wrong.

Mr. BROOKE. Mr. President, will the Senator yield? I think we ought to include at that point——

Mr. BAYH. Let me make just one observation, and I shall be glad to yield.

This whole business of credibility, I think, is a fundamental attribute that any judge or Senator ought to have. I can see how any of us can stumble into an embarrassing situation. I do not suppose there is one of us in this body who has not.

But why, given all the thorough preparation and memory stimulation the night before, did not the judge come right out and say, "Sure, I signed it. Perhaps I should not have. Perhaps I should have. But I signed it, and, sure, I was aware that this was going on in the community. That was several years ago. I am not doing that type of thing any more. I don't think I should have done it then."

I yield to my colleague from Massachusetts.

Mr. BROOKE. I think it is very important to point out that at the time the judge joined this corporation and became an incorporator and a member of the corporation, he was the U.S. attorney for that district of Florida. He was sworn to uphold and defend the law and to enforce the law. Here, then, is a man who was under oath to enforce the law of the land joining in a device to circumvent the very law which he had sworn to uphold, defend, and enforce.

To me, this is even more damaging than a private citizen or a politician or someone of that nature doing the same thing, because as a district attorney he had an added responsibility.

Mr. BAYH. The only thing, if I might interpose one additional thought, that makes it a matter of deeper concern, was the effort that has subsequently been made to deny that this was the whole purpose of the incorporation.

Mr. BROOKE. I think the Senator from Indiana and the Senator from Maryland have been trying to point out that the credibility of Judge Carswell is at issue here. We have the fact that the night before he knew, and the next morning, under oath, he denied, that he was an incorporator of the club.

My distinguished assistant minority leader has said:

But minutes later he corrected the error that he made earlier.

As I read the record, the first Senator to interrogate Mr. Carswell in the Committee on the Judiciary hearings was the Senator from Nebraska (Mr. HRUSKA). That was right after the committee convened, because I believe the chairman turned the matter over immediately to Senator HRUSKA for interrogation, and it was not until he was questioned by Senator KENNEDY, later on—and I think Senator KENNEDY was the last Senator to interrogate Judge Carswell, just prior to the recess at 12:30 on that day—that the error was ever corrected, point is, Mr. President, that Judge Carswell never volunteered any correction of this error. It was only upon rather lengthy interrogation by Senator KENNEDY that he did correct it in fact.

I think the language that was used by Senator KENNEDY and the answers by Judge Carswell are very important. We as lawyers certainly know that you sometimes have to look at the small things in order to determine whether a man is telling the truth or not. You look at the way in which he responds, whether he is evasive or whether he is direct, for example.

As shown on page 31 of the record, Senator KENNEDY asked him:

Earlier today, you responded to the inquiries of the Senator from Nebraska on the golf course down at Capital City Country Club. This was, as I understand it, in regard to a newspaper report that was in this morning's paper, and you responded to him, to the question of the Senator from Nebraska, that you thought it was principally an effort to build a clubhouse.

Judge Carswell's response:

My sole knowledge of that matter had to do with a conversation with a friend named Julian Smith in Tallahassee, who approached me and virtually anyone else, as I recall. He was trying to get the $100 apiece from anyone to build a new country club. I gave him $100. I then received some kind of message that I had a share or stock in this thing. I did receive it, and some several months later, as I have already stated, I sold it and got out of the thing entirely and got $75 back. This is my sole connection with that. I have never had any discussion or never heard anyone discuss anything that this might be an effort to take public lands and turn them into private hands for a discriminatory purpose. I have not been privy to it in any manner whatsoever.

The distinguished Senator from Florida just read from some testimony of Mr. Proctor which would indicate that Judge Carswell never received a share of stock in the corporation. Judge Carswell says he did receive a share of stock in the corporation. Not only did he say he received it, he said:

He was trying to get the $100 apiece from anyone to build a new country club. I gave him $100. I then received some kind of message that I had a share or stock in this thing. I did receive it, and several months later, as I have already stated, I sold it and got out of the thing entirely and got $75 back.

Certainly that is clear English. There is no ambiguity at all. The fact is that he is testfying that he did put in $100, that he did receive a share of stock, that he did sell that share of stock subsequently, and that he did get back $75.

There obviously is an inconsistency in what he had testified before the committee and what Mr. Proctor has testified before the committee.

Again I raise the question of credibility. Is this a mistake on the part of Judge Carswell, or is this a mistake on the part of Mr. Proctor? This is a matter which certainly, through proper hearing before the Senate Judiciary Committee, after the motion to recommit, we could clarify. I think these questions certainly should be resolved.

I think the proponents of Mr. Carswell are not taking this matter seriously enough. Here is a man who would like to sit on the Supreme Court of the United States, and not in one instance but in many instances now his credibility has been challenged. Do we want a man on the Supreme Court whose credibility has been challenged and the issue has not been resolved? In fairness to Judge Carswell, as well as to the Supreme Court and to the President who appointed him, to the Senate, and to the Nation, we ought to resolve these questions of doubt.

I think it is unfair to send a man to the Supreme Court as long as these

clouds are above him, as long as these suspicions are there, as long as these questions about his credibility exist. Time after time after time now evidences of doubt have appeared in the record.

I think this is as proper and as valid and as strong a case for recommittal perhaps we have ever had. I know that some have argued that recommittal is a subterfuge just to get rid of Judge Carswell. We have been debating primarily the case for an up-and-down vote on confirmation. But since that time many issues have come to light which we did not have before us before, which now fully justify a motion to recommit.

All I am suggesting to the proponents of the nomination of Judge Carswell is that the Senate has a right to know, and the people have a right to know, whether Judge Carswell is telling the truth. If he is telling the truth, perhaps he is qualified to sit on the Supreme Court, taking into consideration other qualifications. If he is not telling the truth, I do not care what other qualifications he has. Then I say he is not qualified to sit on the Supreme Court of the United States, if he comes before a Senate Judiciary Committee, sitting on his nomination, and deliberately tells them an untruth. How can we expect respect for order, how can we expect respect for law and justice in this country, if we confirm the nomination of a man whom we believe to be telling an untruth? We can only know that he is not telling an untruth if we go back to the Judiciary Committee, bring in these witnesses, and clear up the doubts that have been raised against him.

I thank the Senator for yielding.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. BYRD of West Virginia. I wish to ask the Senator a question which is not intended to be a flippant one, but is intended to be a serious one.

The Senator has graciously yielded to a number of Senators a number of times in this extended colloquy, and the Senator is laboring here tonight under greater burdens than are the rest of us. The hour is late. It is 5 minutes to 8 o'clock. We will be in session again tomorrow. We are coming in at 10 a.m. tomorrow, and there will be three special orders, none of which will extend beyond a half hour. Statements by other Senators on the Carswell nomination can also be made tomorrow.

I wish to ask the able Senator from Indiana how much longer he expects to speak if uninterrupted.

Mr. BAYH. I think the Senator does pose not a flippant but a serious question.

I think that perhaps the hypothetical question is beyond the realm of reason. Inasmuch as we have had a considerable amount of discussion—and I think most of it has been very much to the point—I would say, directly answering the specific question, perhaps 10 or 15 minutes, and perhaps another 15 minutes or a half-hour of discussion.

The Senator from Indiana regrets keeping his colleagues in at this late hour. I feel that the gravity of this nomination is such that at least the Senator from Indiana wants to take advantage of this opportunity to express himself. He does not ask anybody else to stay with him. Because of certain personal problems, of which the Senator from West Virginia is aware, the Senator from Indiana will not be able to be in the Senate tomorrow, and it is for that reason that I feel this is the opportunity I must take to express myself fully relative to the Presidential letter. That is why we are here.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield further?

Mr. BAYH. I yield.

Mr. BYRD of West Virginia. Let me say further that I recognize the necessity for the Senator's speech this evening, and there was not meant to be in my question any implication that the able Senator from Indiana was delaying the rest of us. I have been sitting here, and I know a colloquy has developed, and it has not been the Senator from Indiana solely who has spoken. Certainly, no reflection is intended to be cast upon any Senator who has participated in the colloquy. Every Senator has acted within his rights.

I merely wanted to determine how much longer the able Senator's speech would require if he were to be permitted to proceed without interruption. I would hope that the Senator would be allowed to proceed without interruption except for questions and complete his speech, and then if other Senators want to speak, we could go from there. Perhaps this suggestion would expedite matters tonight. If other Senators wish to speak further on this subject, perhaps we could get some additional orders for tomorrow and even come in earlier than 10 o'clock.

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

Mr. BROOKE. Mr. President, will the Senator from West Virginia yield?

Mr. BYRD of West Virginia. The Senator from Indiana has the floor.

Mr. BROOKE. Mr. President, will the Senator yield for a question?

Mr. BAYH. I yield.

Mr. BROOKE. The distinguished acting majority leader has posed a very important question. The Senate, as I understand it, will come in at 10 a.m. tomorrow, and there will be, for about an hour and a half, three speeches of 30 minutes each.

Mr. BYRD of West Virginia. That is correct.

Mr. BROOKE. I understand that after that there will be an important resolution that is the pending business which will come before the Senate. That would mean that there is a possibility that tonight would end the debate on Judge Carswell until such time as the Senate convenes on Monday, at 10 a.m.; at that time we have 3 hours remaining, to be divided equally between the proponents and the opponents.

Some matters of grave importance have come before the Senate concerning the Carswell matter, and it would seem to me that the acting majority leader could perform a great service if he could assist in freeing time on the floor tomorrow for further debate on the Carswell matter after the conclusion of the three 30-minute speeches. I think that if that is not done, that will be the only time left to those who wish to discuss this important issue and matters that have come to light of recent vintage. That will be the only time left to those Senators who want to talk on these matters.

I know that the Senator may not have the authority to do so at this time, as the hour is late, and he does want to be considerate. But we certainly would like an opportunity subsequently, and prior to Monday morning, to continue this important debate on the Carswell matter.

Mr. BYRD of West Virginia. Mr. President, if the Senator from Indiana will yield so that I may respond, I know of no reason why there will not be opportunity tomorrow to discuss the Carswell nomination further. The so-called germaneness rule, paragraph 3 of rule VIII, applies only for 3 hours—3 hours following the laying before the Senate of pending or unfinished business. Pending business of some minor nature may be laid before the Senate by the majority leader immediately upon the securing of the floor under the previous order by the able Senator from Michigan (Mr. GRIFFIN), if, of course, Mr. GRIFFIN should yield for that purpose.

That would then be the pending business. He may do that 5 minutes after we come in at 10 o'clock, and then the Pastore rule would begin operating at that point for 3 hours, even though the business were disposed of by unanimous consent and without debate.

As long as there is no business laid before the Senate following that, concerning which statements must be germane, Senators can talk about anything. But the 3 hours continue running. After the 3 hours have been consumed, regardless of what business we may have before the Senate, it is the right of any Senator, if he can get the floor—and under the rule, the President of the Senate is supposed to recognize the Senator who first seeks recognition—it is the right of any Senator once the germaneness rule no longer operates, to talk on any subject he wants.

If the Senator from Massachusetts would like to discuss this nomination further tomorrow, he can do so and he could not be precluded, once that 3-hour rule had passed. Even during the 3-hour period, the Senator may ask unanimous consent to waive the Pastore rule, and falling that, he can move to do it.

Statements can also be made on the Carswell nomination during morning business if a period for morning business is ordered and Senators permitted to make speeches therein. I really think there will be ample time tomorrow for further discussion of this nomination, so I cannot see the difficulty the Senator envisions. Moreover, the pending Senate resolution is not bound to be finally acted upon tomorrow.

Mr. BROOKE. I thank the distinguished Senator from West Virginia. In his customary, knowledgeable manner, he has described the recourses which are available to us. I thank the Senator for that assurance.

Mr. TYDINGS. I should like to comment in response to the distinguished

Senator, with regard to the conference, but I have already inserted a speech which I had originally scheduled to give at 3 o'clock today, which would have taken an hour and a half if delivered. However, there are certain points in the speech of the distinguished Senator from Indiana with respect to the President's position on the historical responsibilities of the Senate as to advise and consent, so that I wish to join him in asking certain questions and give certain material for the RECORD, so that his delivery may be delayed by some 15 or 20 minutes by reason of the questions and the material I shall place in the RECORD.

Mr. BAYH. I shall be here as long as those who are interested in this matter care to discuss it.

Mr. President, I think we have had a rather thorough discussion, for the consideration of all who may read the RECORD, on the President's accusation that the charge of lack of candor is specious. So, let the RECORD speak for itself.

I ask unanimous consent to have printed in the RECORD an editorial published in the Washington Post on March 27, entitled "Judge Carswell: A Question of Candor."

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

JUDGE CARSWELL: A QUESTION OF CANDOR

It is not normally our practice to publish letters to the editor which are released to the press before we have even received them but we make an exception in today's letters column out of courtesy to Senators Hruska, Allott, Dole and Gurney, and because a crucial issue is involved. The senators have chosen to see in a news story, on the front page of this newspaper on Thursday, "charges" made in "desperation" on the eve of a vote on the nomination of Judge Carswell to the Supreme Court. Leaving aside the question of who may or may not be desperate in this matter at this moment, no charges, let alone desperate charges, were made in that story; it consisted of a simple, chronological recital of a set of facts which, taken together, show that Judge Carswell's memory about his role in the affair of the segregated golf club had been thoroughly refreshed *the night before* he appeared at a Senate hearing in which he gave every indication from his testimony that he could barely remember anything about it and hadn't given it a thought for years.

The senators are right in saying he first denied he had been an incorporator—that is, had signed the papers giving birth to the club—but later modified that and eventually, under questioning from Senator Kennedy who had the papers in his hands, said he had signed them. At the time, the sequence led us and, we suspect, others to believe that the judge had forgotten about the details of the incident. Now, learning about the meeting the preceding evening when he was questioned about the club and shown the incorporation papers he had signed, you have to wonder how hazy his memory really was; certainly it improved markedly as the questioning became more persistent and it began to appear that the senators had evidence in hand.

Thus, the real issue is not whether Judge Carswell misled the committee about his role as an incorporator but whether he misled it into thinking he had forgotten all about that until the morning of his testimony when he suddenly saw news stories concerning it. This, as well as a basic question of whether he was candid in saying he knew nothing about a motivation in this transaction to convert public property to private use in order to avoid desegregation, is best resolved by reprinting excerpts of what he said. Bear in mind, in reading the following extracts, that Judge Carswell had discussed this very question at length *the preceding night* with two representatives of the American Bar Association, who brought along for his inspection a copy of the articles of incorporation of the club.

"Senator HRUSKA. Now, this morning's paper had some mention that you were a member of a country club down in Tallahassee. I am confident that you read the account. I would be safe in saying all of us did. You are entitled to tell your side of the story and tell us just what the facts are.

"Judge CARSWELL. I read the story very hurriedly this morning, senator, certainly. I am aware of the genuine importance of the facts of that. Perhaps this is it now. I was just going to say I had someone make a phone call to get some dates about this thing. This is not it. (Noting a paper on his desk). I can only speak upon my individual recollection of this matter. I was never an officer or director of any country club anywhere. Somewhere about 1956, someone, a friend of mine—I think he was Julian Smith—said, we need to get up some money to do something about repairing the little wooden country club, and they were out trying to get subscriptions for this. If you gave them $100, you would get a share in the stock in the rebuilding of the clubhouse. I did that. Later . . . I was refunded $75 of that $100 in February of the following year, 1957 . . . The import of this thing, as I understand it, was that I had something to do with taking the public lands to keep a segregated facility. I have never had any discussion with any human being about the subject of this at all. This is the totality of it, senators. I know no more about it than that.

"Senator HRUSKA. Judge Carswell, it was sought to make of you a director in that country club. Did you ever serve as a director?

"Judge CARSWELL. No, sir; nor in any other official capacity.

"Senator HRUSKA. Did you ever attend any of the director's meetings?

"Judge CARSWELL. Never.

"Senator HRUSKA. Were you an incorporator of that club as was alleged in one of the accounts I read?

"Judge CARSWELL. No, sir.

* * * * *

"Senator HRUSKA. Are you or were you at the time, familiar with the by-laws or the articles of incorporation?

"Judge CARSWELL. No, sir.

"Senator HRUSKA. Could the stock you received on this occasion have borne the label, 'incorporator,' indicating that you were one of the contributors to the building fund for the clubhouse?

"Judge CARSWELL. Perhaps. I have no personal recollection.

* * * * *

"Senator KENNEDY. Did you in fact sign the letter of incorporation?

"Judge CARSWELL. Yes, sir. I recall that.

"Senator KENNEDY. What do you recall about that?

"Judge CARSWELL. That they told me when I gave them $100 that I had the privilege of being called an incorporator. They might have put down some other title, as if you were potentate or something. I don't know what it would have been. I got one share and that was it.

* * * * *

"Senator KENNEDY. The point . . . is whether, in fact, you were just contributing $100 to repair of a wooden clubhouse, or whether in fact, this was an incorporation of a private club, the purpose of which was to avoid the various court orders which had required integration of municipal facilities . . .

"Judge CARSWELL. I state again, unequivocably and as flatly as I can, that I have never had any discussions with anyone. I never heard any discussions about this."

A day later, former Governor Collins of Florida supported Judge Carswell's testimony by saying that he, too, had put up $100 for the club and that he doubted he would have if he had known there were racial overtones in its creation. Subsequently, some residents of Tallahassee and a Miami lawyer who happened to be trying a case there at the time have stated that talk about the transfer of the golf club to keep it segregated was commonplace. Indeed, columnist James J. Kilpatrick, who thinks Carswell should be confirmed, wrote this week, "My own enthusiasm for Carswell is diminished by his evasive account of his participation in the golf club incident of 1956 . . . Forgive my incredulity, but if Carswell didn't know the racial purpose of this legal legerdemain, he was the only one in north Florida who didn't understand."

Did Judge Carswell give the committee the impression that the whole incident hit him as a bolt out of the blue in that morning's newspapers or did he give them the impression he had discussed the matter and been shown the signed incorporation papers the night before? Did Judge Carswell know what was up concerning segregation when that golf course was formed (he was then the United States Attorney for that area) or was he, in Mr. Kilpatrick's words, "the only one in north Florida" who didn't know? Was he candid about that and in saying of his role in forming the club—in sequence, under probing—first that he wasn't an incorporator, second that maybe he was, third that he was. Was he candid or was he trying to slip something past the committee members? We think it was the latter and we think it argues powerfully against his fitness to serve on the Supreme Court.

Mr. BAYH. Mr. President, two other basic points that I should like to deal with deal with the Presidential reply or letter to our distinguished colleague from Ohio (Mr. SAXBE). The first deals with the matter of the nominee's position on human rights and civil rights—this broad and important area—and the second and the last point which I tried to discuss this evening goes to the more basic and fundamental question of State rights.

Let me deal with the first point as quickly as I know how. The President in his letter made the flat statement:

No decision he (Judge Carswell) has rendered can be fairly labeled "racist" in any respect.

Although one might disagree with the extent of hostility required to make a decision "racist," one can hardly disagree with the conclusion that Judge Carswell's record on the bench is one hostile to the interests of racial justice. The 17 separate cases in which the Judge was unanimously reversed by the fifth circuit on questions of civil rights or human rights have already been thoroughly discussed—although the President did not mention them in his letter. Beyond this record, however, the details of several particular instances raise serious questions of racial bias.

One of the most surprising acts of judicial hostility involved nine clergymen arrested in the Tallahassee Airport restaurant in 1961. They asked for a writ of habeas corpus from Judge Carswell's court, and the writ was denied. On

appeal, the fifth circuit ordered the judge to hold a hearing on the case immediately, if the State court did not do so. Judge Carswell, in the presence of the attorney for the nine imprisoned clergymen, then told the city attorney prosecuting the case:

If you go ahead and reduce these sentences, then there will be no hearing. There will not be anything. It will be moot.

On Judge Carswell's advice, this is precisely the action that was taken—over the objection of the clergymen, who wanted their claims decided on the merits so that their records could be cleared. As the State court judge told them, when he denied them the opportunity to vindicate themselves:

Now you have got what you came for. You have got a permanent criminal record.

Another indication of Judge Carswell's racial views comes from the chain of events arising out of the arrest of a group of voting registration volunteers and their imprisonment in the Gadsden County jail. In this case:

First. Contrary to controlling precedent in the fifth circuit, *Lefton* v. *Hattiesburg*, 333 F. 2d 280, an illegal filing fee was required by Judge Carswell's court before the petition for removal to Federal court was accepted.

Second. When a petition for habeas corpus was filed, Judge Carswell delayed the proceeding by requiring the petition to be resubmitted on a special form, which had been designed for a different class of cases.

Third. The proceeding was delayed further by Judge Carswell's requirement that counsel attempt to secure the signatures of the prisoners, although the attorney's signature was all that could be required under rule 11 of the Federal Rules of Civil Procedure.

Fourth. Judge Carswell told the attorneys representing the civil rights workers that he would try, if at all posible, to deny the petition.

Fifth. When he finally granted the petition, as the law expressly required, he violated 28 U.S.C. 1446 by refusing to have his marshal serve the writ on the Gadsden County sheriff.

Sixth. Despite the complexity of the questions posed, without any request from the State, and without affording the civil rights workers any hearing whatever, he remanded the case to the State on his own motion and made possible their immediate rearrest.

That, Mr. President, is about as unconscionable a thing as I have ever seen to have to fight a judge tooth and toenail right down to the mat to get him to grant habeas corpus to let seven young people out of jail and then he turns around on his own volition and waives jurisdiction and gives it back to the same sheriff who arrested them in the first place.

Seventh. Notwithstanding the congressional grant of a special right of appeal from civil rights remands, he even refused to stay his remand order, a decision promptly reversed by a single judge of the fifth circuit.

When the fifth circuit subsequently considered this case on the merits, it unanimously reversed Judge Carswell. *Wechsler* v. *County of Gadsden* 351 F.2d 311 (1965).

Another example of Judge Carswell's hostility on the question of racial justice appears in his final decision in the Tallahassee airport restaurant case, Brooks against City of Tallahassee.

I want particularly to emphasize this case, Mr. President, because it is one which has been used by the Senator from Nebraska (Mr. HRUSKA) and other supporters of Judge Carswell to show that he is a great pro-civil-rights judge.

The facts of the matter are these:

In this case, Judge Carswell decided that the airport could no longer be operated on a segregated basis, a decision plainly required by the Supreme Court's earlier holding on a question directly in point in *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961). Senator HRUSKA has contended that the Brooks decision is one of Judge Carswell's "pro-civil-rights" decisions. However, the order issued by Judge Carswell in this allegedly "pro-civil-rights" decision includes a very unusual—and distinctly anti-civil-rights—statement. In the last paragraph of his order, Judge Carswell announced:

Nothing contained in this order shall be construed as requiring the city of Tallahassee to operate under lease or otherwise restaurant facilities at Tallahassee Municipal Airport.

This statement is clearly irrelevant to the decision before the judge. It is obviously a gratuitous offer of advice by Judge Carswell as to how the city could in the final result avoid its obligation to integrate public facilities.

In other words this great pro-civil-rights judge, this humane nominee, follows the Supreme Court law relative to restaurants and public facilities and says we have to keep the door open for everybody and then on his own volition he adds a little statement in the interest of his order, saying:

Although you have to be desegregated if you stay open, there is nothing in the law that makes you operate. So, you can really get around this rule by closing down the facility.

Whether or not this is racism I leave to other Members of the Senate. But I have no trouble concluding that this is a record of hostility to the cause of racial justice, a record of insensitivity to the most pressing problem of our times, a record not suited to a Justice of the Supreme Court.

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

Mr. BAYH. I yield.

Mr. TYDINGS. I think the Senator's special comment on President Nixon's claim that the Senate must vote to confirm Judge Carswell or place in jeopardy the historic constitutional balance between the executive and the legislative has been extremely pertinent and well phrased.

I would like at this time to ask the Senator a number of questions and ask the Senator whether he would agree with the Senator from Maryland.

Mr. BAYH. Mr. President, would the Senator from Maryland permit me to move a bit further with my speech?

Mr. TYDINGS. I withhold my questions.

Mr. BAYH. The Senator brought up the last point I was about to embark upon. I think it is very pertinent. I will be glad to yield to the Senator or to discuss the matter with any other Senator.

The President's letter concludes, as the Senator from Maryland knows, with his central argument, an argument which made the front pages and headlines in all of the newspapers which in my judgment reveals a fundamental understanding of the role of the Senate in the nomination of a Supreme Court justice.

The President says:

What is centrally at issue in this nomination is the constitutional responsibility of the President to *appoint* members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of *the one person entrusted by the Constitution with the power of appointment.*

The President goes on to say:

Under the Constitution, it is the *duty of the President to appoint* and the Senate to advise and consent.

This interpretation is wrong as a matter of constitutional law, wrong as a matter of history, and wrong as a matter of public policy. The Constitution does not, as the President three times tries to tell Senator SAXBE, confer upon the President the power to "appoint" Supreme Court Justices. Article II, section 2 of the Constitution carefully provides:

The President . . . shall *nominate,* and *by and with the advice and consent of the Senate* shall appoint . . . Judges of the Supreme Court.

The President is not, as President Nixon's letter tries to tell us, "the one person entrusted by the Constitution with the power of appointment." It is not, as the President tries to tell us, "the duty of the President to appoint." The Constitution clearly provides that the power and responsibility for Supreme Court appointments are to be shared between the President and the Senate, the President to "nominate" and the Senate to "advise and consent"—or, as it has some two dozen times in the history of our Republic, to withhold its advice and consent. This is not a quibble over semantics—it is a fundamental question of constitutional law and the distribution of powers.

It would seem that a simple and straightforward reading of the Constitution would be sufficient to demonstrate the shared power and responsibility of the President and the Senate over Supreme Court appointments. But if any confirmation is needed, one can find more than enough in the pages of American history. One of the grievances set forth in the Declaration of Independence concerned the appointment of judges by King George III: "He has made Judges dependent on his Will alone." In the Constitutional Convention there was very substantial support for the appointment of federal judges by the Senate alone, with no role whatsoever for the President.

Mr. TYDINGS. Is it not a fact that the nomination by President George Washington of a man to be Chief Justice of

the United States was turned down by the Senate of the United States?

Mr. BAYH. The Senator is correct. That was Judge John Rutledge who was turned down.

Mr. TYDINGS. He was from South Carolina.

Mr. BAYH. The Senator is exactly right. If we look at the record, we first see that there was substantial support for the appointment of Federal judges by the Senate alone, with no power whatsoever for the President.

Mr. TYDINGS. Is it not a fact that was in the original draft of the Constitutional Convention that was sent to the Committee on Detail and it was only after subsequent debate that the Constitution was agreed to so as to provide that the President would nominate and the Senate would advise and consent?

Mr. BAYH. The Senator is exactly right. That was adopted on the 21st day of July 1787, in the early working days of the Constitution.

Mr. TYDINGS. Mr. President, I will have printed in the RECORD a law note which will appear in the Yale Law Journal, written by the distinguished Prof, Charles L. Black, Jr., entitled "A Note on Senatorial Consideration of Supreme Court Nominees."

The article traces the very history of the Constitutional Convention proceedings which the Senator from Indiana has pointed out. And it makes reference to the Federalist Papers, particularly Nos. 76 and 77 with respect to what the constitutional fathers intended.

I read from one part of the Federalist Papers, No. 76, which was written by Alexander Hamilton:

The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.

That is a quotation from Alexander Hamilton in the Federalist Papers.

I read the final paragraph of Professor Black's article:

To me, there is just no reason at all for a Senator's not voting, in regard to confirmation of a Supreme Court nominee, on the basis of a full and unrestricted review, not embarrassed by any presumption, of the nominee's fitness for the office. In a world that knows that a man's social philosophy shapes his judicial behavior, that philosophy is a factor in his fitness. If it is a philosophy the Senator thinks will make a judge whose service on the Bench will hurt the country, then the Senator can do right only by treating this judgment of his unencumbered by deference to the President's as a satisfactory basis in itself for a negative vote. I have as yet seen nothing textual, nothing structural, nothing prudential, nothing historical, that tells against this view.

Mr. President, I ask unanimous consent that the article to which I have referred be printed at this point in the RECORD.

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

A NOTE ON SENATORIAL CONSIDERATION OF SUPREME COURT NOMINEES

(By Charles L. Black, Jr.*)

If a President should desire, and if chance should give him the opportunity, to change entirely the character of the Supreme Court, shaping it after his own political image, nothing would stand in his way except the United States Senate. Few constitutional questions are then of more moment than the question whether a Senator properly may, or even at some times in duty must, vote against a nominee to that Court, on the ground that the nominee holds views which, when transposed into judicial decisions, are likely, in the Senator's judgment, to be very bad for the country. It is the purpose of this piece to open discussion of this question; I shall make no pretense of exhausting that discussion, for my own researches have not proceeded far enough to enable me to make that pretense.[1] I shall, however, open the discussion by taking, strongly, the position that a Senator, voting on a presidential nomination to the Court, not only may but generally ought to vote in the negative, if he firmly believes, on reasonable grounds, that the nominee's views on the large issues of the day will make it harmful to the country for him to sit and vote on the Court, and that, on the other hand, no Senator is obligated simply to follow the President's lead in this regard, or can rightly discharge his own duty by so doing.

I will open with two prefatory observations.

First, it has been a very long time since anybody who thought about the subject to any effect has been possessed by the illusion that a judge's judicial work is not influenced and formed by his whole life view, by his economic and political comprehensions, and by his sense, sharp or vague, of where justice lies in respect of the great questions of his time. The *loci classici* for this insight, now a platitude, are in such writers as Oliver Wendell Holmes, Jr., Felix Frankfurter, and Learned Hand. It would be hard to find a well-regarded modern thinker who asserted the contrary. The things which I contend are both proper and indispensable for a Senator's consideration, if he would fully discharge his duty, are things that have definitely to do with the performance of the judicial function. The factors I contend are for the Senator's weighing are factors that go into composing the quality of a judge. The contention that they may not properly be considered therefore amounts to the contention that some things which make a good or bad judge may be considered—unless the Senator is to consider nothing—while others may not.

Secondly, a certain paradox would be involved in a negative answer to the question I have put. For those considerations which I contend are proper for the Senator are considerations which certainly, notoriously, play (and always have played) a large, often a crucial, role in the President's choice of his nominee; the assertion, therefore, that they should play no part in the Senator's decision amounts to an assertion that the authority that must "advise and consent" to a nomination ought not to be guided by considerations which are hugely important in the making of the nomination. One has to ask, "Why?" I am not suggesting now that there can be no answer; I only say that an answer must be given. In the normal case, he who lies under the obligation of making up his mind whether to advise and consent to a step considers the same things that go into the decision whether to take that step. In the normal case, if he does not do this, he is derelict in his duty.

I have called this a constitutional question, and it is that (though it could never reach a court), for it is a question about the allocation of power and responsibility in government. It is natural, then, for American lawyers who look first at the applicable text, for what light it may cast. What expectation seems to be projected by the words, "The President . . . shall nominate, and by and with the Advice and Consent of the Senate shall appoint . . . Judges of the Supreme Court . . . "?[2] Do these words suggest a rubber-stamp function, confined to screening out proven malefactors? I submit that they do not. I submit that the word "advice," unless its meaning has radically changed since 1787, makes next to impossible that conclusion.

Procedurally, the stage of "advice" has been short-circuited.[3] Nobody could keep the President from doing that, for obvious practical reasons. But why should this procedural short-circuiting have any effect on the *substance* so strongly suggested by the word "advice"? He who merely *consents* might do so perfunctorily, though that is not a necessary but merely a possible gloss. He who *advises* gives or withholds his advice on the basis of *all* the relevant considerations bearing on decision. Am I wrong about this usage? Can you conceive of sound "advice" which is given by an advisor who has deliberately barred himself from considering some of the things that the person he is advising ought to consider, and does consider? If not, then can the Presidents, by their unreviewable short-circuiting of the "advice" stage, magically have caused to vanish the Senate's responsibility to consider what it must surely consider in "advising"? Or is it not more reasonable to say that, in deciding upon his vote at the single point now left him, every Senator ought to consider everything he would have considered if, procedurally, he were "advising"? Does not the word "advice" permanently and inescapably define the *scope* of Senatorial consideration?

It is characteristic of our legal culture both to insist upon the textual reference-point, and to be impatient when much is made of it, so I will leave what I have said about this to the reader's consideration, and pass on to ask whether there is anything else in the Constitution itself which compels or suggests a restriction of Senatorial consideration to a few rather than to all of the factors which go to making a good judge. I say there is not; I do not know what it would be. The President has to concur in legislation, unless his veto be overridden. The Senate has to concur in judicial nominations. That is the simple plan. Nothing anywhere suggests that some duty rests on the Senator to vote for a nomination he thinks unwise, any more than that a duty rests on the President to sign bills he thinks unwise.

Is there something, then, in the whole structure of the situation, something unwritten, that makes it the duty of a Senator to vote for a man whose views on great questions the Senator believes to make him dangerous as a judge? I think there is not, and I believe I can best make my point by a contrast. The Senate has to confirm—advise and consent to—nominations to posts in the executive department, including cabinet posts. Here, I think, there is a clear structural reason for a Senator's letting the President have pretty much anybody he wants, and certainly for letting him have people of any political views that appeal to him. These are his people; they are to work with him. Wisdom and fairness would give him great latitude, if strict constitutional obligation would not.

Footnotes at end of article.

Just the reverse, just exactly the reverse, is true of the judiciary. The judges are *not* the President's people. God forbid! They are not to work with him or for him. They are to be as independent of him as they are of the Senate, neither more nor less. Insofar as their policy-orientations are material—and, as I have said above, these can no longer be regarded as immaterial by anybody who wants to be taken seriously, and are certainly not regarded as immaterial by the President—it is just as important that the Senate think them not harmful as that the President think them not harmful. If this is not true, why is it not? I confess here I cannot so much as anticipate a rational argument to which to address a rebuttal.

I can, however, offer one further argument tending in the same direction. The Supreme Court is a body of great power. Once on the Court, a Justice wields that power without democratic check. This is as it should be. But is it not wise, before that power is put in his hands for life, that a nominee be screened by the democracy in the fullest manner possible, rather than in the narrowest manner possible, under the Constitution? He is appointed by the President (when the President is acting at his best) because the President believes his world view will be good for the country, as reflected in his judicial performance. The Constitution certainly permits, if it does not compel, the taking of a second opinion on this crucial question, from a body just as responsible to the electorate, and just as close to the electorate, as is the President. Is it not wisdom to take that second opinion in all fullness of scope? If not, again, why not? If so, on the other hand, then the Senator's duty is to vote on his whole estimate of the nominee, for that is what constitutes the taking of the second opinion.

Textual considerations, then, and high-political considerations, seem to me strongly to thrust toward the conclusion that a Senator both may and ought to consider the life view and philosophy of a nominee, before casting his vote. Is there anything definite in history tending in the contrary direction?

In the Constitutional Convention, there was much support for appointment of judges *by the Senate alone*—a mode which was approved on July 21, 1787,[4] and was carried through into the draft of the Committee of Detail.[5] The change to the present mode came on September 4th, in the report of the Committee of Eleven[6] and was agreed to *nem. con.* on September 7th.[7] This last vote must have meant that those who wanted appointment by the Senate alone—and in some cases by the whole Congress—were satisfied that a compromise had been reached, and did not think the legislative part in the process had bsen reduced to the minimum. The whole process, to me, suggests the very reverse of the idea that the Senate is to have a confined role.

I have not read every word of *The Federalist* for this opening-gun piece, but I quote here what seem to be the most apposite passages, from Numbers 76 and 77:

"But might not his nomination be overruled? I grant it might, yet this could only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though perhaps not in the first degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted, by the preference they might feel to another, to reject the one proposed; because they could not assure themselves, that the person they might wish would be brought forward by a second or by any subsequent nomination. They could not even be certain, that a future nomination would present a candidate in any degree more acceptable to them; and as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the chief magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

"To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though, in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration."

It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger to his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to the one and to the other. He would be both ashamed and afraid to bring forward for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.[8]

* * * * *

"If it be said they might sometimes gratify him by an acquiescence in a favorite choice, when public motives might dictate a different conduct, I answer, that the instances in which the President could be personally interested in the result, would be too few to admit of his being materially affected by the compliances of the Senate. The *power* which can *originate* the disposition of honors and emoluments, is more likely to attract than to be attracted by the *power* which can merely obstruct their course. *If by influencing the President be meant restraining him, this is precisely what must have been intended.* [emphasis supplied] And it has been shown that the restraint would be salutary, at the same time that it would not be such as to destroy a single advantage to be looked for from the uncontrolled agency of that Magistrate. The right of nomination would produce all the good of that of appointment, and would in a great measure avoid its evils."[9]

I cannot see, in these passages, any hint that the Senators may not or ought not, in voting on a nominee, take into account anything that they, as serious and public-spirited men, think to bear on the wisdom of the appointment. It is predicted, as a mere *probability*, that Presidential nominations will not often be "overruled." But "special and strong reasons," thus generally characterized, are to suffice. Is a Senator's belief that a nominee holds skewed and purblind views on social justice not a "special and strong reason"? Is it not as "special and strong" as a Senator's belief that an appointment has been made "from a view to popularity"—a reason which by clear implication *is* to suffice as support for a negative vote? If there is anything in *The Federalist Papers* neutralizing this inference, I should be glad to see it.

When we turn to history, the record is, as always, confusing and multifarious. One can say with confidence, however, that a good many nominations have been rejected by the Senate for repugnancy of the nominee's views on great issues, or for mediocrity, or for other reasons no more involving moral turpitude than these. Jeremiah Sullivan Black, an eminent lawyer and judge, seems to have been rejected in 1861 because of his views on slavery and secession.[10] John J. Crittenden was refused confirmation in 1829 on strictly partisan grounds.[11] Wolcott was rejected partly on political grounds, and partly on grounds of competence, in 1811.[12] There is the celebrated Parker case of this century.[13] The perusal of Warren [14] will multiply instances.

I am very far from undertaking any defense of each of these actions severally. I am not writing about the wisdom, on the merits, of particular votes, but of the claim to historical authenticity of the supposed "tradition" of the Senators' refraining from taking into account a very wide range of factors, from which the nominees' views on great public questions cannot, excepted arbitrarily, be excluded. Such a "tradition," if it exists, exists somewhere else than in recorded history. Of course, all these instances may be dismissed as improprieties, but then one must go on and say why it *is* improper for the Senate, and each Senator, to ask himself, before he votes, *every* question which heavily bears on the issue whether the nominee's sitting on the Court will be good for the country.

I submit that this "tradition" is just a part of the twentieth-century mystique about the Presidency. That mystique, having led us into disastrous undeclared war, is surely due for reexamination. I do not suggest that it can be or should be totally rejected. I am writing here only about a little part of its consequences.

To me, there is just no reason at all for a Senator's not voting, in regard to confirmation of a Supreme Court nominee, on the basis of a full and unrestricted review, not embarrassed by any presumption, of the nominee's fitness for the office. In a world that knows that a man's social philosophy shapes his judicial behavior, that philosophy is a factor in his fitness. If it is a philosophy the Senator thinks will make a judge whose service on the Bench will hurt the country, then the Senator can do right only by treating this judgment of his, unencumbered by deference to the President's, as a satisfactory basis in itself for a negative vote. I have as yet seen nothing textual, nothing structural, nothing prudential, nothing historical, that tells against this view. Will someone please enlighten me?

FOOTNOTES

* Henry R. Luce, Professor of Jurisprudence, Yale University. B.A. 1935, M.A. 1938, University of Texas; LL.B 1943, Yale.

[1] I shall not provide this discussion with an elaborate footnote apparatus. I am sorry to say that I cannot acknowledge debt, for I am writing from my mind; experience teaches that, when one does this, one unconsciously draws on much reading consciously forgotten; for all such obligations unwittingly incurred I give thanks. I have had the benefit of discussion of many of the points made herein with students at the Yale Law School, of whom I specifically recollect Donald Paulding Irwin; I have also had the benefit of talking to him about the piece after it was written. (A specific addendum in proof: Harris, THE ADVICE AND CONSENT OF THE SENATE (1953) came to my attention and hands after the present piece had gone to the printer. This excellent and full account of the whole function would doubtless have fleshed out my own thoughts, but I see nothing in the book that would make me alter the

Footnotes at end of article.

position taken here, and I hope a single-shot thesis like the present may be useful.)

[2] U.S. CONST. art. II, § 2, cl. 2.

[3] Even this short-circuiting is not complete. First, the President's "appointment," *after* the Senate's action, is still voluntary (Marbury v. Madison, 5 U.S. (1 Cranch) 137, 155 (1803)), so that in a sense the action of the Senate even under settled practice may be looked on as only "advisory" with respect to a step from which the President may still withdraw. Secondly, nominations are occasionally withdrawn after public indications of Senate sentiment (and probable action) which may be thought to amount to "advice."

[4] 2 Records of the Federal Convention of 1787, at 83 (M. Farrand ed. 1911).

[5] *Id.* at 132, 146, 155, 169, 183.

[6] *Id.* at 498.

[7] *Id.* at 539.

[8] The Federalist No. 76, at 494–95 (Modern Library 1937) (Alexander Hamilton).

[9] *Id.* No. 77, at 498 (Alexander Hamilton).

[10] 2 C. Warren, The Supreme Court in the United States History 364 (rev. ed. 1926).

[11] 1 *Id.* at 704.

[12] *Id.* at 413.

[13] L. Pfeffer, The Honorable Court, A History of the United States Supreme Court 288 (1965).

[14] C. Warren, The Supreme Court in United States History (rev. ed. 1926).

Mr. TYDINGS. Mr. President, at this point I would like to read some very pertinent paragraphs from an article written by the distinguished Senator from Michigan (Mr. GRIFFIN) that appeared in the prospectus of the University of Michigan in April 1969.

This has to do with the nomination of Mr. Justice Fortas to be Chief Justice of the United States. In the article the distinguished minority whip, I think, ably presents very tellingly the complete rebuttal to the statement of the President of the United States in his letter to the Senator from Ohio (Mr. SAXBE) which denigrates the position and role of the Senate in its advice and consent function.

I ask unanimous consent that the entire part of the Law Review article entitled "The Historical Context for Advice and Consent," appearing on pages 287 through 291 be printed in the RECORD.

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

THE HISTORICAL CONTEXT FOR ADVICE AND CONSENT

Much of the controversy revolves around the appropriate functions of the President and of the Senate in the circumstances of a nomination to the Supreme Court. There are some who suggest that the Senate's role is limited merely to ascertaining whether a nominee is "qualified" in the sense that he possesses some minimum measure of academic background or experience. It should be emphasized at the outset that any such view of the Senate's function with respect to nominations for the separate judicial branch of the government is wrong and simply does not square with the precedents or with the intention of those who conferred the "advice and consent" power upon the Senate.

I am firmly convinced that approval by the confirming authority of a nomination to the third highest post in our land, the highest judicial post, on the basis of the record before the Senate in the Fortas case, would have been a disservice to the nation and would have constituted an abdication of the "advice and consent" power of the Senate. To assure the independence of the judiciary as a separate and coordinate branch, then, it is important to recognize that this power of the Senate with respect to the judiciary is not only real, but it is at least as important as the power of the President to nominate.

No one denies the constitutional power of the President to make an appointment to the Supreme Court, technically even at a time when he is only a few months from leaving office. But, of course, that is *not* the point. Some have not understood, or will not recognize, that under our Constitution the power of any President to nominate constitutes only *one-half* of the appointing process. The *other* half of the appointing process lies within the jurisdiction of the Senate, which has not only the constitutional power but the solemn obligation to determine whether to confirm such a nomination. Because the Senate has not used its power of "advice and consent," there is a widespread belief that it is almost a rubber-stamp.

However, against the backdrop of history we must recognize that the Senate has not only the right but the responsibility to consider more than the mere qualifications of a nominee to the Supreme Court of the United States, the highest tribunal in a separate, independent and coordinate branch of the government. The Senate has a duty to look beyond the question: "Is he qualified?" The Senate must not be satisfied with anything less than application of the highest standards, not only as to professional competence but also as to such necessary qualities of character as a sense of restraint and propriety. A distinguished former colleague, Senator Paul Douglas of Illinois, put it this way:

"The 'advise and consent' of the Senate required by the Constitution for such appointments (to the Judiciary) was intended to be *real*, and *not* nominal. A large proportion of the members of the (Constitutional) Convention were fearful that if judges owed their own appointments solely to the President the Judiciary, even with life tenure, would then become dependent upon the executive and the powers of the latter would become overweening. By requiring *joint* action of the legislature and the executive, it is believed that the Judiciary would be made more independent."

Illuminating the appropriateness of these views is the clear history of the formulation of constitutional obligations built into the structure of our government to realize such objectives as an independent judiciary and checks and balances on respective centers of power. In the Federalist Papers, Alexander Hamilton wrote that the requirement of Senate approval in the appointing process would . . . be *an excellent check upon a spirit of favoritism of the President*, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachments, or from a view to popularity.

In the Constitutional Convention of 1787, James Madison generally favored the creation of a strong executive; he advocated giving the President an absolute power of appointment within the executive branch of the government. Madison stood with Alexander Hamilton against Benjamin Franklin and others who were concerned about granting the President such power on the ground that it might tend toward a monarchy. While he argued for the power of the President to appoint within the executive branch, it is very important to note that Madison drew a sharp distinction with respect to appointments to the Supreme Court, the judicial branch. Madison did not believe that judges should be appointed by the President; he was inclined to give this power to "a senatorial branch as numerous enough to be confided in—and not so numerous as to be governed by the motives of the other branch; as being sufficiently stable and independent to follow clear, deliberate judgments."

At one point during the convention, after considerable debate and delay, the Committee on Detail reported a draft which provided for the appointment of judges of the Supreme Court by the Senate, Gouverneur Morris and others would not agree, and the matter was put aside. It was not finally resolved until the next to last day of the Constitutional Convention. The compromise language agreed upon provides that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint judges of the Supreme Court and all other officers of the United States." Clearly, the compromise language neither confers upon the President an unlimited power to appoint within the executive branch nor confers upon the Senate a similar power of appointment with respect to the judiciary. Significantly, however, we have moved in actual practice over the years toward those original objectives of Madison. It is a fact, though sometimes deployed by political scientists, that judges of the lower federal courts are actually "nominated" by Senators while the President exercises nothing more than a veto authority. On the other hand, the Senate has generally accorded the widest latitude to the President in the selection of the members of his cabinet. It is recognized that unless he is given a free hand in the choice of these associates, he cannot be held accountable for the administration of the executive branch of government.

I believe that history demonstrates that the Senate has generally viewed the appointment of a cabinet official in a different light than an appointment of a Supreme Court Justice. The general attitude of the Senate over the years with respect to the cabinet nominations was expressed by Senator Guy Gillette of Iowa in these words:

"One of the last men on earth I would want in my cabinet is Harry Hopkins. However, the President wants him. He is entitled to him . . . I shall vote for the confirmation of Harry Hopkins. . . ."

Throughout our history, only eight out of 564 cabinet nominations have failed to win Senate confirmation.

The reasons for a limited Senate role with respect to executive branch appointments, however, do *not* apply when the nomination is for a *lifetime* position on the Supreme Court, the highest tribunal in the *independent*, third branch of government.[a] No less a spokesman than former Justice Felix Frankfurter has emphasized one of the chief reasons for the higher responsibility of the Senate to look beyond mere qualifications in the case of a Supreme Court nominee:

"The meaning of 'due process' and the content of terms like 'liberty' are not revealed by the Constitution. It is the Justices who make the meaning. They read into the neutral language of the Constitution their own economic and social views . . . Let us face the fact that five justices of the Supreme Court are the molders of policy rather than the impersonal vehicles of revealed truth."

In an oft-quoted statement Chief Justice Charles Evans Hughes noted wryly: "We are under a constitution, but the Constitution is what the judges say it is."

Thus, when the Senate considers a nomination to one of the nine lifetime positions on the Supreme Court of the United States, particularly a nomination to the position of Chief Justice, the importance of its determination cannot be compared in any sense to the consideration of a bill for enactment into law. If Congress makes a mistake in the enactment of legislation, it can always return at a later date to correct the error. But once the Senate gives its "advice and consent" to a lifetime appointment to the Supreme Court there is no such convenient

Footnotes at end of table.

way to correct an error since the nominee is not answerable thereafter to either the Senate or to the American people.

Throughout our history as a nation until the pending nominations were submitted, one hundred and twenty-five persons have been nominated as Justices of the Supreme Court. Of that number, twenty-one, or one-sixth, failed to receive confirmation by the Senate. The question of qualifications or fitness was an issue on only four of these twenty-one occasions. In debating nominations for the Supreme Court, the Senate has never hesitated to take into account a nominee's political views, philosophy, writings, and attitude on particular issues.

The Senate's responsibility to weigh these factors is not diminished by the fact that such professional organizations as the American Bar Association limit their own inquiries. The ABA committee on the federal judiciary has acknowledged limitations on its role. For example, letters from the chairman of the committee, Albert E. Jenner, to Senator James Eastland which transmitted the committee's recommendation with respect to the nomination of Abe Fortas and Homer Thornberry contained this statement:

"[O]ur responsibility [is] to express our opinion *only on the question of professional qualification*, which includes, of course, consideration of age and health, and of such matters as temperament, integrity, trial and other experience, education and demonstrated legal ability. *It is our practice to express no opinion at any time with regard to any other consideration not related to such professional qualifications which may properly be considered by the appointing or confirming authority.*" [Emphasis added.]

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[1] In this context, it is interesting to take note of the Senate's approach toward nominations for regulatory boards and commissions—agencies which are "neither fish nor fowl" in the scheme of government and perform quasi-executive functions and quasi-judicial functions. For example, in 1949, President Truman nominated Leland Olds for a third term as a member of the Federal Power Commission. Since Olds had served on the Commission for ten years, it was difficult to argue that he lacked qualifications. The Senate finally voted to reject the nomination. Afterward, there was general comment in the press that the real issue had nothing to do with the nominee's qualifications but everything to do with regulation of the price of natural gas.

In considering such nominations, it has not been unusual for the Senate to focus on the charge of "cronyism." That was the issue in 1946 when President Truman nominated a close personal friend, George Allen, not to a lifetime position on the Supreme Court, but to be a member of the Reconstruction Finance Corporation. Not only did such columnists as David Lawrence react sharply, but the New York Times opposed the nomination as well. Senator Taft led the opposition declaring that Allen was one of three who were nominated "only because they are personal friends of the President. Such appointments as these are a public affront."

In 1949, the Washington Post severely criticized the nomination by President Truman of Mon C. Wallgren, not to a lifetime position on the Supreme Court, but to be a member of the National Security Resources Board. A former Governor and Senator, the nominee had become a close friend of President Truman when the two served together on the Truman committee. The Washington Post characterized this nomination as a "revival of government by crony which we thought went out of fashion with Warren G. Harding." The Senate Committee which considered Wallgren's nomination voted seven to six against confirmation and the matter never reached the Senate floor.

Mr. TYDINGS. Mr. President, I would like, however, to read a number of paragraphs which, to me, seem to get right to the heart of the speciousness of the President's letter to Senator SAXBE on the role and responsibility of the advice-and-consent function of the Senate.

I now read a portion of the article of the distinguished Senator from Michigan (Mr. GRIFFIN):

THE HISTORICAL CONTEXT FOR ADVICE AND CONSENT

Much of the controversy revolves around the appropriate functions of the President and of the Senate in the circumstances of a nomination to the Supreme Court. There are some who suggest that the Senate's role is limited merely to ascertaining whether a nominee is "qualified" in the sense that he possesses some minimum measure of academic background or experience.

I will leave the text for a moment to comment we had some argument on the mediocrity point earlier in the debate on this nomination.

I now go back to the article written by the distinguished minority whip.

It should be emphasized at the outset that any such view of the Senate's function with respect to nominations for the separate judicial branch of the government is wrong and simply does not square with the precedents or with the intention of those who conferred the "advice and consent" power upon the Senate.

I am firmly convinced that approval by the confirming authority of a nomination to the third highest post in our land, the highest judicial post, on the basis of the record before the Senate in the Fortas case, would have been a disservice to the nation and would have constituted an abdication of the "advice and consent" power of the Senate. To assure the independence of the judiciary as a separate and coordinate branch, then, it is important to recognize that this power of the Senate with respect to the judiciary is not only real, but it is at least as important as the power of the President to nominate.

No one denies the constitutional power of the President to make an appointment to the Supreme Court, technically even at a time when he is only a few months from leaving office. But, of course, that is *not* the point. Some have not understood, or will not recognize, that under our Constitution the power of any President to nominate constitutes only *one-half* of the appointing process. The *other* half of the appointing process lies within the jurisdiction of the Senate, which has not only the constitutional power but the solemn obligation to determine whether to confirm such a nomination. Because the Senate has not used its power of "advice and consent," there is a widespread belief that it is almost rubber-stamp.

However, against the backdrop of history we must recognize that the Senate has not only the right but the responsibility to consider more than the mere qualifications of a nominee to the Supreme Court of the United States, the highest tribunal in a separate, independent and coordinate branch of the government. The Senate has a duty to look beyond the question: "Is he qualified?" The Senate must not be satisfied with anything less than application of the highest standards, not only as to professional competence but also as to such necessary qualities of character as a sense of restraint and propriety.

I wish to read one final paragraph:

Thus, when the Senate considers a nomination to one of the nine lifetime positions on the Supreme Court of the United States, particularly a nomination to the position of Chief Justice, the importance of its determination cannot be compared in any sense to the consideration of a bill for enactment into law. If Congress makes a mistake in the enactment of legislation, It can always return at a later date to correct the error. But once the Senate gives its "advice and consent" to a lifetime appointment to the Supreme Court, there is no such convenient way to correct an error since the nominee is not answerable thereafter to either the Senate or the American people.

I wish to ask my distinguished friend from Indiana whether or not the paragraphs I read do not completely refute the argument or the thrust of the argument in the letter sent to the Senator from Ohio by the President.

Mr. GRIFFIN. Mr. President, will the Senator yield on that point?

Mr. BAYH. Mr. President, if the Senator will permit me to proceed first I would be glad to yield to such an eminent authority on the subject. I think that if the Chief Executive had consulted the Senator from Michigan first he would not have sent the letter to the Senator from Ohio, or at least couched it in quite this manner.

I am glad to yield to the Senator from Michigan.

Mr. GRIFFIN. Mr. President, I want to say that the Senator from Maryland does me a great honor by quoting from the article I wrote. I retreat from it not one inch. I feel just as strongly now about the importance of the Senate's responsibility in the appointing process as I did during the debate on the nomination of Mr. Justice Fortas. It is not surprising that this President, as other Presidents, has sought to be very sure that his part of the appointing process was observed and not infringed upon.

The controversy, the conflict between the Senate and the executive branch has gone on for a long time. Unfortunately, for too many years the Senate did not assert itself, in my humble opinion, having studied the history of nominations to the Supreme Court; and in too many instances the Senate was a rubberstamp. No one could be more pleased than I am that now the Senate is truly exercising its advice and consent power.

The difference of this situation—and I respect the point of view of the Senator from Indiana and the Senator from Maryland—is that we differ and disagree as to whether or not this nominee is qualified. I think he is not only qualified but that he is highly qualified; that he is one of the best trained and most experienced nominees who has been nominated for the Supreme Court.

Mr. BAYH. Is it fair to assume the Senator from Michigan does not associate himself with the presidential letter which states that the central issue here is that we are going to destroy the presidential power if we do not advise and consent to this nominee?

Mr. GRIFFIN. The central issue before the Senate ought to be the qualifications of Judge Carswell to serve on the Supreme Court. It may well be that in the eyes of the President, and I think it is probably the conclusion of many others—although the Senator from Michigan will not say it—that there is a good deal of opposition to this nomina-

tion that is motivated from other reasons that are more political and that really are directed against the President than the person of Judge Carswell. But that should not be the question before the Senate.

Mr. BAYH. I am sure the Senator from Michigan would not want to impute other than the finest motives to his colleagues as to why they oppose Judge Carswell.

Mr. GRIFFIN. No, I believe I would not do that. I attribute the highest motives to those on the floor now.

Mr. TYDINGS. Would the Senator agree it is the responsibility of each individual Senator to use his own best judgment as to whether or not the nominee to the Supreme Court of the President or any President should be confirmed to that position and that the Senator should use his own best judgment rather than the best judgment of the President?

Mr. GRIFFIN. There is no question. Each Senator is elected from his State and he is elected to exercise his independent judgment.

Mr. BAYH. This is one matter that really concerned the Senator from Indiana more than anything else involved in all these debates.

A few years ago I was involved in opposing one of the nominations of a Democratic President. The nomination was not for the Supreme Court but to a lesser position. But I have some idea what this means. I do not think in the time I have been in the Senate we have ever had a President who began to go as far as the statement issued by the present President when he said:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the court—and whether the responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment.

I concur with my friend from Michigan. The question before us, Democrats and Republicans all, is: Is the man qualified?

The Senator from Michigan thinks he is and the Senator from Indiana thinks he is not; but the Senator from Indiana is not going to sit by and let the President, whoever he is, suggest uncontroverted that to deny him this nominee is going to destroy the relationship of the President's power to nominate and the Senate's power to advise and consent.

Mr. TYDINGS. I wonder if we could ask the Senator from Michigan one other question.

Mr. BYRD of West Virginia. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Indiana has the floor. Does the Senator from Indiana yield?

Mr. BAYH. Mr. President, I yield with the understanding I do not lose my right to the floor.

Mr. TYDINGS. I wish to ask the Senator from Indiana if it would not be helpful if we had a response from the distinguished Senator from Michigan to this question: Is it not a fact that the President of the United States, under the Constitution, does not have the right to appoint members of the Supreme Court or any other Federal judge? He has the right and the constitutional responsibility to nominate Justices of the Supreme Court and judges of the Federal judiciary. The Senate of the United States has the responsibility to advise and consent. Together they exercise the appointment provisions with respect to appointment of judges of the Federal bench.

Mr. BAYH. I think that an answer would be very helpful, but, as I recall, it was contained rather eloquently in the words of the Senator from Michigan in the law journal article which the Senator from Maryland has introduced into the RECORD.

Mr. GRIFFIN. Mr. President, if the Senator wants me to answer, I would answer it in this way: that, like a lot of other terms that sometimes are used interchangeably by those who are knowledgeable in the law and those who are not knowledgeable in the law, the term "appoint" and the term "nominate" are often——

Mr. TYDINGS. Confused?

Mr. GRIFFIN. Confused. That has happened, I am sure, in the speeches of the Senator from Maryland, and it happened in the very article that the Senator from Maryland referred to. I noticed, when I used the word "appoint" I should have used the word "nominate." It is a technical distinction the Senator is drawing, but it is accurate.

Mr. BAYH. But the Senator from Michigan did not write the letter that appeared on the front pages of all the newspapers, which said that the central issue appeared to be that we were taking away the responsibility from the one person empowered by the Constitution to appoint. I wish the Senator from Michigan had been consulted before the letter was written. Then I am sure it would not have been written and we would have been dealing with the essential question of the qualifications of the nominee.

Mr. GRIFFIN. If I had edited it, I would have used over the word "appoint," the word "nominate" and it would not have created any change in substance.

Mr. BAYH. I am sure we might overlook the word "appoint," but it would be rather difficult for us to misinterpret the reasoning of a rather lengthy 4- or 5-line sentence which has been quoted two or three times previously by the Senator from Indiana.

Let me proceed to finish my speech, if I may. I in no way suggest that any Senator who wants to proceed with colloquy should be denied the right to do so.

I would like to finish by suggesting that we can go to the times in which the Constitution was written to try to see what the Founding Fathers who penned these words had in mind.

In Federalist Paper No. 76, Alexander Hamilton makes it perfectly clear that the Senate might refuse its advice and consent to a Presidential nominee, and argues that this very possibility would be a "powerful" and "excellent check" on the President and "an efficacious source of stability in the administration." And in Federalist No. 77, Hamilton makes the Senate's power even clearer:

> If by influencing the President be meant restraining him, this is precisely what must have been intended.

Thus it was crystal clear from the very inception of the Constitution that the Senate was not intended merely to rubberstamp the President's nominees, but to exercise its independent judgment as to their fitness: their character and honesty; their fairness and judicial temperament; their professional competence and judicial record.

But the historical lesson does not end with the Founding Fathers. The whole record of Senate action on Supreme Court nominees since 1787 confirms the nature of the Senate's independent power and responsibility. The President's letter asks for the same right of choice in naming Supreme Court Justices which has been freely accorded to my predecessors of both parties. Let us look at that record. Is President Nixon being singled out, is he really being treated any differently from previous Presidents? In 1795—only 6 years after the enactment of the Constitution—the Senate rejected a Supreme Court nominee for the first time, Judge John Rutledge, a former Supreme Court Justice nominated by President Washington to be Chief Justice. Throughout the Federalist period and the entire 19th century, almost 25 percent of the Presidential nominees for the Supreme Court failed to receive Senate confirmation.

Four of President Tyler's nominees failed to secure Senate approval, as did three of President Filmore's nominees and three of President Grant's nominees. And of the 24 Presidential nominees for Supreme Court Justice who failed to gain confirmation, only 10 were defeated in a confirmation vote; the remaining 14 nominations were either delayed and never acted upon or were withdrawn by the President. And surely we have not so quickly forgotten the fact that President Johnson had two Supreme Court nominees confirmed—and submitted two additional nominees who failed of confirmation. So no one can fairly claim that this is merely a partisan political issue, that some absolute "right of choice" as the President calls it "has been freely accorded to" his "predecessors of both parties."

Mr. GURNEY. Mr. President, will the Senator yield at that point?

Mr. BAYH. I yield.

Mr. GURNEY. I listened carefully to the colloquy between the Senator from Indiana and the Senator from Michigan. It strikes me that what the President was saying in his letter is contained in these words:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment.

I think what the President is really saying there—and I find no quarrel with that—is that he feels that many of the issues being raised in the debate now going on before the Senate are really viable issues as far as the qualifications of this

nominee are concerned, but are subjective within a Senator's own interpretation and influenced by his political philosophy.

Therefore, if that be the case, the will of the President under his constitutional authority is truly being frustrated.

I do not mean to indicate that the Senator from Indiana and any other Senators who are opposing the nomination are not honestly and sincerely opposing it, but do so because they believe their objections are valid. That is not what I am saying. But I think that in his own mind the President feels that political philosophy and subjective attitudes that are personal within a Senator's own interpretation, rather than objective attitudes, are frustrating his constitutional authority. I do not think that that militates at all against the very high constitutional duty of a Senator to advise and consent.

Mr. BAYH. Since the Senator from Florida has brought up this point, he might care to give us his opinion as to what reasonable interpretation could be put on the following sentence. This is the President of the United States speaking. After going through a number of issues which he calls specious, he then comes to what I think could be called the high point of his letter:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitution with the power of appointment.

I repeat: "That of the one person entrusted by the Constitution with the power of appointment."

Does the Senator from Florida believe that the President has the power to appoint Supreme Court Judges?

Mr. GURNEY. Again, after amplifying my interpretation of that language—and that was the language the Senator read—the President feels that so far as the political philosophy of a judge on the Supreme Court is concerned, that ought to be his right to determine.

To decide whether a nominee should be a conservative or a liberal or a middle-of-the-road person is not within the contemplated purview of rejection under the advise and consent role of the Senate. I think that that is what the President is saying. That is my interpretation of his statement, and I think that throughout the history of the Senate that has been pretty much the Senate's interpretation.

Surely, men have been appointed to the Supreme Court in recent times by President Johnson, by President Kennedy, and perhaps even by President Eisenhower, of whom, I suspect, many Senators did not approve at all so far as the political philosophy of the appointees was concerned. But they voted to confirm the nominations, feeling that it was the prerogative of the President to appoint the men he wanted, so far as their political philosophy was concerned.

Mr. BAYH. I suppose the Senator from Florida could not completely avoid the fact that we are discussing the G. Harrold Carswell nomination, because this Senate refused to give to President Nixon's predecessor the prerogative which he now claims for himself.

Mr. GURNEY. What judge is the Senator referring to?

Mr. BAYH. The Senate refused to accept the nomination of Justice Fortas as Chief Justice, and refused to accept the nomination of Judge Thornberry at all. That is why we are here.

Mr. GURNEY. I am not familiar with the Thornberry case. I did not know that that came before the Senate. I know that he was contemplated at one time.

As far as the Fortas case is concerned, while I was not a Member of the Senate, I was of the House of Representatives. My recollection of the case is that it did not have much to do with political philosophy, but it had a whole lot to do with ethics.

Mr. BAYH. It had quite a bit to do with ethics.

Mr. GURNEY. And that is why he was rejected. I see nothing wrong with that. I think, certainly, ethics enters into the role of the Senate to advise and consent.

Mr. BAYH. The Senator might refer to the record. Judge Thornberry's nomination was never considered by the Senate because of the filibuster over the nomination of Justice Fortas to be Chief Justice.

It appears that it is very easy for the Senator from Florida to make the distinction between the ethical question involving Justice Fortas and the lack of candor and the refusal to be forthright with the Senate Judiciary Committee on the part of this judge. The Senator from Indiana finds great difficulty in making that distinction; but, of course, we have had great differences of opinion before in this debate.

Mr. DOLE. Mr. President, will the Senator yield on this point, just briefly?

The PRESIDING OFFICER. Does the Senator from Indiana yield to the Senator from Kansas?

Mr. BAYH. Oh, yes, I would not want to miss this opportunity.

Mr. DOLE. I appreciate the Senator's indulgence. I know he is a busy man.

On page 32 of the report, in the individual views of Mr. TYDINGS, I call attention to the last sentence in the first paragraph:

> Therefore, I must oppose confirmation of the appointment.

Later on on the same page the Senator from Maryland says:

> Men appointed to the Supreme Court have for practical purposes life tenure.

Mr. TYDINGS. That is correct. Men appointed to the Supreme Court do have life tenure. They are nominated by the President and confirmed by the Senate, and they have life tenure.

Mr. DOLE. The Senator from Indiana has yielded to me.

Mr. BAYH. I would associate myself with the remarks of the Senator from Maryland. I think the appointment process is a double headed vehicle. It involves the nomination by the President and the advice and consent authority of the Senate, and that is what the Senator from Maryland was referring to.

Mr. DOLE. Then, in the individual views of Messrs. BAYH, HART, KENNEDY, and TYDINGS, it is stated:

> In his campaign speeches, President Nixon pledged appointees to the court—

I just bring this up in connection with the word appoint, which seems to be causing great distress, and yet it is used in the individual views of the Senator from Maryland and in his individual views together with those of Senators BAYH, HART, and KENNEDY.

Mr. BAYH. The Senator is reading the record. Can he find any notation of views at all such as those in the President's letter, in which he refers to himself as "the one person entrusted by the Constitution with the power of appointment"? The one person?

The Senator from Maryland talks about the term "refusing the nomination" in terms of advising and consenting.

Mr. DOLE. I think the point is in the word "use." As the Senator from Michigan said, he may have used it instead of the word "nominate." Senators on the other side have used it, and perhaps they should have used the word "nominate" or "nomination" or "nominates." But I do not think we really misunderstand what the word means.

Mr. TYDINGS. I think the Senator makes a good point. It is sometimes easy, in haste, as I did, or the Senator from Michigan or others, to interchange the words.

But the fact is that the thrust of the President's letter was that if he nominated someone, and he felt they had the requisite qualifications, then it was up to the U.S. Senate to go ahead and confirm him. That is why he wrote the letter to Senator SAXBE.

The problem is not the use of the word "appoint." The problem is the whole thrust and tenor of the President's letter, which denigrates the role of the U.S. Senate to advise and consent. In fact, it overlooks the entire constitutional history of article III and the role of the Senate to advise and consent to a Supreme Court nomination.

It is not whether he used the word "appoint" or "nominate"; he could make a mistake. I make it all the time, and the Senator from Michigan makes it.

But he is the one who sent that letter. He is the one who is trying to get the Senate to go ahead and approve, without exercising its own responsibility through the advise and consent procedure.

Mr. DOLE. I think he says in the letter that we have that right, as of course the Senator, as a Member of this body, knows.

But again, at page 33 of the report, the Senator from Maryland uses the word "appointment." Now the Senator is asked to advise and consent to the appointment.

The point I make is that we all use the word rather freely, apparently.

Mr. BAYH. I would be the last to suggest that there have not been occasions, I suppose, when all of us have interchanged the word "nominate" and the word "appoint." But it would seem strange to me that the President of the United States, the Chief Executive of the land, advised by the Attorney General as his own personal attorney, would so con-

sistently confuse those words; and to use the theme of absolute right to make this determination and imply that the whole relationship between the President and the Senate is going to come apart if he does not have this right to appoint, I think, flies in the face of history.

It would be rather inconsistent for some of us to stand on the floor of the Senate and assert that it is time for us to take a little initiative to restore the inalienable rights of this body, and then suddenly yield that authority because the President feels he is not being treated properly.

It seems to me that we cannot avoid the responsibility to stand up and be counted on this issue any more than our responsibility to advise and consent to treaties—and we have in the past refused to ratify treaties on many occasions, notwithstanding the President's very substantial power to conduct our foreign affairs.

We cannot avoid this responsibility any more than our responsibility to advise and consent to the nomination of executive officers of the United States—and despite our desire to give the President much more latitude in this matter than over Supreme Court appointments, we have often withheld our advice and consent from Executive appointments. Only a few weeks ago, a prospective Presidential appointment was actually withheld after the distinguished Senator from Maine and the distinguished Senator from Mississippi suggested their unwillingness to confirm.

We cannot avoid this responsibility any more than we can avoid laying and collecting taxes, or declaring wars, or paying Federal debts, or any of the other heavy burdens which the Constitution places upon us as U.S. Senators.

We cannot avoid this responsibility any more than the President can avoid his obligation to make an independent judgment as to whether to sign into law or veto any measure we enact and send to him.

And, I for one, intend that we in the Senate, as representatives of the people of our respective States, shall not be intimidated into forsaking the powers—or evading the responsibilities—squarely laid upon us by the terms of the Constitution and faithfully exercised for 200 years.

Mr. President, let me suggest in closing that nothing should distract the Senate from the central issue of this debate—not the central issue as described by the President, but the central issue as described by the Senator from Michigan—the qualifications or lack of qualifications of the nominee. The record is clear; it is irrefutable. Unfortunately, Judge G. Harrold Carswell lacks the temperament, the legal competence, and the sensitivity to the role of the judiciary in interpreting the Constitution required for elevation to the Supreme Court. I hope and I am confident that the Senate will have the wisdom and the courage to exercise its independent judgment and reject this nominee as unqualified. This will permit the President to exercise his prerogative to send us another, a better nominee.

Mr. President, I ask unanimous consent, in behalf of the distinguished junior Senator from California (Mr. CRANSTON) to have a statement by him printed at this point in the RECORD.

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

STATEMENT OF SENATOR CRANSTON

There is an interesting omission in President Nixon's letter on Tuesday (Mar. 31) to Senator Saxbe in which the President attempted to deny Judge Carswell's obvious racism.

The President cited only three flimsy shreds of evidence—a letter from a World War II shipmate of the Judge, one law school professor, and Judge Carswell's alleged repudiation of his racial supremacy views.

Significantly, the President did not use the one source that had been the cornerstone of the efforts in the Senate to disprove Judge Carswell's racism.

Before last Monday's disclosures, Senators supporting Judge Carswell had repeatedly cited a letter from Charles F. Wilson to the Senate Judiciary Committee to argue that Judge Carswell is not a racist. But now we see that the President has avoided mentioning Mr. Wilson and we can only assume that the President now agrees that Mr. Wilson's letter has been completely discredited.

Contradictory and inconsistent statements by Mr. Wilson, Deputy Atty. Gen. Richard G. Kleindienst and Asst. Atty. Gen. William H. Rehnquist as reported in the press over the past few days gave the President good cause to shy away from Mr. Wilson's letter. For example:

On one hand, Mr. Rehnquist says he drafted the letter (New York Times, Washington Post).

But on the other hand, Mr. Wilson says "the language and draftsmanship was mine" (UPI Audio) and that he wrote the letter himself (Philadelphia Inquirer).

On one hand, Mr. Rehnquist says he didn't seek Wilson out (Washington Star) and Mr. Kleindienst says Mr. Wilson "stood in the shoes of a volunteer" (UPI).

But on the other hand:

Mr. Rehnquist says he decided to get in touch with Mr. Wilson (Washington Star, same story).

Mr. Rehnquist says Mr. Wilson called him (Washington Post).

Mr. Wilson says he was approached by Mr. Rehnquist (Washington Star).

And Mr. Wilson says he can't remember whether he or Mr. Rehnquist made the first contact (Washington Star, same story)!

On one hand, Mr. Wilson says he would have preferred to have seen someone other than Judge Carswell nominated (Baltimore Sun, Philadelphia Inquirer, Los Angeles Times, Washington News).

But on the other hand, a spokesman for Judge Carswell says Mr. Wilson telephoned the judge this week to express "his continuing support of the Carswell nomination" (Los Angeles Times).

On one hand, Mr. Wilson says he was "disturbed" that his letter had generally been interpreted as an endorsement by Judge Carswell's supporters when he hadn't intended it that way (Philadelphia Inquirer, Washington News).

But on the other hand, Mr. Wilson took no action whatever on his own initiative to correct the widespread misunderstanding his letter created.

On one hand, Mr. Wilson says his letter was intended as neither an endorsement nor a condemnation of Judge Carswell (Baltimore Sun, Philadelphia Inquirer, Los Angeles Times, Washington Post, New York Times).

But on the other hand, Mr. Wilson has never explained what induced him to send his letter in the first place—when he knew the Justice Department wanted that letter to advance Judge Carswell's nomination.

Mr. Wilson says Mr. Rehnquist asked him whether he would testify before the Judiciary Committee, prepare an affidavit, or write a letter. Mr. Wilson says he chose the third alternative offered to him—the controversial and now discredited letter (Baltimore Sun). Mr. Wilson and Mr. Rehnquist have never explained why it was decided that Mr. Wilson should not testify before the Committee, and should write a letter instead. Was it because they feared that under questioning by the Committee, the complete truth about Mr. Wilson's feelings toward Judge Carswell would come to light?

Mr. Wilson's letter to the Committee was an obvious attempt to mislead the Committee and the Senate by telling only half-truths. The technique of the half-truth has again been used by Mr. Wilson and the Justice Department to defend Mr. Wilson's letter.

Mr. BAYH. I yield the floor.

THE EXCELLENCE OF JUDGE CARSWELL

Mr. GOLDWATER. Mr. President, it will be my purpose today to urge that the Senate soundly reject the motion to recommit the nomination of Judge Carswell.

The record is already bulging with enough testimony, citations, letters, telegrams, and student memorandums to fill a bookshelf. If any Senator is incapable of reaching a decision after he has studied this encyclopedia, I do not think he will ever be able to resolve the question.

Mr. President, the committee hearings, together with the committee report on the nomination of Judge Carswell, run to over 500 pages. To this, we have added 12 days of floor debate that take up well over 300 pages of the CONGRESSIONAL RECORD.

This is enough. The business of the Court, and indeed of the Senate, must go on.

Let us remember that the seat which we are asked to fill has been vacant for almost a year now. The longer this body delays in acting on the merits of the nominee, the longer will grow the list of individuals whose rights are held in limbo because the Court is shorthanded.

One way or the other, we should vote on this nomination. But we owe it to the prestige of the Court, to the individual litigants awaiting their day in Court, and to the President who has asked for our advice and consent, to reach a decision on the nominee.

Mr. President, speaking to this point, I want to state my strong conviction that Judge Carswell should be confirmed.

Frankly, at first I had no intention of participating in this debate. Not being a lawyer, I did not think there was much that could be added to the record being developed by my colleagues who are members of the legal profession.

However, Mr. President, when I began to observe the type of campaign taking shape against Judge Carswell—the unreasoned, blistering condemnation of this man as a racist and mediocre jurist—I knew that I could not stand by and watch a distinguished, highly capable individual be so viciously and unfairly abused.

Perhaps I have an advantage in viewing these proceedings. It might be that the fact I do not have a legal training is the very reason I do not accept at face value the sweeping accusations being fired at Judge Carswell.

It is precisely because so much of the debate and testimony is devoted to a

highly technical analysis of case law and legal jargon that I have waited for the record to settle.

It is the layman's need to cut beneath the technical gobbledegook that has caused me to explore many points sharply that my professional friends may take for granted.

Mr. President, on the basis of my reading of the entire record, I can only express my complete amazement at the incredible collection of falsehoods, half-truths, and smears that make up the gist of the charges against the nominee. It seems unbelievable to me that the opposition, which by and large consists of people who claim to be liberals, would resort to such unjust and unproven accusations against another human being, whoever he might be.

To my mind, these practices smack of nothing short of neo-McCarthyism. Make no mistake about it. The political Left has resorted to glib charges, smear innuendos, and distorted statistics in presenting their case.

For example, one claim that has been bandied about is the idea that most of Judge Carswell's cases are reversed. The way this charge has been presented by Judge Carswell's critics, he is the biggest bungler ever to hold a seat on the Federal bench.

"Think of it!" We are told. Fifty-nine percent of Judge Carswell's cases have been reversed on appeal.

Why, this must run into the hundreds. The judge must be utterly devoid of any legal sense at all. This is certainly the image that the charge casts in the public's eye.

But, lo and behold, when one searches for the source of this sensational charge, he finds that the uproar is based on a claim of 10 reversals.

Ten cases. Out of 4,500 cases decided by a man.

Ten cases. Over a span of 11 years on the bench.

Ten cases. From more than 8,000 rulings, orders, and decisions which might have been challenged if an error or mistake had been made.

This is typical of the kind of unexplained, wild charge that has filled the air throughout these proceedings.

Upon examination, one finds that this figure was blown all out of proportion by selecting only the printed decisions of Judge Carswell that were actually appealed. In other words, if a case was so well handled that it did not lend itself to an appeal, it was not counted. Or if a decision was not printed, it was not counted.

This technique by itself seems highly dubious and misleading to me. But the worst part of it is the deceptive manner in which the statistic has been used without explanation.

Take another example. Examine, if you will, the specific cases that are cited against Judge Carswell.

Two of them concern school desegregation matters. Youngblood against Board of Bay County is one and Wright against Board of Alachua County is the other.

Judge Carswell's decisions in these cases happen to have been reversed by the fifth circuit as a result of an intervening Supreme Court opinion that changed the law in that circuit. The two decisions rendered by Judge Carswell were among 13 similar decisions which the circuit court reversed by reason of the later Supreme Court decision.

In fact, Judge Carswell was by then a member of the fifth circuit bench and he personally voted to reverse 11 of these 13 decisions.

Now there are three things wrong with the manner in which these cases were cited. First, Judge Carswell's detractors made it appear that he alone among all district judges in the fifth circuit was stubbornly defying the higher courts. What the liberals conveniently neglected to mention is the fact that Judge Carswell's decisions were only two of the 13 cases overturned by the appellate court.

They also failed to reveal or even consider that the law had been changed in that circuit as the result of a new interpretation which was first announced by the Supreme Court after these cases had been decided.

And, nowhere in their critiques will one find any mention of Judge Carswell's participation among the appellate judges who applied the new doctrine.

Again, I must express my amazement at the misleading manner in which important facts have been left untold. Again, the half-truth, the hidden truth has been presented as the whole truth.

Another instance of the distorted record is the repeated reference by the Carswell opponents to the Wechsler case.

In this instance, Judge Carswell sent back to the State court a criminal prosecution instituted there but sought to be removed to the Federal court by the defendants. The fifth circuit vacated Judge Carswell's order on the basis of two rulings which it expressly noted came at a later date than his order.

Now, not only do the critics pass over the significant time factor—the fact that Judge Carswell's decision came prior to the new circuit court rulings—but they completely fail to report that the circuit court's new doctrine was in turn rejected by the Supreme Court.

All the opponents have told us about is the reversal of the judge's order. That the Supreme Court later turned the tables on the circuit court and vindicated Judge Carswell's ruling was left unsaid.

Mr. President, this is the kind of slight of hand which the liberals have played in order to sustain their feeble claim that Judge Carswell is hostile to blacks.

But this is not all. The opposition squeezed more fluff out of the Wechsler case by pointing to the testimony of two New York lawyers who assisted the defendants during part of this case.

Prof. John Lowenthal, whose experience before Judge Carswell seems to amount to a segment of this one case, accused the judge of being "extremely hostile" toward northern lawyers.

Norman Knopf, an aide to Lowenthal, who says the Wechsler case was his first courtroom experience out of law school, also has given his notions about Carswell's hostile attitude.

Mr. President, all I can say about these accusations is that I agree with Professor Vandercreek of SMU Law School, who has written:

> It seems that those who criticize his rulings are merely disappointed litigants who cannot evaluate Judge Carswell fairly in the light of their zeal for their cause.

Mr. Lowenthal's bias is spread all over his testimony. The professor went so far as to accuse Judge Carswell of telling his marshal to advise the county sheriff that he had sent the case back to the county court from the Federal court. Mr. Lowenthal claimed that his clients were rearrested because Judge Carswell did this.

This is truly a serious charge of prejudice and malicious intent. It clearly reveals the frame of mind which Mr. Lowenthal held toward Judge Carswell and, if untrue, throws doubt on his whole presentation.

Well, the record shows that is untrue. Marvin Waits, the U.S. marshal who is referred to in the incident, appeared before the Judiciary Committee to swear that he made the telephone call to the sheriff strictly as a matter of custom. Mr. Waits testified that he placed the call simply as part of a reciprocal arrangement that the local law enforcement officers had worked out. Judge Carswell had nothing to do with the call.

Mr. President, it is exactly this kind of unprofessional guesswork and doctrinaire bias that flows through almost every page of the hearings record where a Carswell critic appears.

Ernst Rosenberger, another member of the New York bar, testified that Judge Carswell informed a city court judge about a devious way in which the city could prevent his clients from getting a hearing on the merits of their case. Mr. Rosenberger claims that the city judge falsely recorded that the defendants had applied for this procedure, and yet, he failed to take any action to appeal the order which he alleges was falsely written. Instead he blames Judge Carswell for his troubles.

Mr. President, this testimony sounds like a lot of sour grapes to me. A few witnesses of this nature are bound to crop up with regard to any judge. The important thing is what the entire record of a man's career demonstrates.

There is one more New York attorney who appeared before the Judiciary Committee. He is Prof. Leroy Clark who represented the National Conference of Black Lawyers. He took the position that America is a racist society, "a Jim Crow society which is still intact—more than a century after the Emancipation Proclamation."

The thrust of Mr. Clark's testimony was that Judge Carswell is hostile to civil rights matters. Once again, Mr. President, I must raise the question whether this witness could view anyone to be free of prejudice unless he was an outspoken activist of liberal causes.

Mr. President, these instances are sufficient to reveal that the entire movement against Judge Carswell is founded on a persistent pattern of falsehood, emotional reactions, and gripes by disgruntled lawyers.

They fit part and parcel with the phony mailing campaign in which thousands of letters have been sent to Members of the Senate falsely represented to be from residents of a Senator's own State.

Mr. President, you will not find it out by reading the Washington Post or the

New York Times, or by watching the network news broadcasts, but there is a tremendous amount of eminent, first-hand testimony which strongly supports the integrity, scholarship, compassion, and industry of Judge Carswell.

Until the opponents chose to attack him, almost no one in the public had been informed about the impressive statement made by the longtime civil rights leader, Attorney Charles Wilson.

This gentleman, who is a black lawyer, probably was the first attorney to take up the cause of black plaintiffs in Florida. He appeared before Judge Carswell during a 5-year period and emphatically reaffirms his statement that "there was not a single instance in which he was ever rude or discourteous" to him.

Likewise, who in the general public has heard that Judge Bryan Simpson of the Fifth U.S. Court of Appeals endorsed the nomination of Justice Carswell with the most glowing words available to one judge speaking about another.

If the mass media would only quote from a small portion of Judge Simpson's letter, the public would catch the true picture of a man and his career.

Judge Simpson has written:

More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an open-minded disposition to hear, consider and decide important matters without preconceptions, predilections or prejudices.

Mr. President, how many front page stories have informed the public that Mike Krasny, who was law clerk to Judge Carswell for two and a half years, has assured the Senate that litigants before Judge Carswell "were not judged by their race, creed, or color."

Mr. Krasny writes:

Judge Carswell's integrity and honesty is beyond question in this regard. He dealt fairly, honestly and respectfully with all those who came before him. His judicial manner was not altered by the race or color of those who appeared before him.

Or take the telegram from Mr. William Corrouth, who was bailiff in Judge Carswell's court for 11 years. How often has anyone heard on the evening news shows that this gentleman was present in the chambers when counsel in the Wechsler case appeared before Judge Carswell? And that the bailiff never heard the Judge speak, then or at any other time, in a rude voice?

According to Mr. Corrouth, Judge Carswell "did not express any statement at all about lawyers from other parts of the country or express opposition to what they were doing."

For that matter, how many quotes have we seen in the daily news media from the many lawyers who went before Judge Carswell to try civil rights cases and who report that they have never seen him display hostility or discourtesy to any attorney, party, or witness in a case?

Mr. President, as persuasive as these voices are, the best witness who appeared before the Senate Judiciary Committee is none other than Harrold Carswell himself.

His testimony covers over 60 pages of the hearings record.

His words reveal the brilliance, character, and qualities attached to greatness.

His answers confirm beyond any doubt that here is an exceptional man, deeply versed in the philosophy and practicality of the law.

Judge Carswell advanced his great concern for the pressing problems that face our country. He expressed his awareness of the great issues of poverty, crime, education, job training, the frustrations of young people, and all the matters that serve as the grist mill from which cases arise.

He stated his efforts to understand where these problems came from and why they exist.

He announced his strong support for the application to Supreme Court Justices of strict ethical standards, such as reporting requirements, public disclosure, and other safeguards.

He proclaimed that the "law is a movement, not a monument."

He referred to former Justice Cardozo's paper about the essence of deciding and interpreting the law, and gave the straight-forward response that there is a grain of lawmaking power in every judge.

He gave his view that there are gaps in the law "where the judicial function and the judicial process inevitably requires the gap to be filled because action has to be taken and rights determined."

In short, Judge Carswell has given us a view of a man who is deeply concerned with human problems. He is sensitive to changes in our society and to the need for a living Constitution.

At the same time he shows an abiding affection for this historic document and for the people and institutions which make up the society which it serves.

Mr. President, I believe the record is crystal clear. Judge Carswell is a sincere, compassionate individual with a deep concern and interest in human feelings and rights.

He is a man of untarnished integrity, a man of excellence, and a man of high distinction.

He is unquestionably qualified to serve as a Supreme Court Justice and I shall vote for his confirmation without the slightest reservation.

Mr. President, I ask unanimous consent to insert at this point in the RECORD a commentary from the Miami Herald of March 26. The article is aptly headed: "Somebody Forgot To Mention Judge Carswell's Supporters."

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

SOMESODY FORGOT TO MENTION JUDGE CARSWELL'S SUPPORTERS

(By Malcolm Johnson)

TALLAHASSEE.—Judge Harrold Carswell, it seems, is taking a worse beating from the news reports than he is in the official documents filed for and against his nomination to the U.S. Supreme Court.

The 567-page printed record on the Senate Judiciary Committee hearings on his nomination, just received here, provides a powerful refutation of the accusations of bigotry and mediocrity which are being used against him.

Much of it has not heretofore been revealed to his hometown editor who probably has watched the daily reports as closely as anyone.

For example, we have been regaled this last week or so by the supposedly scornful fact that two members of the U.S. Fifth Circuit Court of Appeals have not endorsed his elevation from their bench to the Supreme Court.

Now, mind you, they have not opposed his appointment. They have only not endorsed him. (And retired Judge Tuttle, who praised him highly then withdrew his offer to testify in his behalf, to this day hasn't opposed him, either.)

But have you heard, or have you read, what other members of the Fifth Circuit Court have said about him in official letters now a part of the printed record of the Senate?

Judge Homer Thornberry (who was nominated by President Johnson for this very Supreme Court seat, but it didn't become vacant by elevation or resignation of Justice Abe Fortas in time for a Democrat to get it) had this to say about Carswell:

". . . A man of impeccable character . . . his volume and quality of opinions is extremely high . . . has the compassion which is so important in a judge."

Judge Bryan Simpson, who was held up by civil rights lawyers as the kind of southern judge President Nixon should have chosen, wrote to the Senate:

"More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an open-minded disposition to hear, consider and decide important matters without preconceptions, predilections or prejudices."

Judge Griffin Bell, a former campaign worker for President Kennedy whose own name was mentioned for this vacancy:

"Judge Carswell will take a standard of excellence to the Superior Court . . .

Judge David W. Dyer: " . . Great judicial talent and vigor."

Judge Robert Ainsworth: ". . . A person of the highest integrity, a capable and experienced judge, an excellent writer and scholar . . ."

Judge Warren Jones: ". . . Eminently qualified in every way—personality, integrity, legal learning and judicial temperament."

Most of these statements have been in the record since January, not recently gathered to offset criticism.

There are similar testimonials from a couple of dozen other Florida state and federal district judges in the record, but our newspaper received a news report from Washington about only a partial list of them (without quotation) only after calling news services in Washington and citing pages in the Congressional Record where they could be found.

And on the matter of antiracial views, the printed record of the committee contains numerous letters and telegrams disputing contentions of a few northern civil rights lawyers who said Judge Carswell was rude to them when they came to his court as volunteers, mostly with little or no legal experience.

Foremost among them is this letter from Charles F. Wilson of Pensacola:

"As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court," he said, "there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions

"I represented the plaintiffs in three of the major school desegregation cases filed in his district. He invariably granted the plaintiffs

favorable judgments in these cases, and the only disagreement I had with him in any of them was over the extent of the relief to be granted."

Why such statements in the record have been overlooked by Washington news reporters while they are daily picking up any little crumb from the opposition is hard to explain to the public.

It could be that the organized forces opposing Judge Carswell are more alert to press agentry than the loose coalition in the senate that is supporting him.

The press agent offers fresh news, while the Record brings it stale to the attention of news gatherers upon whom there is great pressure to start every day off new with the abundance of news you know is going to develop that day.

That, really, could be a better explanation than the common assumption that our Washington reporters are just naturally more anxious to report something bad about a man—especially if he is a conservative, than something complimentary. But it isn't a very good explanation, at that.

Mr. MURPHY. Mr. President, I stand in support of the nomination of Judge G. Harrold Carswell which was sent by the President of the United States to the Senate Committee on the Judiciary and which that committee, after careful and extensive hearings, saw fit to report to the full Senate, either to be approved or rejected.

We, the Members of the Senate, have come once again to the exercise of one of our most important obligations with regard to our relationship with the executive branch—to advise and consent and thereby to exert our judgment and influence on the future course of the history of our Nation.

The dreadful importance of our position takes on an intensified value because of the times in which we live and the conditions which confront and surround us. Some of us are greatly concerned about the apparent breakdown and dissolution of the conditions of law and order across our broad land, with the daily examples of the disastrous erosion of our Nation's moral substance and standards, and the rising and rampant evidence of unleashed crime which is so disturbing that it defies our imagination and confounds our understanding completely. We know, all of us, that the restoration of the dignity of our courts is one of the most important goals to which we must address ourselves. And if there is any question about this in anyone's mind, I ask him to go back 3 or 4 weeks and look at the horrendous and ridiculous performance of the so-called Chicago seven. It is true that many of my colleagues differ in their assessment of the reasons for these current conditions by which we are presently vexed. However, I believe that we will all agree that the cornerstone of our national health and safety rests in our legal structure, which must certainly be preserved at all costs if we are to survive as a nation. And that cornerstone is the respect and high regard which our citizens must have restored once again for our courts and those who grace our benches.

Judged against the background of the unfortunate conditions which surround us, this present selection of a new Associate Justice for our Supreme Court demands our strictest attention, our most serious consideration, and, above all, our finest judgment—a judgment which will bear the most searching public scrutiny to insure that political considerations, philosophical biases, sociological differences, personal idiosyncracies, and all other minutiae have been carefully eliminated.

Not long ago we had another nominee sent to the Senate and after long, arduous, and serious debate, this man was rejected. There were all sorts of reasons raised during the extended discourse as to why he was not acceptable. After rereading that record and the full testimony of our colleagues, I believe that many Members of this distinguished body, including myself, are not certain that the true cause of justice was advanced by his rejection. It appeared that there were overruling political considerations—great pressure for a part of the press; maybe the desire to embarrass the new President or maybe an impulse on the part of some who were overenthusiastic in their assessment of some of our major problems. As the debate went on, there was a great deal of talk about something referred to as "the appearance of impropriety." This, I felt, was a contrivance and I believe we all suspected this. It is a new practice and it is disturbing to me since I do not feel we should try to create the impression of something that does not exist. However, I say it is possible that these conditions pertained and that conclusions were drawn from a hypothetical situation which was imagined or set up in an unreasonable and unreasoning manner. In other words, a column of figures was totaled up before the numbers involved were really known and then the numbers were made to suit the total.

Mr. President, I trust that my colleagues will not misunderstand my words and my meaning today. I have no intention of presenting any criticism of the past. This would be improper of me and would be overly presumptuous. I merely desire after a great deal of thought and study to make certain that in our judgments regarding the nimination now before us, we are only swayed by valid, reasonable and substantial matters and that we will have the good judgment and wisdom to discard hearsay, sly suggestions and contrived confusion, and questionable evidence. I believe we should extend the same presumption of truth we would hope to receive.

Now, let us for a moment trace the history of this nomination. First of all, it was made by the President of the United States. He did not reach out as some have in the past to select a good friend, a crony, a pal. He organized a search headed up by capable legal minds to find a particular jurist of experience, of wisdom and of capability in order to fill this most important position. And so this name came through. And the name was sent to the Committee on the Judiciary, and I am pleased to remind my colleagues that this most capable body spent 5 days of hearings and heard 25 witnesses in connection with the nomination. Then, at long last, the committee made its decision by a vote of 13 to 4 to send the name of this nominee to the entire body of the Senate. The committee also issued a report, of course, and I would like to quote from this report to remind my colleagues of some of the sections it contained.

For instance, the report said:

In evaluating the qualifications of Judge Carswell, the committee welcomed the opinion of the American Bar Association. Lawrence E. Walsh, a former Federal judge and the chairman of the association's prestigious standing committee on the Federal judiciary, reported by letter that "on the basis of its investigation the committee has concluded, unanimously, that Judge Carswell is qualified for appointment as Associate Justice of the Supreme Court of the United States."

The report also noted:

In addition, Judge Carswell personally impressed the committee by the reasonable, thoughtful, and articulate manner in which he responded to questions from the members of the committee. His appearance before the committee confirmed fully the views of his colleagues that he is a man of superior intelligence, impeccable integrity, and outstanding judicial temperament.

And finally the report said:

It is our opinion that Judge Carswell is thoroughly qualified for the post to which he has been nominated.

I do not think, Mr. President, that there is any reason to suspect the judgment of the very able committee members, and consequently I, for one, respect their opinions and their report. And so, after lengthy hearings and debate, we approach the moment of decision. Suddenly, however, it seems that there are those who would deny us the privilege of making this most important decision. In fact, we are to be faced with what may be termed a parliamentary procedural move by which some might attempt to avoid our obligation. I hope that this will not be the case.

Yes, I hope it will not be the case, for not only do I support the nomination of G. Harrold Carswell, I also go one step further.

I feel strongly that it is the moral duty of the Senate to meet the issue head on and to vote the nominee up or down, rather than take what some might consider to be the devious and disruptive course of recommittal.

There are, of course, sincere advocates of the recommittal approach, but unfortunately their stand has become clouded by the aura of misunderstanding which cloaks the movement.

This air of attempted deceit is apparent on two counts. It is apparent, first, in some of the phony "nose counts" designed to stampede votes toward or away from the nominee.

And it is also apparent in the not-so-subtle whisperings that recommittal would dispose of the Carswell issue in a way which purportedly would be clean, comparatively inoffensive and, in general, politic. It wouldn't hurt anyone but Judge Carswell.

I would like to discuss this air of deception for a moment, and I would like to offer as exhibit A a newspaper article which reported—completely erroneously, I want to point out from the beginning—on my stand on the recommittal issue.

Mr. President, I was dumfounded when I read in the Baltimore Sun of Friday, March 27, that I would vote to recommit the nomination of Judge G. Harrold Carswell to the Supreme Court of

the United States. I have never made such a statement. I have never waivered in my support for the nomination of Judge Carswell, nor have I ever indicated to anyone that I would vote to recommit the nomination, or that I would even seriously consider voting to recommit the nomination.

I was happy to see that the junior Senator from Kansas, in a speech on the floor of the Senate on Tuesday, March 31, call to account those opponents of Judge Carswell who have resorted to a campaign of untruths in order to defeat his confirmation. I want to discuss some points that the junior Senator from Kansas did not touch on, but first let me say a few more words about the article in the Baltimore Sun.

That same article attributes to Clarence M. Mitchell, Jr., the NAACP representative in Baltimore, the statement that the FBI reported Judge Carswell's 1948 speech, but that "somewhere along the way it got dropped."

We all know by now about this charge concerning the speech in question. Attorney General Mitchell denied it. The Director of the Federal Bureau of Investigation, J. Edgar Hoover, denied it. One's initial tendency is to call Mr. Mitchell to account for having made such a statement. But I think of my own position, where this very same article attributed a position to me which I had never taken. It may be that Mr. Clarence Mitchell did not really say what the reporter says he said, any more than I did.

If, in fact, Mr. Clarence Mitchell did not make the statement attributed to him, even as I did even as I did not make the statement that "unimpeachable sources" attributed to me, then we must classify among the opponents of the nomination the particular reporter who wrote the article in question. If this is the case, he is doing his part to oppose the nomination by printing untrue information in one of the leading daily newspapers on the East Coast.

I think we have here a question not just of what the announced opponents are resorting to in the way of tactics to prevent confirmation of Judge Carswell, but the tactics that a small minority of the working press are using.

There was a story in the Palm Beach Post, a newspaper published in Palm Beach, Fla., in the middle of February which first commented on the fact that Judge Carswell had signed a deed involving a racial covenant in 1966. Let me quote the first two paragraphs of that story:

> Barely four years ago, Supreme Court nominee G. Harrold Carswell and his wife, Virginia, sold a bayfront lot in nearby Wakulla County with the proviso that it could only be occupied by white persons.
>
> The restriction excepted, however, "domestic employees employed by and residing with such Caucasian family."

A story like this, appearing as it did while the nomination was pending before the Senate Judiciary Committee, suggests by its very presence in the newspaper, that it contains facts which have an important bearing on the nominee's qualifications or at least bear in some way on his qualifications for the office to which he was nominated. The plain implication of this story was that anyone who would do what Judge Carswell did in connection with this deed must be a segregationist or against civil rights.

Now, as you read through the story, if you read very carefully, you get an intimation—no more than that—that the particular covenant against occupancy by races other than Caucasian was not to be found in the deed itself, but in some other instrument. As a matter of fact, the story is so factually misleading as to be virtually indefensible. The question of the racial covenant has been discussed during these debates, but I would like to turn to it again not to justify Judge Carswell's conduct in the matter—that has already been ably done by others—but instead to point out just how insidious this type of news story is.

What were the facts in connection with this incident?

First, the deed signed by Judge Carswell did not contain the racial restriction. The only language it had relating to restrictive covenants was this: "Subject to those restrictive covenants as more specifically set out in that warranty deed from Jack W. Simmons, Jr., et al. to Virginia S. Carswell, dated November 1, 1963, and recorded in Official Records Book 5, pages 178–180 in the Public Records of Wakulla County, Florida."

Second, the earlier deed had not merely one, but numerous restrictive covenants relating to residential use of the property, limiting the use of the property to one dwelling, imposing setback requirements, and imposing a minimum square-foot requirement on any residence to be built. "Restrictive covenants" are by no means limited to one's dealing with race—all of these covenants I have just mentioned are restrictive covenants, because they restrict the use of the property in some manner.

Third, Judge Carswell did not even own this property. He signed it because it belonged to his wife, and under Florida practice, the title attorneys call for the husband's signature in a case such as this.

Fourth, when Judge Carswell conveyed land which he and Mrs. Carswell owned together, 7 years previous to this 1966 transaction, they imposed several restrictive covenants on the land. But none of these restrictions were related to race in any way. They are the sort of restrictions that any property owner might impose when he sells off a parcel of land which he owns, and retains the remainder. To illustrate this point, I shall place a copy of the 1959 deed in the record.

Unfortunately, the full facts seldom catch up with the initial "charge," and so the campaign of innuedo and misleading statements goes on apace.

The most recent example of misstatement and an actual use of names which was not authorized in any sense is that of the petition against Judge Carswell signed by former law clerks to the Supreme Court of the United States. One of the purported signatories to this petition was Charles Luce, the chief executive officer of the Consolidated Edison Co. of New York. The fact of the matter is, I am advised, that Mr. Luce did not sign the petition himself, and did not authorize anyone else to sign his name for him. I am advised that he has contacted the newspapers, and requested that his name not be shown as a signatory of this petition.

The question which this sort of thing raises in my mind is whether there are any other, among the 200-odd persons who signed this petition, who are likewise shown as signers without their consent. And how did Mr. Luce's name get on this petition without his consent? Who circulated it? Who was responsible for the unauthorized use of Mr. Luce's name? I think we would all feel a good deal more comfortable if someone would stand up and take the responsibility for this obvious error, rather than simply having the matter hang in an awkward silence.

I am dismayed at some of the stratagems that have apparently been adopted by the opponents of Judge Carswell's confirmation. The opponents apparently feel that the end which they seek justifies any means—truthful or untruthful, honest or dishonest—to accomplish that purpose. I hope they will regret their use of tactics such as those I have just described.

I say now to the Baltimore Sun, and to the so-called "unimpeachable sources" in the Senate that were quoted by the Baltimore Sun, that I will vote against recommittal of Judge Carswell's nomination, and I will vote for his confirmation.

In conclusion, I want to refer once again to the recommittal movement and urge as strongly as possible that this tactic be rejected.

Ours is a clear and present duty.

This is no time for timid hearts.

Nothing will be served by recommittal.

No new information will be developed.

Let the vote be up or down, and let there be no devious evasions.

We owe decisive action to the nominee, to our President, and to the persons who elected us, but just as importantly, perhaps, we owe it to ourselves, for only through a clearcut vote can we adequately fulfill our obligation to advise and consent in such cases.

I ask unanimous consent to have a copy of the deed printed in the RECORD.

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

WARRANTY DEED—DEED 245, PAGE 255

This indenture, made and entered into this 7th day of July, A. D. 1959, by and between G. Harrold Carswell and Virginia S. Carswell, his wife, of the County of Leon and State of Florida, Parties of the First Part, and James R. Warren and Leslie Warren, his wife, whose mailing address is 185 Devonshire Street, Boston 10, Massachusetts, of the County of Suffolk, State of Massachusetts, Parties of the Second Part.

Witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten dollars ($10.00) and other valuable considerations to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said parties of the second part, their heirs and assigns, forever, the following described land, situate, lying and being in the County of Leon, State of Florida, to-wit:

Commence at the Northeast corner of Section 1, Township 1 North, Range 1 West, and

run thence South 1320 feet, thence West 958.4 feet, thence South 969.5 feet, thence West 3600 feet, thence North 1320 feet, thence West 3538.1 feet to the Point of Beginning; from said point of beginning continue thence West 1235.5 feet to an iron pipe, thence continue West 629.7 feet to a point on the Randolph Meander Line of Lake Jackson, thence run South 59° 00' East along said Meander line 291.24 feet, more or less, thence run East 497.02 feet, more or less to an iron pipe, thence continue East 757.75 feet, thence run North 72° 58' East 365.13 feet, thence North 15° 10' East 44.6 feet to the Point of Beginning, containing 5.40 acres, more or less.

Together with a 30 foot easement for the purpose of ingress and egress, the center line of which is described as follows: Commence at the Northeast corner of Section 1, Township 1 North, Range 1 West, and run thence South 1320 feet, thence West 958.4 feet, thence South 969.5 feet, thence West 3600 feet, thence North 1320 feet, thence West 3538.1 feet, thence South 15° 10' West 44.6 feet, thence run South 59° 27' West 116 feet to the Point of Beginning being at the radius point of a circle of 50-foot radius. From said Point of Beginning run thence North 83° 53' East 333.57 feet, thence South 87° 52' East 235.49 feet, thence South 74° 08' East 83.5 feet, thence North 79° 38' East 285.1 feet, thence South 88° 00' East 265.7 feet to its terminal point in the Easterly boundary of property of G. Harrold Carswell at a point South 43° 30' West 69.6 feet from the Northeast corner thereof.

Further together with a 15 foot wide utility easement extending immediately north of and adjacent to the Northerly boundary of the aforementioned 30 foot easement for ingress and egress.

Reserving and excepting unto the said parties of the first part, however, and unto their heirs and assigns forever, an easement for a turning circle over the lands conveyed hereby, said turning circle being described as part of the hereinabove mentioned 30 foot easement for ingress and egress.

The property conveyed by this instrument shall be subject to the following restrictive covenants:

1. The property shall be used exclusively for single family residential purposes, and shall not be used for any commercial venture, or enterprise whatsoever. This restriction shall not prevent the construction of separate and distinct buildings for use as guest or servants' house, garage, storage, or the like so long as they are related to the general residential character of the property in type of construction in existing use.

2. No building or construction of any type shall be situated within twenty-five (25) feet of the Easterly, Southerly, and Westerly exterior property lines and within 15 feet of the Northerly exterior property line of subject property, with the exception of fencing which is not prohibited.

3. The Parties of the first part specifically reserve the right by this restriction to approve the exterior architectural design of any construction on subject property. The owner of subject property, however, shall have the right to construct any dwelling or building so long as it conforms generally in character and stability with others in the neighborhood as embraced in each of the lots of which it is a part, said neighborhood being exemplified herein by unrecorded plat of survey of property for G. Harrold Carswell dated February 17, 1959, by Poole & Poole, Engineers and Land Surveyors.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever, except for taxes for the year 1959, which are to be pro-rated as of this date.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the date and year first above written.

Signed, Sealed and Delivered in Presence of:

JOHN S. GWYNNE.
SARA WAYFORD.
G. HARROLD CARSWELL.
VIRGINIA S. CARSWELL.

State of Florida County of Leon:

I hereby certify, that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, G. Harrold Carswell and Virginia S. Carswell, his wife, to me well known to be the persons described in and who executed the foregoing instrument and they severally acknowledged before me that they executed the same freely and voluntarily for the purpose therein expressed.

Witness my hand and official seal at Tallahassee, County of Leon, and State of Florida, this 7th day of July, A.D. 1959.

JOHN S. GWYNN,
Notary Public, State of Florida at Large.

My Commission Expires: 12/6/61.

State of Florida, County of Leon:

I hereby certify that the above and foregoing is a true and correct copy of a Warranty Deed filed in my office on the 8th day of July A.D. 1959 and recorded in Deed book 245 at page 255.

Witness my hand and official seal this 13th day of February AD 1970.

PAUL E. HARTSFIELD,
By JANE SAUL,
Clerk Circuit Court.

DECEPTIVE MAIL

Mr. BENNETT. Mr. President, I commend the distinguished Senator from California for calling the matter of deceptive mail to the attention of the public and the Senate. As he has spoken about misrepresentations I, too, have had an experience with attempted misrepresentation. I have received a large number of postcards postmarked in Logan, Utah, opposing the Carswell nomination. When this mail began to pour into my office 3 weeks ago, I became very suspicious, because over the years this kind of political position and activity has been very uncommon in the Logan area. Consequently, I began to investigate the mail, and I was surprised to learn that almost none of the names appeared in the Logan telephone directory. I had sources at the Utah State University try to determine if such a mailing campaign might be under way on the campus from students who would not necessarily be in the phone book. To date, we still find none of these names.

Also, return addresses were excluded from this mail making it impossible to reply to the writer. This coupled with the fact that the names do not appear in the telephone directory have made me suspicious of the actual origin of the mail. When it was called to my attention that other Senators have received similar mail, I wrote to the Justice Department asking it to look into the Logan matter.

I hold sacred the right of Americans to petition and to communicate with their elected representatives. This is one of the fundamental principles of representative government and on such vital issues, as the Carswell nomination, I feel each Senator should hear from the citizens of his State. However, there are some ground rules that must be followed and this mail campaign has apparently violated them.

A person writing to his Senator should be responsible enough to give his full name and a legitimate return address. This person should also be willing to avoid any deceptive practice such as signing a postcard written in a different handwriting and without a return address.

I wonder if this is another part of the smear compaign against the nomination of Judge G. Harrold Carswell. I think Senators should be alert to this kind of deceptive communication. In my Senate career, I have held nothing more important than honest, legitimate communication from my constituency. On the other hand, if this is deceptive, as it appears, I condemn and reject it as being unfair and unrepresentative of the American practice of fairplay.

THE CARSWELL NOMINATION

Mr. TYDINGS. Mr. President, I have already addressed myself to the issue of whether Judge Carswell has the ability to put aside his own prejudices and biases so as to be able to approach every case with a fair and open mind.

I have referred to a number of lawyers who have come forward to report occassions where Judge Carswell manifested from the bench an antagonism toward or a bias against the rights of a litigant who was black or poor.

And now another lawyer has made known of instances in which Judge Carswell displayed an open animosity toward the rights of litigants in his court. I have a telegram from Henry M. Aronson, an attorney who appeared before Judge Carswell late in 1966 and early in 1967 on behalf of black students and parents seeking to desegregate their public schools.

Mr. Aronson states:

On each of these appearances, Judge Carswell displayed a marked disrespect for my clients, the 14th Amendment, and my professional responsibilities. He made no effort to mask his racial bias or his abhorrence for those of us advocating views inconsistent with his. Judge Carswell's demeanor was simply inappropriate to a United States Court House. In my three years experience as an attorney engaged in full time civil rights practice, I never appeared before a judge who demonstrated less balance, restraint, and general ability than Judge Carswell.

I ask unanimous consent to insert this telegram in the RECORD at this point.

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

NEW YORK, N.Y.,
March 26, 1970.

Senator JOSEPH TYDINGS,
New Senate Office Building,
Washington, D.C.:

I appeared before Federal District Judge G. Harrold Carswell late in 1966 and early in 1967 on behalf of black students and parents seeking to desegregate their public schools. On each of these appearances, Judge Carswell displayed a marked disrespect for my clients, the 14th amendment, and my professional responsibilities. He made no effort to mask his racial bias or his abhorrence for those of us advocating views inconsistent with his. Judge Carswell's demeanor was

simply inappropriate to a United States court house.

In my three years experience as an attorney engaged in full time civil rights practice, I never appeared before a judge who demonstrated less balance, restraint, and general ability than Judge Carswell to the Supreme Court. Would be an insult to the people of the United States, to the legal profession, to the law, and to the court. I urge your continued opposition.

HENRY M. ARONSON.

Mr. TYDINGS. Mr. President, despite the problems of temperament that Judge Carswell displayed on the lower courts, there might still be some bias for supporting his confirmation to the Supreme Court if he were a man of great intellectual and professional distinction. At least then there would be hope that once on the Supreme Court he would display a capacity for growth that would enable him to deal capably and objectively with the matters of vast importance that come before the Court.

However, the best that can be said of him is that he is a mediocre man. He has demonstrated neither the depth of intellect nor of understanding that would indicate that he might fill with distinction the seat once held by Felix Frankfurther and Benjamin Cardozo. He is, instead, in the opinion of the deans of two of our most respected law schools, a man who is professionally unqualified to sit on the Supreme Court. Dean Pollak of Yale testified:

Judge Carswell has not demonstrated the professional skills and the larger constitutional wisdom which fits a lawyer for elevation to our highest court.

I am impelled to conclude, with all deference, I am impelled to conclude that the nominee presents more slender credentials than any nominee for the Supreme Court put forth in this century.

Dean Bok of Harvard has written:

Judge Carswell has a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the court.

Charles L. Black, Jr., Luce professor of jurisprudence at the Yale Law School and one of the most respected members of the academic legal community stated in a letter to the chairman:

There can hardly be any pretence that he—Carswell—possesses any outstanding talent at all. On the contrary, all the evidence I have seen would lead to the conclusion that mediocrity is an independent valid objection to his appointment.

The opinions of Deans Pollack and Bok and Prof. Charles Black are representative of the great weight of expert legal opinion on the subject of Judge Carswell's judicial ability. Indeed, by now it is perfectly clear that among legal experts who have studied his opinions, the overwhelming weight of opinion is that Judge Carswell clearly has not demonstrated the minimum standard of judicial ability required of a Supreme Court Justice. The outpouring of opposition from the Nation's legal scholars, judges and lawyers, both in terms of quantity and analytical perceptiveness, has never been equaled in the history of the Court. From all over the Nation those trained in the law have stepped forward to voice their opposition.

In my own State of Maryland, Eli Frank, the president of the Maryland Bar Association and William Marbury, past president of the Maryland Bar, are of the opinion that Judge Carswell "does not have the legal or mental qualification essential for service on the Supreme Court or on any high court in the land."

And this week I received a letter from the prestigious Junior Bar Association of Baltimore City, which is composed of the outstanding young lawyers of the city of Baltimore. This bar association has joined others in strongly opposing the nomination of G. Harrold Carswell. The bar association states:

Judge Carswell does not meet the high standards of intellect and scholarship which are required of a Supreme Court Justice.

I ask unanimous consent to insert their letter in the RECORD at this point.

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

JUNIOR BAR ASSOCIATION
OF BALTIMORE CITY, INC.,
Baltimore, Md., March 30, 1970.

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

DEAR SENATOR TYDINGS: The Junior Bar Association of Baltimore City expresses its strong opposition to the nomination of Judge G. Harrold Carswell to the Supreme Court of the United States. Quite apart from legitimate questions raised in recent weeks concerning his candor in testifying before the Senate Judiciary Committee and his attitude respecting racial equality, Judge Carswell does not meet the high standards of intellect and scholarship which are required of a Supreme Court Justice. His judicial career has been among the least distinguished of the judges in his circuit and has been characterized by an unusually large number of reversals. On this ground alone, the Senate should withhold its consent.

In view of the serious doubts as to the qualification of Judge Carswell, we urge that you continue to exercise the vigilence and careful scrutiny demanded by the Constitution and vote against the nomination of Judge Carswell.

Sincerely yours,
HERBERT J. BELGRAD,
President, The Junior Bar Association of Baltimore City.

Mr. TYDINGS. The members of the faculty of the Department of Government and Politics of the University of Maryland likewise have gone on record in opposition to this obviously poor nomination.

Thirty political scientists from the Maryland faculty state:

We believe the public record reveals him to be a totally unsatisfactory candidate for this position at this time in our history. We believe that his confirmation by the United States Senate would greatly weaken the competence, prestige, and influence of the judicial branch of our national government. We fear that his confirmation and his service on the Supreme Court would result in an exacerbation of the racial crisis now confronting our nation.

I ask unanimous consent to insert their letter in the RECORD at this point.

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

UNIVERSITY OF MARYLAND,
March 24, 1970.

EDITOR,
The Washington Post,
Washington, D.C.

DEAR SIR: We the undersigned, members of the faculty of the Department of Government and Politics of the University of Maryland at College Park, wish to express our opposition as individuals to the confirmation of Judge G. Harrold Carswell as Associate Justice of the Supreme Court of the United States.

We believe the public record reveals him to be a totally unsatisfactory candidate for this position at this time in our history. We believe that his confirmation by the United States Senate would greatly weaken the competence, prestige, and influence of the judicial branch of our national government. We fear that his confirmation and his service on the Supreme Court would result in an exacerbation of the racial crisis now confronting our nation.

We join our many colleagues from the academic and legal worlds who have earnestly implored the Senate to ponder carefully its vote on this issue. Judge Carswell should not be confirmed.

Sincerely yours,

Aubrey C. King, Earlean M. McCarrick, Martin O. Heisler, Conley H. Dillon, Daniel Melnick, Ralph A. Ranald, Don C. Piper, Paris N. Glendening, Clarence N. Stone, Herbert H. Werlin, Elbert M. Byrd, Ernest A. Chaples, Jr., Thorton Anderson, Michael D. Hais, Anthony M. Angiletta, Jonathen Wilkenfeld, Harold Larson, Joseph L. Ingles, Eugene D. McGregor, Guy B. Hathorn, Peter K. Bechtold, Mavis Reeves, H. V. Harrison, Richard Claude, James M. Glass, Ronald J. Terchek, James H. Oliver, Eldon W. Lanning, Suzanne K. Sebert, Theodore McNelly.

Mr. TYDINGS. Moreover, I recently received a letter from Profs. David Skillen Bogen, Edward A. Tomlinson, Lawrence Kiefer, Hal M. Smith, Laurence M. Jones, John M. Brumbaugh, Everett F. Goldberg, James W. McElhaney, Garrett Power, Laurence M. Katz, Alice A. Soled, J. Joel Woodey, and Bernard Autrback, 13 distinguished members of the faculty from the University of Maryland School of Law.

In their letter these law professors state:

The undersigned faculty members at the University of Maryland Law School oppose as individuals the nomination of G. Harrold Carswell to the United States Supreme Court. Judge Carswell's undistinguished career does not qualify him to sit on the nation's highest court. Furthermore, his insensitivity on racial matters disqualifies him from sitting in judgment on the vital issues which confront the Court. We hope that the Senate will reject the nomination.

I request unanimous consent to print their letter in the RECORD at this point.

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

UNIVERSITY OF MARYLAND,
SCHOOL OF LAW,
Baltimore, Md., March 16, 1970.

EDITOR,
Washington Post,
Washington, D.C.

GENTLEMEN: The undersigned faculty members at the University of Maryland Law School oppose as individuals the nomination of G. Harrold Carswell to the United States Supreme Court. Judge Carswell's undistin-

guished career does not qualify him to sit on the nation's highest court. Furthermore, his insensitivity on racial matters disqualifies him from sitting in judgment on the vital issues which confront the Court. We hope that the Senate will reject the nomination.

Very truly yours,

David Skillen Bogen, Edward A. Tomlinson, Lawrence Kiefer, Hal M. Smith, Laurence M. Jones, John M. Brumbaugh, Everett F. Goldberg, James W. McElhaney, Garrett Power, Laurence M. Katz, Alice A. Soled (Mrs.), J. Joel Woodey, Bernard Auerbach.

Mr. TYDINGS. Mr. President, the objection voiced by the faculty of the Maryland Law School is part of the veritable crescendo of opposition that is emanating from the deans and faculties of practically every fine law school located in every region of the country.

Law professors from Harvard, Yale, Boston College, Notre Dame, Ohio State, Arizona State, Columbia, Catholic University, University of California at Los Angeles, Valparaiso, Georgetown, University of Iowa, University of Pennsylvania, Loyola, University of Maine, Indiana University, Rutgers, State University of New York at Buffalo, University of Illinois, Oklahoma City University, University of Chicago, New York University, University of Connecticut, Hofstra, University of California, University of Toledo, University of Arizona, University of Pittsburgh, Western Reserve, Cornell, Syracuse, University of Oklahoma, Willamette Univeristy, University of Kansas, as well as many others have expressed their opposition. Opposition to the nomination knows no geographical bounds, as witness the opposition expressed by numerous members of the faculties of the law schools of the University of North Carolina, University of Virginia, Washington and Lee, Duke University, and Florida State University.

Thirty-one distinguished members of the School of Law of Columbia University also have written the Senate urging rejection of the nomination of Judge Carswell. Their letter states:

We believe that no one should be appointed to our highest tribunal whose qualifications do not meet the most exacting standards. An appointment to the Supreme Court is the highest honor our nation can bestow on a lawyer. If our judiciary is to remain respected, that honor must be earned by outstanding professional and intellectual credentials. It is our considered judgment that Judge Carswell's record fails to show that he meets these requirements.

I request unanimous consent to print their letter in the RECORD at this point.

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

COLUMBIA UNIVERSITY SCHOOL OF LAW,
New York, N.Y., March 2, 1970.

AN OPEN LETTER TO MEMBERS OF THE UNITED STATES SENATE

As law teachers deeply concerned about the law and its administration, we oppose the appointment of Judge G. Harrold Carswell to the United States Supreme Court.

We believe that no one should be appointed to our highest tribunal whose qualifications do not meet the most exacting standards. An appointment to the Supreme Court is the highest honor our nation can bestow on a lawyer. If our judiciary is to remain respected, that honor must be earned by outstanding professional and intellectual credentials. It is our considered judgment that Judge Carswell's record fails to show that he meets these requirements.

We further believe that in the present times only someone whose record of fair-mindedness to all citizens is completely unblemished should be appointed to our highest tribunal. Judge Carswell does not meet this requirement. His racial statements in the past and the more recent charges of abuse to civil rights lawyers made against him by responsible members of the bar, inescapably cast doubt on his impartiality and fairness in civil rights cases. As we all know, in these matters it is more important than ever to avoid any grounds for suspicion of bias in our system of law.

A judiciary that can claim the respect of even those who disagree with its decisions is a foundation on which this nation has been built. We urge you not to undermine this foundation, for to do so will only fortify those disenchanted groups who claim that the courts and legal process offer no hope for meaningful justice.

We earnestly request that you vote not to confirm the appointment of Judge Carswell.

Respectfully yours,

Harlan M. Blake, George Cooper, Robert M. Cover, Harold Edgar, Sheldon Elsen, Tom J. Farer, Allan Farnsworth, Henry Freedman, Wolfgang Friedmann, Nina M. Galston, Richard N. Gardner, Frank P. Grad, R. Kent Greenawalt.

Robert Hellawell, Louis Henkin, Alfred Hill, N. William Hines, W. Kenneth Jones, Victor Li, Louis Lusky, Willis L. M. Reese, Albert J. Rosenthal, Harold J. Rothwax, Benno C. Schmidt, Jr., Edwin G. Schuck, Hans Smit, Abraham D. Sofaer, Michael I. Sovern, Telford Taylor, H. Richard Uviller, Walter Werner.

Members of the Faculty of Law, Columbia University.

Mr. TYDINGS. Similarly, 25 members of the School of Law of the University of California, Los Angeles, have stated that they feel a "special responsibility to oppose the elevation of G. Harrold Carswell to the Supreme Court." I ask unanimous consent that their letter be printed in the RECORD at this point.

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

UNIVERSITY OF CALIFORNIA, LOS ANGELES,
Los Angeles, Calif., February 20, 1970.

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

DEAR SENATOR: Surely no one who values the unique role of the United States Supreme Court as both a symbol and as a vital instrument of liberty can relish the spectacle of yet another struggle in the effort to maintain high standards and judicial integrity on the nation's highest tribunal. Exhausted from a struggle to save the Court from the damage it would have suffered from the appointment of a judge who demonstrated a singular insensitivity to accepted norms of behavior in conflict of interest situations, the legal profession must now protect the court from a one-time self-professed white supremacist whose undistinguished career on the bench has contributed to the fulfillment of the vows he made more than twenty years ago to uphold the "ideals" of racial segregation.

The Supreme Court is as threatened now by racism as it was by impropriety two months ago. A judge whose career has all too frequently been marred by evasion of the letter and spirit of Supreme Court decisions, who has repeatedly been reversed by the Court of Appeals for his decisions in racial cases, and who has demonstrated a callous indifference to the constitutional rights of America's black citizens can hardly be gauged the right man for the Supreme Court at this turning point in American history.

For these reasons, as law professors who view the law as an instrument of peaceful and orderly social change, we feel a special responsibility to oppose the elevation of G. Harrold Carswell to the Supreme Court.

Respectfully,

Henry W. McGee, Jr., Benjamin Aaron, Reginald H. Alleyne, Michael R. Asimow, Robert C. Casad, George P. Fletcher, Kenneth W. Graham, Jr., Donald G. Hagman, Martin H. Kahn, Kenneth L. Karst, William A. Klein, James E. Krier, Leon Letwin, Melville B. Nimmer, Monroe E. Price, Paul O. Proehl, Joel Rabinovitz, Ralph S. Rice, Barbara B. Rintala, Gary T. Schwartz, Herbert E. Schwartz, Henry J. Silberberg, Frederick E. Smith, William D. Warren, and Richard A. Wasserstrom, Professors of Law.

Mr. TYDINGS. Mr. President, 20 members of the faculty of the Law School of the University of Pennsylvania have examined the judicial work of Judge Carswell. Like hundreds of other scholars who are outraged by this nomination, they have concluded that, "Judge Carswell has failed to exhibit those qualifications which the American people are entitled to expect of a Justice." The members of this faculty state, "our examination of his opinion in various areas of the law compels the conclusion that he is an undistinguished member of his profession, lacking claim to intellectual stature." I ask unanimous consent to print their letter in the RECORD at this point.

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

UNIVERSITY OF PENNSYLVANIA,
Philadelphia, Pa., February 5, 1970.

It is bitter irony that in a society racked by the consequences of injustices long and callously visited upon black Americans the present nominee to the Supreme Court should be a man who at one point vehemently espoused the doctrine of white supremacy. Accepting his assurances that he no longer holds this view hardly dispels doubts concerning his generosity of spirit and breadth of vision. Indeed, the recent testimony of lawyers who have appeared before Judge Carswell raises serious questions as to his temperament and fair-mindedness, suggesting at best a grudging accommodation rather than a devotion to the constitutional rights of minorities. Beyond this, our examination of his opinions in various areas of the law compels the conclusion that he is an undistinguished member of his profession, lacking claim to intellectual stature.

It is one thing to say that Judge Carswell should not be rejected solely on the basis of views expressed as a young man. It is quite another matter, however, to elevate to the Supreme Court of the United States a judge whose principal distinctions appear to be his Southern heritage and his lack of investment in the securities market.

Appointment to the High Court is an event of national moment and lasting significance. We submit that Judge Carswell has failed to exhibit those qualifications which the American people are entitled to expect of a Justice.

Bruce Ackerman, Martha F. Alschuler, Martin J. Aronstein, Paul Bender, Paul W. Bruton, Morris L. Cohen, David B. Filvaroff, James O. Freedman, Stephen R. Goldstein, Robert A. Gorman, Jan Z. Krasnowiecki, Howard Lesnick, Richard G. Lonsdorf, Paul J. Mishkin, Clarence Morris, Covey T. Oliver, Louis B.

Schwartz, Ralph S. Spritzer, Edward V. Sparer, and Bernard Wolfman, Members of the Faculty of the University of Pennsylvania Law School.

Mr. TYDINGS. Rutgers Law School is another distinguished institute of higher learning that has addressed itself to the issue of Judge Carswell's legal qualifications to sit on the Supreme Court. Seventeen members of this faculty have concluded that, "his professional competence is of such a low level that approval of his nomination would, as the New York Times put it on January 28, come close to contempt of the Supreme Court." I ask unanimous consent to print their letter in the RECORD at this point.

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

RUTGERS—THE STATE UNIVERSITY,
Newark, N.J., February 11, 1970.

Hon. HARRISON A. WILLIAMS,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR WILLIAMS: We are dismayed by the nomination of Judge Carswell for the Supreme Court. Judge Carswell's judicial record unfortunately fulfills his 1948 pledge of racism, as lawyers who have practiced before him testified without rebuttal. Legal scholars who studied his opinions and decisions testified that Judge Carswell has been consistently reluctant to enforce the guarantees of the Bill of Rights, and that his professional competence is of such a low level that approval of his nomination would, as The New York Times put it on January 28, come close to contempt of the Supreme Court.

We trust that you will do everything in your power to prevent confirmation by the Senate.

Respectfully,

John G. Glenn, Frank Askin, Richard Chuseel, J. Allen Smith, Saul Mendlontz, Robert E. Knowlton, Eli Garmel, Steven A. Gifin, Alexander D. Brooks, Ruth B. Ginsburg, Era H. Hanks, Thomas A. Cowan, Thomas A. Cantry, Julius A. Lee, David Haber, John Lowenthal, and Vincent Kimberley, members of the faculty, Rutgers University, School of Law, Newark.

Mr. TYDINGS. Twelve members of the faculty of the College of Law of the University of Illinois state that there is "nothing . . . to indicate that Judge Carswell is a man of such eminence, quality, and demonstrated legal ability as to warrant a lifetime appointment to the high court of the land."

I ask unanimous consent to have their letter printed in the RECORD.

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

UNIVERSITY OF ILLINOIS,
Champaign, Ill., February 13, 1970.

Hon. CHARLES PERCY,
1200 New Senate Office Building,
Washington, D.C.

DEAR SENATOR PERCY: We, the undersigned members of the faculty of the College of Law, write to express our concern over the nomination of Judge Carswell to the United States Supreme Court. The concern is not that he is a Southerner or a conservative. Those are matters which seem to be properly within the discretion of a President in making his selection.

The concern is not primarily that Judge Carswell has a background of stated white racism. Even in as sensitive a position as justice of the Supreme Court, a man should not be automatically disqualified because of an error in his youth. Whether such error should be grounds for rejection at this particular point in our nation's history is a close judgment call.

The primary concern is simply this: nothing has yet been reported in the press or elsewhere to indicate that Judge Carswell is a man of such eminence, quality, and demonstrated legal ability as to warrant a lifetime appointment to the high court of the land. The question ought not be, has he done anything to cause the Senate to reject him; the question should be whether he has done enough to entitle him to acceptance. The evidence so far clearly suggests the answer is no.

We appreciate the difficulty after the Haynsworth matter of again challenging the wisdom of the President's choice, particularly for members of his own party. Nevertheless, in view of the importance of Senate confirmation of a Supreme Court justice, we ask that you give this matter the searching examination it deserves.

Very truly yours,

Sheldon J. Plager, Michael P. Dooley, Peter Hay, Jeffrey O'Connell, Wayne R. LaFave, Lawrence Waggoner, Rubin C. Cohn, Robert W. Brown, Roger W. Findley, Prentice H. Marshall, Victor J. Stone, and J. Nelson Young.

Mr. TYDINGS. Twenty-three members of the School of Law of the University of Puerto Rico, in an open letter to the Senate, state:

We believe that no one should be appointed to our highest tribunal whose qualifications do not meet the most exacting standards. An appointment to the Supreme Court is the highest honor our nation can bestow on a lawyer. If our judiciary is to remain respected, that honor must be earned by outstanding professional and intellectual credentials. It is our considered judgment that Judge Carswell's record fails to show that he meets these requirements.

I ask unanimous consent to print their letter in the RECORD at this point.

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

UNIVERSITY OF PUERTO RICO,
Rio Piedras, P.R., March 13, 1970.

An Open Letter to Members of the United States Senate:

As law teachers deeply concerned about the law and its administration, we oppose the appointment of Judge G. Harrold Carswell to the United States Supreme Court.

We believe that no one should be appointed to our highest tribunal whose qualifications do not meet the most exasting standards. An appointment to the Supreme Court is the highest honor our nation can bestow on a lawyer. If our judiciary is to remain respected, that honor must be earned by outstanding professional and intellectual credentials. It is our considered judgment that Judge Carswell's record fails to show that he meets these requirements.

We further believe that in the present times only someone whose record of fairmindedness to all citizens is completely unblemished should be appointed to our highest tribunal. Judge Carswell does not meet this requirement. His racial statements in the past and the more recent charges of abuse to civil rights lawyers made against him by responsible members of the bar, inescapably cast doubt on his impartiality and fairness in civil rights cases. As we all know, in these matters it is more important than ever to avoid any grounds for suspicion of bias in our system of law.

A judiciary that can claim the respect of even those who disagree with its decisions is a foundation on which this nation has been built. We urge you not to undermine this foundation, for to do so will only fortify those disenchanted groups who claim that the courts and legal process offer no hope for meaningful justice.

We earnestly request that you vote not to confirm the appointment of Judge Carswell.

Respectfully yours,

Dean David M. Helfeld, Jacob I. Karro, Eulalio Torres, Demetrio Fernández, Samuel E. Polanco, Luis F. González Correa, Jaro Mayda, Helen Silving, Eduardo Ortiz Quiñones, Alvaro Calderón, and José E. Villares.

William C. Headrick, Raúl Serrano Geyls, Richard H. Francis, Efraín González Tejera, Ratimir Maximiliano Pershe, José M. Canals, Antonio J. Amadeo Murga, Margaret Hall, Jaime B. Fuster, Benjamín Rodríguez Ramón, Nicolás Jiménez, and Richard B. Cappalli, Members of the Faculty of Law, University of Puerto Rico (Organizational affiliation for purpose of identification only.)

Mr. TYDINGS. Twenty-one professors of law of the State University of New York have concluded that Judge Carswell fails to have the "strength of intellect" which is needed on the Court. I ask unanimous consent to print their letter in the RECORD at this point.

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

[From the New York Times, Mar. 17, 1970]

CARSWELL OPPOSED

To the Editor: Recent disclosures about the capacities and attitudes of Judge G. Harrold Carswell have persuaded us that he should not be confirmed as a Justice of the United States Supreme Court. We therefore urge the committee and the Senate to reject this nomination.

The Supreme Court plays a uniquely powerful role in our nation. Whether a justice is a "strict constructionist" or an "activist," the issues coming before the Court require great strength of mind and sensitivity to injustice. Every nomination for the Court thus carries a heavy burden in this regard.

Measured by these standards, the nomination of Judge Carswell is clearly deficient. In the past he has demonstrated attitudes hostile to our black citizens. Admittedly, these occurred many years ago, but when such evidence appears in the record, there is an obligation to show that the attitude then reflected no longer exists.

Justice Hugo Black had indeed been a member of the Ku Klux Klan some years before his nomination, but he had sufficiently demonstrated the insignificance of this by his conduct both before and after. Judge Carswell has not only made no such demonstration of a changed attitude, but the emerging evidence indicates that at least remnants of this attitude still linger.

Finally, as careful students of his judicial performance like Prof. William Van Alstyne (who, incidentally, supported Judge Haynsworth's nomination) and Dean Louis Pollak of Yale have concluded, the intellectual quality of Judge Carswell's opinions is far from distinguished. [Editorial March 13.]

This is not to deny the appropriateness of a justice from the South, but in these difficult days, strength of intellect and sensitive to minority aspirations are indispensable for any appointment to one of the most powerful and demanding offices our society possesses. Measured by either of these standards, Judge Carswell fails.

HERMAN SCHWARTZ.

BUFFALO, *March 9, 1970.*

(NOTE.—The letter was signed by twenty other Professors of Law at the State University of New York.)

Mr. TYDINGS. Mr. President, four statements of opposition from southern law school faculties deserve special note.

One letter comes from the University of Virginia School of Law, one of the South's finest law schools. Nineteen members of the faculty of this outstanding school have written:

The failure of the organized bar and law schools of this land to oppose vigorously the nomination of Judge Carswell to the Supreme Court can only be described as lamentable. President Nixon is entitled to his belief that what the Supreme Court needs now is another Southern justice, indeed even a "strict constructionist," but as faculty members of a Southern law school we cannot remain silent while a judge whose legal abilities and judicial background are so sadly wanting is awarded one of the highest judicial honors that this country can bestow upon a member of our profession.

I ask unanimous consent to have their letter inserted in the RECORD at this point.

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

LAW PROFESSOR'S OPPOSITION TO CARSWELL

The failure of the organized bar and the law schools of this land to oppose vigorously the nomination of Judge Carswell to the Supreme Court can only be described as lamentable. President Nixon is entitled to his belief that what the Supreme Court needs now is another Southern justice, indeed even a "strict constructionist," but as faculty members of a Southern law school we cannot remain silent while a judge whose legal abilities and judicial background are so sadly wanting is awarded one of the highest judicial honors that this country can bestow upon a member of our profession.

R. B. LILLICH,
University of Virginia School of Law.
CHARLOTTESVILLE.

(NOTE.—This letter also bore the names of 18 other members of the law school faculty.)

Mr. TYDINGS. Equally significant is a statement signed by 86 members of the graduating class of the University of Virginia School of Law. These young men well trained in law at one of the South's finest institutes of higher learning state:

Evidence overwhelmingly shows that G. Harrold Carswell is unqualified to sit on the nation's highest court.

I ask unanimous consent to have this petition inserted in the RECORD at this point.

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

ACT NOW AGAINST THE NOMINATION OF G HARROLD CARSWELL

The integrity of the Supreme Court is a matter of concern to all citizens. Evidence overwhelmingly shows that G. Harrold Carswell is unqualified to sit on the Nation's highest court. As third year students at the Law School we urge all opposed to the nomination to express their views to their Senators and to urge their relatives and friends to do the same.

David T. Reidel, S. Martin Teel, Jr., Kurt A. Kaufmann, Robert J. Miller, John A. Mahaney, Hunter Hughs, Harvey A. Goldman, Russell R. French, M. Langhorne Keith, Harvey E. Bines, Mark J. Spooner, C. Porter Vaughan, III, John G. Milliken, J. Anthony Sinclitico III, Priscilla J. Rassin, Timothy E. Hoberg, Alan Stephenson, David Brewer, John R. Lacey, Kennth M. Greene, F. A. McDermott, Richard Saahl, Carl Hanzelik, Thomas J. Mullaney, Peter Tierney.

R. A. Graham, Edward L. Hogshire, Frederick T. Stant III, Vernon Swartsel, John T. Morin, John H. Cassady, Vincent Tramoute II, Luciene Wulsin, Jr., Russel H. Lubiner, Jay H. Calvert, Jr., Myron T. Steele, Robert W. Benjamin, James A. L. Daniel, Philip S. Davi, Lynn Groseclose, F. L Carter, J. H. Morganstern, William N. Pollard, Elaine R. Jones, John S. Edwards, D. Sophocles Dadakis, Alice Rebecca Snyder, Leo L. Tully, Richard N. Carrell, Timothy More.

Andrew R. Gelman, William D. Cotter, Michael J. McDermott, John T. Schell, III, John A. Dudek, Jr., F. Guthrie Gordon III, Roger C. Wiley, Jr., Craig M. Bradley, John O. Wynne, Neil G. McBride, Stephen M. Pa, Samuel M. Bradley, John X Denney, Jr., David S. Lott, H. Sadler Pi, T. James Bryan, John P. Paone, Richard A. Smith, Allan J. Tanenbaum, Marshall V. Miller, E. William Chapman, Charles H. Majors, Vincent J. Poppiti, Robert P. Kl, Marion H. Allen.

Robert A. Boas, John G. Milburn, M. R. Bromley, C. Ca, Kathleen A. Keane, Jack McKay, Thomas E. Bundy, Nancy Smith, David M. Levy, Paul C. Giannelli, R. M. C. Glenn III.

Mr. TYDINGS. The second statement comes from nine members of the law school of Florida State University, located in Tallahassee. Notwithstanding the fact that Judge Carswell helped to establish this law school, the members of the faculty asked the President to withdraw the nomination. Their letter states:

Because we believe that only the most highly qualified should be appointed to the United States Supreme Court, we urge you to withdraw the name of Judge G. Harrold Carswell and to submit to the Senate the name of some truly distinguished Southern jurist.

I ask unanimous consent that this letter be inserted in the RECORD.

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

THE FLORIDA STATE UNIVERSITY,
Tallahassee, March 17, 1970.

Hon. RICHARD M. NIXON,
President of the United States,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: Because we believe that only the most highly qualified should be appointed to the United States Supreme Court, we urge you to withdraw the name of Judge G. Harrold Carswell and to submit to the Senate the name of some truly distinguished Southern jurist.

Sincerely,

Robert P. Davidow, Assistant Professor of Law; Raymond G. McGuire, Assistant Professor of Law; John F. Yetter, Assistant Professor of Law; David F. Dickson, Associate Professor of Law; John W. VanDoren, Associate Professor of Law; Ken Vinson, Professor of Law; Jarrett C. Oeltjen, Assistant Professor of Law; Francis N. Millett, Jr., Associate Professor of Law; Edwin M. Schroeder, Law Librarian & Instructor.

Mr. TYDINGS. A third letter in opposition comes from the law faculty of the University of North Carolina.

Twenty-two members of this law faculty, representing a majority of the faculty at this fine school, have declared their opposition. They state:

The Supreme Court deserves and demands the best America has to offer; and Judge Carswell is, as his Senate supporters admit, mediocre.

I ask unanimous consent to insert their letter in the RECORD at this point.

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

THE UNIVERSITY OF NORTH CAROLINA,
Chapel Hill, March 24, 1970

Senator SAM ERVIN,
Senator B. EVERETT JORDAN,
Senate Office Building,
Washington, D.C.

DEAR SENATORS: We, the undersigned, being a majority of the law professors at the University of North Carolina, urge you to vote against the ratification of Judge Carswell. The Supreme Court deserves and demands the best America has to offer; and Judge Carswell is, as his Senate supporters admit, mediocre.

Daniel H. Pollitt, R. H. Robinson, Jr., Dale Whitman, Robert Melott, Kenneth S. Broun, Robert Byrd, Donald F. Clifford, Jr., John P. Dalzell, Dan B Dobbs, John Evans, Morris R. Gelblum. Arnold H. Loewy, Martin B. Louis, Laughlin McDonald, Barry Nakell, Walter D. Navin, Jr., Dickson Phillips, Thomas J. Schoenbaum, John W. Scott, Jr., John E. Semonche, Frank R. Strong, W. L. Walker.

Mr. TYDINGS. The fourth statement comes from 57 faculty members, including more than half of the law school faculty, of the Washington and Lee University at Lexington, Va. They state:

Judge Carswell's judicial record is undistinguished . . . He seems to be a thoroughly mediocre man by the most lenient standards. . . . Surely, here in the South, are judges of conservative mind, but men of good will and judicial ability. Let the Senate turn aside the nomination of Judge Carswell and then let the President look again.

I ask unanimous consent to print their letter in the RECORD at this point.

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

JUDGE CARSWELL'S NOMINATION

We, the undersigned members of the Washington and Lee University faculty, oppose the confirmation of Judge G. Harrold Carswell as Associate Justice of the Supreme Court of the United States of America. His appointment would be a slap in the face to 23 million black Americans—our fellow citizens—and would further disenchant young Americans in their hope for quality and noble leadership in government. Judge Carswell's judicial record is undistinguished. The deans of the law schools at Yale, Harvard and the University of Pennsylvania have called his record "the least distinguished in this century." He seems to be a thoroughly mediocre man by the most lenient of standards.

Surely, here in the South, are judges of conservative mind, but men of good will and judicial ability. Let the Senate turn aside the nomination of Judge Carswell and then let the President look again.

MILTON COLVIN,
Professor of Political Science, Washington and Lee University.

Mr. TYDINGS. Mr. President, some have asserted that Judge Carswell should be confirmed because in the past nominees have been confirmed who lacked judicial experience. This argument totally misses the point. Judge Carswell should not be confirmed because he does

have judicial experience and this experience has proved that he is not fit to sit on the Supreme Court.

The facts are that Judge Carswell has not distinguished himself in any aspect of the law whatsoever. Distinguished and learned professors have examined Judge Carswell's opinions dealing with property law, tax law, criminal law, torts, and contracts. Their conclusion—Judge Carswell "has failed to demonstrate even the most elementary of judicial skills."

He simply strikes out when it comes to judicial ability.

Prof. Charles R. Nesson, who teaches courses in personal property and real property at Harvard Law School examined Judge Carswell's property decisions. Professor Nesson writes that Judge Carswell's opinions are flawed by his failure "to state the facts in any comprehensible fashion," "to indicate the basis for Federal jurisdiction" and by his dismissal of "the defendant's major contention in conclusionary fashion with no indication of the facts supporting the conclusion."

Professor Nesson concludes:

In a time when law and courts are seen increasingly as instruments of political repression it is particularly important that judicial appointees be men on legal and moral distinction. Judge Carswell does not appear to meet such standards.

I ask unanimous consent to insert this statement in the RECORD at this point.

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

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., February 14, 1970.
Senator JOSEPH TYDINGS,
Senate Judiciary Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: Apart from the issues of social outlook and racial bias of Judge Carswell, serious questions have been raised as to whether he has the requisite judicial qualities to be appointed to the Supreme Court. Because these latter qualities are difficult to evaluate with precision, there is a tendency for witnesses at the hearings and public commentators to overlook or deemphasize this issue as a factor in the Senate's decision. It appears, for example, that the ABA Committee on Judicial Appointments gave no more than perfunctory attention to Judge Carswell's record on the bench as a measure of his abilities as a judge. This approach to judicial appointments impairs the quality as well as the stature of the Supreme Court, and seriously undercuts respect for law.

As a professor of Property Law I have evaluated the published opinions of Judge Carswell in my field. These opinions are Lefkowitz v. McQuagge, 230 F. Supp. 757, affirmed 334 F. 2d 243; U.S. v. 452 Acres of Land, 207 F. Supp. 323; and First Nat. Bank v. US, 350 F. 2d 606. They are not distinguished opinions. The opinion in Lefkowitz v. McQuagge, for example, fails to state the facts in any comprehensible fashion, fails to indicate the basis for federal jurisdiction (the case is an ejectment proceeding), and dismisses what appears to be the defendant's major contention (a claim of adverse possession) in conclusory fashion with no indication of the facts supporting the conclusion.

In a time when law and courts are seen increasingly as instruments of political repression it is particularly important that judicial appointees be men on legal and moral distinction. Judge Carswell does not appear to meet such standards.

Sincerely yours,
CHARLES R. NESSON,
Professor of Law.

Mr. TYDINGS. Prof. Guido Calabresi of Yale reviewed Judge Carswell's opinions in tort cases, an area that Professor Calabresi has taught for 11 years and concluded:

There is nothing in them to suggest any special distinction or qualification for the United States Supreme Court.

Interestingly, Professor Calabresi also noted that Judge Carswell's opinions in the field of torts "do not show that universal dedication to precedent and strict construction which it is said the President desires."

I ask unanimous consent to have this letter printed in the RECORD.

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

LAW SCHOOL OF
HARVARD UNIVERSITY,
Cambridge, Mass., February 13, 1970.
Hon. JOSEPH D. TYDINGS,
Judiciary Committee,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TYDINGS: I have taught the law of Torts over the last eleven years at the Yale, Harvard and Columbia schools of law. Recently I have read some twenty-three torts opinions by Judge H. Carswell. These, I believe, include substantially all his writings in this area which have been published. My view of his opinions is that while most are competent, there is nothing in them to suggest any special distinction or qualification for the United States Supreme Court. It is an unfortunate fact that lack of distinction, by itself, has rarely been deemed a sufficient ground for denying the President his choice of appointments to the Supreme Court. Where an appointment, however, is insulting to a great number of citizens as this one is, lack of distinction adds a very important dimension.

Judge Carswell has made blatant and public racist remarks. A Senator may feel bound to vote to confirm a man who has made such racial remarks if he believes that those remarks have been honestly recanted and if failure to confirm would substantially limit the President's appointment prerogatives. This last might be the case if the nominee was a jurist of distinction who could be replaced only with difficulty. My reading of Judge Carswell's opinions in my field suggests this is not the case. Indeed, it suggests that there are many sitting judges both in the country and in the South who hold the view of law the President seems to espouse, who are at least as qualified technically as Judge Carswell, and who have not publicly insulted a large number of our citizens. Under the circumstances confirmation of Judge Carswell amounts to gratuitous insult.

It may be worth noting that Judge Carswell's opinions in the field of Torts do not show that universal a dedication to precedent and strict construction which it is said the President desires. This raises a question whether in those areas of law like Civil Rights, where experts say they have detected an especially narrow constructionism, something is at work other than a general judicial philosophy.

I sincerely hope that you will vote to withhold your advice and consent to this nomination.

Very truly yours,
GUIDO CALABRESI,
Professor of Law, Yale University, Visiting Professor of Law, Harvard University.

Mr. TYDINGS. Professor I. Lazerow, professor and assistant dean at the University of San Diego School of Law read and analyzed 10 of Judge Carswell's opinions relating to property or Federal taxation. These are areas in which Professor Lazerow has expertise. Professor Lazerow has found that Judge Carswell "Adduces conclusion of law—which are unsupported by any reasoning." On the basis of his analysis, he has found that Judge Carswell demonstrates a marked inability "to relate the facts of the case to the governing law."

Professor Lazerow concludes:

Judge Carswell does not possess sufficient lawlerly ability to sit on the Supreme Court of the United States.

I ask unanimous consent to insert Professor Lazerow's letter in the RECORD at this point.

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

UNIVERSITY OF SAN DIEGO,
San Diego, Calif., March 26, 1970.
Senator GEORGE MURPHY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MURPHY: I have noted in the press allegations with respect to the competence of Judge Harrold Carswell to sit on the Supreme Court of the United States, and have made my own investigation of the matter.

I have read and analyzed ten of his opinions relating to property or federal taxation, areas in which I have some expertise. From the opinions in those cases, I must conclude that Judge Carswell does not possess sufficient lawyerly ability to sit on the Supreme Court of the United States.

In Lefcowitz v. McQuagge, 230 F. Supp. 757 (N.D. Fla. 1963), defendant was claiming title by seven years' adverse possession. Judge Carswell's opinion presents conclusions of facts or law, rather than findings and reasoned judgment. On the question of adverse possession, he states that the evidence fails to establish adverse possession as a result of taking turpentine from trees on the land. Every first semester property student learns that adverse possession is the use of the land in the manner to which it is best suited. There is no discussion in Judge Carswell's opinion of the use to which the land is suited or of the scope of the defendant's activities in taking turpentine. Both are crucial. For contrast, compare the court's opinion in Brumagin v. Bradshaw, 39 Cal. 24 (1870).

In the same case, Judge Carswell adduces conclusions of law with respect to the Florida statutes which are unsupported by any reasoning, and therefor unpersuasive.

The same inability to relate the facts of the case to the governing law in an adequate and persuasive manner was demonstrated in three tax cases. All of these cases were correctly decided, but failure to adequately use judicial techniques mars the opinions. See Patterson v. Belcher, 302 F.2d 289 (5th Cir. 1962); Lazonby v. Tomlinson, 272 F. Supp. 558 (N.D. Fla. 1967); and Motor Fuel Carriers v. U.S. 202 F. Supp. 497 (N.D. Fla. 1962).

In Patterson, he also fails to point out the

significance or purpose of the distinction between acquisition and sales intent in deciding whether an asset is held primarily for sale in the ordinary course of business.

In Macey's Jewelry Corp. v. U.S., 242 F. Supp. 25 (N.D. Fla. 1965), rev'd 387 F.2d 70 (5th Cir. 1967), Judge Carswell fails to consider the purposes of the law in deciding whether a particular credit charge is included in the list price of the goods or is a finance charge. The basic proposition that laws (even tax laws) are to be construced according to their intent seems to have escaped him.

I have not investigated his opinions in other areas. However, briefly reviewing the subsequent history of his decision, I note that he has been reversed by higher courts in a disproportionate number of cases.

For the above reasons, I would urge you to vote against his confirmation and to urge the President to nominate an individual better qualified to carry on the important functions of the Supreme Court.

Sincerely,

HERBERT I. LAZEROW,
Assistant Dean and Professor of Law.

Mr. TYDINGS. Professor John Griffiths, a teacher and a scholar in the field of criminal law and procedure at Yale Law School and four of his students undertook to examine Judge Carswell's judicial work in the area of their expertise—criminal law and procedure. They studied a substantial body of opinions—both written by him and written by appellate courts reviewing his decisions.

Here is their conclusion:

We found no sign whatever of special ability. Judge Carswell's opinions are characterized, at best, by unimaginative, mechanical mediocrity. This is not a matter of judicial ideology: one did not expect to find a future Justice Black or Brennan, but no potentially solid (let alone great) judicial conservative—no Justice Harlan, no Judge Friendly—is revealed in these opinions either. We found nothing that, by *anyone's* lights, could conceivably justify confirming Judge Carswell to the Supreme Court. . . .

We conclude that, in the area we investigated, Judge Carswell's judicial performance does not begin to qualify him for elevation to the Supreme Court.

I ask unanimous consent that their letter be inserted in the RECORD at this point.

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

YALE LAW SCHOOL,
New Haven, Conn., Feb. 18, 1970.

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

DEAR SENATOR EASTLAND: In the course of the growing controversy concerning Judge Carswell's fitness for the Supreme Court, the question of his professional competence for such a position has been relatively little discussed. This seems unfortunate. Surely there can be no doubt but that only the most distinguished and technically qualified members of the legal profession ought even to be considered for the highest Court in the Nation. Surely, also, it is part of the Senate's duty to exercise its responsibility in confirmation as to maintain the highest standard, in proficiency as well as in integrity, as a *minimum* qualification for elevation to the Supreme Court. But while the subject has not been intensively discussed, there is certainly widespread belief in the profession, and beyond that Judge Carswell falls far short of any reasonable minimum standard and ought therefore not be confirmed. Dean Louis H. Pollak of the Yale Law School was one of the few witnesses before your Committee who dealt with this question. He put what is apparently a widespread consensus bluntly when he stated that Judge Carswell possesses "more slender credentials than any nominee in this century." Dean Derek C. Bok of the Harvard Law School has likewise expressed the view, in a letter to your Committee that the nominee shows "a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the Court."

The undersigned are a teacher and scholar in the field of criminal law and procedure, and four students in his criminal law course. We undertook to examine Judge Carswell's judicial work in the area of our expertise—criminal law and procedure. We studied a substantial body of opinions—both written by him, and written by appellate courts reviewing his decisions. These cases are listed in an appendix to this letter.

The enterprise solidly confirmed the general opinion we had set out to test. We found no sign whatever of special ability. Judge Carswell's opinions are characterized, at best, by unimaginative, mechanical mediocrity. This is not a matter of judicial ideology: one did not expect to find a future Justice Black or Brennan, but not potentially solid (let alone great) judicial conservative—no Justice Harlan, no Judge Friendly—is revealed in these opinions either. We found nothing that, by *anyone's* lights could conceivably justify confirming Judge Carswell to the Supreme Court.

In addition, we found some troublesome indications of a lack of proper judicial temperament in the Judge. For example, in the important area of federal jurisdiction comprised of *habeas corpus* petitions from State prisoners, Judge Carswell had to be reversed four times in the single year 1968 (*Dawkins, Brown, Harris, Barnes*). In three of these, his error was the same: failure to hold an evidentiary hearing as required by the face of the petition (*Brown, Harris, Barnes*). It is essential to emphasize that this reflects not only a questionable ideological bias operative in his adjudication, but apparent lack of technical ability—in one case (*Brown*) he erred *in favor of the petitioner* on one critical issue, by failing to investigate whether State remedies had been exhausted.

Inadequacy as a judge also appears in *Hayes,* where Judge Carswell held that the petitioner could not raise exclusion of Negroes from his jury on *habeas corpus* because he had not done so at trial. Such an automatic waiver doctrine is not the law and has not been since *Fay* v. *Noia,* 372 U.S. 319, 438–440 (1963). The cases on which Judge Carswell relied were inapposite, because they concerned the effect, in *federal* cases, of a defendant's failure to conform to Rule 12(b)(2), F. R. Crim. P. — Only the *habeas* hearing which Judge Carswell refused—in this, as in so many other cases—to hold, could have discovered whether the petitioner's failure to raise the issue could "fairly be described as the deliberate by-passing of state procedures." 372 U.S. at 439.

As a final example, his opinion in *Boulden* raises serious questions of craftsmanship, at least, if not of judicial integrity. The case involved the "voluntariness" of a confession, under the "totality of circumstances" rule. Judge Carswell's opinion failed even to refer to the petitioner's first confession, which preceded the two confessions used at his trial, and which had been extracted by a police chief who promised petitioner safety from an angry mob and a pistol-waving policeman if he would confess. Surely scrupulous integrity with facts is a *sine qua non* of an adequate judge, and in the *Boulden* case, at least, Judge Carswell did not display it.

We conclude that, in the area we investigated, Judge Carswell's judicial performance does not begin to qualify him for elevation to the Supreme Court. We hope you will take these considerations under advisement and, if this is in conformity with the Rules of your Committee, transmit them not only to the members of the Judiciary Committee, but also to the Senate as a whole.

Very sincerely yours,

JOHN GRIFFITHS,
Assistant Professor of Law.
ABRAHAM A. ARDITI.
ROSSER H. BROCKMAN II.
ROBERT H. CLARIDGE.
ERIC P. STAUFFER.

APPENDIX

OPINIONS OF JUDGE CARSWELL AND CASES IN WHICH HE RENDERED A DECISION

Abrams v. Goodwyn, 186 F.Supp. 271.
Barnes v. Florida, 402 F.2d 63 (reversing Carswell).
Baxter v. Florida, 295 F.Supp. 1164.
Bell v. Wainwright, 299 F.Supp. 521.
Beufve v. U.S., 238 F.Supp. 494, vacated 344 F.2d 958.
Boulden v. Holman, 385 F.2d 102, vacated 394 U.S. 478.
Brown v. Wainwright, 394 F.2d 153 (reversing Carswell).
Dawkins v. Crevasse, 391 F.2d 921 (reversing Carswell).
Grissetle v. U.S., 313 F.2d 187.
Hall v. Wainwright, 263 F.Supp. 727.
Harris v. Wainwright, 399 F.2d 142 (reversing Carswell).
Hayes v. Wainwright, 302 F.Supp. 716.
Holstein v. Wainwright, 302 F.Supp. 615.
Johnson v. U.S., 293 F.2d 100.
Landers v. U.S., 304 F.2d 577.
McCullough v. U.S., 231 F.Supp. 740.
Malone v. U.S., 269 F.Supp. 755.
Miller v. U.S., 207 F.Supp. 5.
Tyler v. U.S., 397 F.2d 565, cert. den. 394 U.S. 917.
U.S. v. Levy, 232 F.Supp 661.
Walker v. U.S., 301 F.2d 36.
Weaver v. U.S., 298 F.2d 497.
Yeloushan v. U.S., 313 F.2d 303.

Mr. TYDINGS. In the area of contract law, Judge Carswell's opinions have been analyzed by Prof. Monroe Friedman of the George Washington University Law Center. Professor Friedman has been teaching courses in contracts for 12 years and is the author of a case book on contracts. Professor Friedman states that one of Carswell's opinions in this area shows him to be a "broad constructionist." He states that another opinion shows him to be, in Professor Friedman's words, "an absurd constructionist." Professor Friedman states that in this opinion Judge Carswell, "interpreted a contract to mean that one of the parties to it could change any of the terms, including the price, any time he pleased. This decision violated well-established principles of contract law as well as commonsense."

Another Carswell opinion that Professor Friedman analyzed suggests, according to Professor Friedman, "serious doubts as to his ability to perform the most elementary form of legal analysis; that is, the matching of facts and rules."

Professor Friedman concludes that—

Judge Carswell's opinions in the Contract area show him to be a broad constructionist, favoring technicalities over common sense and fair dealing, and a jurist incapable of performing the most elementary of legal analysis.

I ask unanimous consent that Professor Friedman's letter be inserted in the RECORD at this point.

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

THE NATIONAL LAW CENTER,
March 9, 1970.

Re Nomination of Judge Carswell.
Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: The controversy over the nomination of Judge George Harrold Carswell to the Supreme Court of the United States has focused upon the Judge's background as a "strict constructionist" and on his views and conduct regarding civil rights. These issues, of course, are charged with considerable emotion and involve questions of political preference, as to which the President should have wide latitude.

At the same time, substantial doubts have been raised as to Judge Carswell's quality as a jurist—his intellectual capacity and his ability to carry out legal analysis in a professional way. It therefore seems worth while to consider the Judge's opinions in areas of the law that are less political and emotional in their implications. One of these areas is Contracts. Since I have taught Contracts I and II at the National Law Center for twelve years and am the author of a casebook on Contracts (2d ed., 1967), I have undertaken to review Judge Carswell's opinions dealing with Contracts. There are five in all, and only three of these are presented in such a way as to permit adequate analysis: *Dove Sheet Metal* v. *Hays Heating,* 249 F. Supp. 266; *Associated Beverages Co.* v. *Ballantine,* 287 F. 2d 261; and *Luse* v. *Valley Steel Products,* 293 F. 2d 625.

The *Dove* case is of particular intsrest because it shows Judge Carswell to be a broad constructionist of statutory technicalities. In this case the plaintiff and defendant, two businessmen, had orally contracted for construction work, and the defendant had admittsdly broken the contract without cause. The defense rested entirely upon a technicality: the contract had not been written, and the defendant contended that the Statute of Frauds therefore permitted him to violate his word with impunity. Judge Carswell recognized that the law was unsettled on this point and that the statute might well have been construed strictly, so as not to apply to the particular transaction. Nevertheless, Judge Carswell chose to construe the statute broadly, thereby permitting the defendant to avoid a just claim by means of a questionable technicality.

The *Associated Beverages* case reveals the Judge as what can best be called an absurd constructionist. There he interpreted a contract to mean that one of the parties to it could change any of the terms, including the price, any time he pleased. This decision violated well-established principles of Contracts law as well as common sense.

The most significant of Judge Carswell's Contracts opinions, however, is in the *Luse* case, because it suggests serious doubts as to his ability to perform the most elementary form of legal analysis, that is, the matching of facts and rules. Indeed, this level of legal analysis is so simple that it is assumed that candidates for law school are all capable of doing it; for this reason all "matching" questions were eliminated from the Law School Admission Test several years ago in favor of more complex problems. (See my article, "Testing for Analytic Ability on the Law School Admissions Test," 11 Jour, Legal Education 24 (1958).)

In *Luse* the question was whether the manufacturer of defective goods was liable to the plaintiff, who had purchased the goods through another. The overwhelming weight of modern authority in such cases is to hold the manufacturer liable, since he is the party who is responsible for the defective goods he produces and markets, and because he is the party best able to prevent such harm and best able, usually, to spread the cost.

Judge Carswell, however, wholly ignored both the trend of authority and the underlying questions of policy. Instead, he misread and misapplied previous cases. One of these cases had held that "the mere resale" of an article did not give the subpurchaser rights. The other prior case had held that an ordinary resale by a retailer did not make a wholesaler liable where there was "nothing to indicate" that the wholesaler understood that he was dealing with the ultimate purchaser. What Judge Carswell somehow failed to see was that the transaction in *Luse* was not a "mere resale" by a retailer with "nothing to indicate" that the defendant understood that he was dealing with the plaintiff. On the contrary, the facts of *Luse* as stated by the Judge clearly show that the defendant shipped the goods to the care of the plaintiff. Thus, the cases cited by Judge Carswell did not "match" the one before him for decision, as he somehow believed, and they therefore did not require his decision exculpating the manufacturer from liability for his defective goods.

In sum, Judge Carswell's opinions in the Contracts area show him to be a broad constructionist, favoring technicalities over common sense and fair dealing, and a jurist incapable of performing the most elementary tasks of legal analysis.

Yours truly,

MONROE H. FREEDMAN,
Professor of Law.

Mr. TYDINGS. In light of the analysis of Judge Carswell's legal ability, it is no wonder that a disproportionate number of Judge Carswell's opinions that were appealed were reversed.

The opinions of two other legal scholars, William Van Alstyne, of Duke Law School, and John P. Frank, deserve special mention.

Prof. William Van Alstyne of the Duke University Law School is one of the most distinguished legal scholars of the South. Professor Van Alstyne had testified before the Senate Judiciary Committee in support of Judge Haynsworth, but testifying in opposition to Judge Carswell, Professor Van Alstyne concluded that Judge Carswell's decisions reflected a lack of reasoning, care, or judicial sensitivity overall.

John Frank taught law at both Indiana Law School and Yale Law School. He is the author of nine books largely on legal subjects, including several works on the Supreme Court. Mr. Frank testified at the Judiciary hearings on Judge Haynsworth's nomination in support of that nomination. Mr. Frank feels differently about Judge Carswell. He opposes this nomination and has also gone on record as believing that "Judge Carswell does not have the legal or mental qualifications essential for service on the Supreme Court or any high court in the land, including the one where he now sits."

Another voice to be heard in opposition comes from a man who is perhaps the most eminently qualified to adjudge the fitness of Judge Carswell to sit on the Supreme Court. This is because it is his seat on the Supreme Court that Judge Carswell has been nominated to fill. Mr. Justice Arthur Goldberg recently addressed himself to the Carswell nomination and asserted:

How can it be said that Judge Carswell is qualified to take the seat once held by Justice Cardozo and Justice Frankfurter. He is not fit.

And 206 former law clerks to Supreme Court Justices are of the same opinion; 206 of the Nation's best legal minds who have worked for Supreme Court Justices, starting with Justices Brandeis and Holmes, and who know first hand the special qualities required of a Supreme Court Justice—the intellect, judgment, and temperament—have concluded that Judge Carswell clearly does not have these qualities.

They state:

We are all united in our conviction of the importance of the Supreme Court as an American institution and are similarly united in our opposition to the confirmation of Judge Carswell. All nominations to the Court are important; the filling of the present vacancy is of particular significance. There is widespread lack of confidence in many of our institutions, including the courts. It is therefore imperative that the nominee possess the qualities of judgment and intellect necessary to discharging with distinction the exacting and vital functions of the nation's highest court.

Unfortunately, Judge Carswell is not equal to these responsibilities. The record shows him to be of mediocre ability. His performance on the lower courts—and as United States attorney—reflects the absence of the qualities which, we believe, all Supreme Court nominees should possess.

There has never been a time when it was more important to have a nominee with the recognized capacity, character, and professional accomplishments who could immediately contribute to the Court's work and its place in the life of our country. Confirmation of Judge Carswell would be a disservice to the Court and the nation. We urge that his nomination be rejected.

I ask unanimous consent to print their letter in the RECORD at this point.

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

MARCH 31, 1970.

DEAR SENATOR: We are all former law clerks to Supreme Court Justices, having served for Justices starting with Justice Holmes and Brandeis. Our views on the basic issues before the country vary widely. We are of various political persuasions. Some of us are active in political affairs, some are not.

But we are all united in our conviction of the importance of the Supreme Court as an American institution and are similarly united in our opposition to the confirmation of Judge Carswell. All nominations to the Court are important; the filling of the present vacancy is of particular significance. There is widespread lack of confidence in many of our institutions, including the courts. It is therefore imperative that the nominee possess the qualities of judgment and intellect necessary to discharging with distinction the exacting and vital functions of the nation's highest court.

Unfortunately, Judge Carswell is not equal to these responsibilities. The records shows him to be of mediocre ability. His performance on the lower courts—and as United States attorney—reflects the absence of the qualities which, we believe, all Supreme Court nominees should possess.

There has never been a time when it was more important to have a nominee with the recognized capacity, character, and professional accomplishment who could immediately contribute to the Court's work and its place in the life of our country. Confirmation of Judge Carswell would be a disservice to the Court and the nation. We urge that his nomination be rejected.

Dean Acheson, Bruce Ackerman, James N. Adler, Lee A. Albert, Francis H. Allen, William H. Allen, Margaret Altschuler, Richard S. Arnold, Jr., Mac Asbill, Jr., Joseph Barbash, Stephen R. Barnett, Paul M. Bator, Scott H. Bice, Ronald L. Blanc, Bennett Boskey, Paul

Brest, Stephen G. Breyer, Tyrone Brown, E. Edward Bruce, Julian Burke, Donald M. Cahen, Guido Calabresi, James S. Campbell, Abram J. Chayes, Jerome R. Cohen, Louis R. Cohen.

William Cohen, Alan Y. Cole, Robert Cole, William T. Coleman, Jr., Vern Countryman, Roger Crampton, David P. Currie, Kenneth W. Dam, Walter Estes Dellinger, Jan G. Deutsch, Paul M. Dodyk, J. William Doolittle, Norman Dorsen, John W. Douglas, Earl C. Dudley, Jr., Steven B. Duke, Allison Dunham, James Edwards Philip Elman, John Hart Ely, Jerome B. Falk, Jr., Floyd Feeney, David Feller, David Filvaroff, William T. Finley, Jr., H. Bolton Finn, III, Peter M. Fischbein.

Adrian Fisher, Raymond C. Fisher, Fred Fishman, Dennis M. Flannery, Martin J. Flynn, Richard J. Flynn, Laurence S. Fordham, Marc Franklin, John D. French, Charles Fried, Stephen J. Friedman, Walter Gellhorn, David Ginsberg, Robert A. Girard, Stephen M. Goodman, Robert Gorman, Kent Greenawalt, Ronald J. Greene, Francis M. Gregory, Jr., Eugene Gressman, C. B. Grey, John Griffiths, Bruce Griswold.

Isaac N. Groner, Harvey M. Grossman, Gerald Gunther, James T. Hale, Robert W. Hamilton, Milton Handler, Carl Hawking, Irving J. Helman, Louis Henkin, Ira M. Heyman, Michael Heyman, Philip B. Heymann, Richard Hiegel, Donald Hiss, Robert Hoerner, C. Stephen Howard, Manley O. Hudson, Jr., Louis L. Jaffe, Nicholas Johnson, Phillip Johnson, William K. Jones, Andrew L. Kaufman, Phillip B. Kurland, Robert T. Lasky.

Leonard M. Leiman, Marx Leva, Gerry Levenberg, Daniel P. Levitt, Jerome B. Libin, Peter Van N. Lockwood, Roderick M. Hills, Louis Lusky, Patrick F. McCarten, Nicholas J. McGrath, Jr., Ellis H. McKay, John K. McNutly, Lee B. McTurnan, Malachy Mahon, J. Keith Mann, Bayless Manning, Harry K. Mansfield, James M. Marsh, William B. Matteson, Daniel K. Mayers, Lewis B. Merrifield III, Frank I. Michelman, Abner J. Mikva.

Charles A. Miller, Alan J. Moscov, Phil C. Neal, C. Roger Nelson, Charles R. Nesson, John D. Niles, Matthew Nimetz, John Nolan, William A. Norris, Alan R. Novak, Dallin H. Oaks, Louis F. Oberdorfer, Joseph Onek, Alan K. Palmer, W. Cary Parker, Michael E. Patterson, John H. Pickering, Louis H. Pollak, Earl E. Pollock, S. Paul Posner, Richard A. Posner, Joseph H. Price, Monroe E. Price, Robert L. Randall, Joseph L. Rauh, Jr.

Cecil Ray, Jr., Charles D. Reed, Charles A. Reich, Curtis Reitz, William A. Reppy, Jr., Charles E. Rickershauser, Jr., William D. Rogers, H. David Rosenbloom, Albert J. Rosenthal, Stuart Philip Ross, Ernest Rubenstein, Neal P. Rutledge, Albert A. Sacks, Henry P. Sailer, Terrance Sandalow, Frank E. A. Sander, George L. Saunders, Norbert A. Schiel, Benno C. Schmidt, Jr., Carl W. Schneider, Roy A. Schotland.

Murray L. Schwartz, David I. Shapiro, Richard E. Sherwood, Harry L. Shnider-man, Stephen N. Shulman, Larry J. Simon, Michael Smith, Abaham D. Sofaer, John B. Spitzer, Henry J. Steiner, Henry J. Steinman, Jr., Samuel A. Stern, Richard B. Stewart, Preble Stolz, Stephen D. Sussman, Peter R. Taft, Stanley L. Temko, Stephen M. Tennis, Stuart W. Thayer, Donald T. Trautman, Lawrence Tribe.

Howard J. Trienens, Max O. Truitt, Jr., Donald F. Turner, Steven M. Umin, John W. Vardaman, Robert B. Von Mehren, James Vorenberg, Robert W. Wales, Robert Weinberg, Emmanuel G. Weiss, Harry H. Wellington, Howard C. Westwood, Charles H. Wilson, Jr., Payson Wolff, Kenneth Ziffren, Edwin M. Zimmerman.

Mr. TYDINGS. I also have received statements from the Philadelphia Bar Association and the Bar Association of San Francisco declaring opposition to the nomination of Judge Carswell.

I ask unanimous consent to insert these statements in the RECORD at this point.

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

PHILADELPHIA BAR ASSOCIATION,
Philadelphia, Pa.

RESOLUTION

Whereas, there is no more compelling occasion that calls for the public expression of informed opinion by the Organized Bar than the occasion of an appointment of a Justice of the Supreme Court of the United States;

Whereas, the testimony and statements of leading legal scholars and lawyers raise serious questions as to Judge Carswell's legal ability and judicial stature to serve upon the highest court of our land; and

Whereas, the evidence raises serious questions as to Judge Carswell's sensitivity to human and individual rights;

Now Therefore, Be it Resolved that the Board of Governors of the Philadelphia Bar Association hereby urges the Senate of the United States to refuse its consent to the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court of the United States.

Adopted the 23rd day of March, 1970.

REPORT OF THE SPECIAL COMMITTEE ON THE QUALIFICATIONS OF JUDGE CARSWELL TO SERVE ON THE SUPREME COURT OF THE UNITED STATES

There is no office which should be of more concern to the Organized Bar than the office of Justice of the Supreme Court of the United States. It should be a compelling obligation of the Organized Bar to make its views known publicly on the qualifications of a nominee for that office.

The Board of Governors established this Special Committee to review the available evidence on the proposed nominee for the Supreme Court, Circuit Judge G. Harrold Carswell, and to make a report to this Board.

The Special Committee has reviewed the transcript of the hearings before the Judiciary Committee of the United States Senate, the Report of the Judiciary Committee, the analysis of the Ripon Society, and the Statement of the Lawyers' Committee, which was prepared by leading members of the New York Bar.

On the basis of this review, we unanimously recommend that the Board of Governors of the Philadelphia Bar Association declare its opposition to the confirmation of Judge Carswell as a Justice of the United States Supreme Court and that it adopt the attached Resolution.

Respectfully submitted.

ABRAHAM J. BREM LEVY,
Chairman.
WILLIAM T. COLEMAN, JR.,
ROBERT M. LANDIS,
DANIEL MUNGALL, JR.

SAN FRANCISCO, CALIF.,
March 21, 1970.

HON. JOSEPH D. TYDINGS,
Washington, D.C.:

The following resolution was adopted by the board of directors of the Bar Association of San Francisco Friday, March 20, 1970:

"Whereas the Bar Association of San Francisco has a policy of recommending and supporting for judicial office those judges and members of the bar who by their character, temperament and professional aptitude and experience have demonstrated their special qualifications for judicial office and opposing the selection for judicial office of those persons who do not possess these qualifications; and

"Whereas the members of this association as lawyers are particularly concerned with the status of the Supreme Court of the United States as an institution and as a symbol of justice particularly in this day of growing skepticism about the ability of the judiciary to deal with current crisis; and

"Whereas the directors of this association recognize the right of the President of the United States to appoint to the Supreme Court of the United States persons of competence who reflect his judicial and political philosophy but believe that standards of professional aptitude and experience should be maintained on that Court as well as all others; and

"Whereas the directors of this association have considered the qualifications of G. Harrold Carswell as a lawyer and judge;

"Now, therefore, be it resolved that the directors of the Bar Association of San Francisco recommend that the nomination of G. Harrold Carswell as an Associate Justice of the Supreme Court of the United States be withdrawn or disapproved on the basis of his lack of qualifications to sit on that Court."

We commend this to your serious consideration.

CHARLES P. SCULLY,
President.

Mr. TYDINGS. Justice Goldberg's statement on top of the refusal of Judges Wisdom, Brown, Tuttle, Goldberg, and others who sit with Judge Carswell on the fifth circuit, to affirmatively support Judge Carswell strongly suggest that Judge Carswell is not deserving of Senate confirmation.

Despite his failure to follow the opinions of the higher courts in a number of areas of the law, Judge Carswell has been referred to by his supporters as a strict constructionist or a judicial conservative. Such terms, properly applicable to men with highly developed judicial philosophies such as Mr. Justice Frankfurter and Mr. Justice John Harlan have no relevance to a man such as Judge Carswell who at best is mediocre and, more accurately, has allowed his biases to permeate his courtroom.

CONCLUSION

I must conclude that Judge Carswell has displayed neither a proper judicial temperament nor a professional competency equal to the task set for him. I oppose the confirmation.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business tonight, it stand in adjournment until 10 o'clock tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATOR GRIFFIN TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that after the disposition of the reading of the Journal on tomorrow, the able Senator from Michigan (Mr. GRIFFIN) be recognized for not to exceed 30 minutes.

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

ORDER FOR RECOGNITION OF SENATOR PROXMIRE TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, at the conclusion of the remarks of the Senator from Michigan (Mr. GRIFFIN), the Senator from Wisconsin (Mr. PROXMIRE) be recognized for not to exceed 30 minutes.

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

ORDER FOR RECOGNITION OF SENATOR HOLLAND TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that, upon the completion of the remarks of the Senator from Wisconsin (Mr. PROXMIRE), the distinguished Senator from Florida (Mr. HOLLAND) be recognized for not to exceed 30 minutes.

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that at the completion of the special orders which have previously been entered into for tomorrow, there be a period for the transaction of routine morning business, with statements therein limited to 3 minutes.

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

THE NOMINATION OF JUDGE G. HARROLD CARSWELL

Mr. HART. Mr. President, I know the hour is late. It approaches 9 o'clock. But in somewhat the nature of defense, I have been here for approximately 5 hours and enjoyed thoroughly the discussion. It is possible that had I prepared remarks, I would have been able, as was the Senator from California, simply to submit them for the RECORD. Unhappily, I have not prepared them.

I rise now very briefly to make an observation about the pending nomination.

We have heard discussion about who signed what incorporation papers. What did he see the night before? Did he respond fully to questions addressed to him by the Committee on the Judiciary? Could you live in Tallahassee and be able to read and still not be aware of the dominant reason or motive for the incorporation of that club? Was the FBI investigation thorough? Is the FBI on trial? All these things have relevance. Each is one of the elements that Members of the Senate should evaluate as we approach action on the nomination.

I came to the floor because I had received a letter from a Michigan citizen. Unfortunately, but understandably, the letter cannot be made a part of the record, nor can the identity of the writer. But I think the point he makes is one that is, not only central, to use a phrase from the President's letter, but of critical importance; and I raise it in his words, in part:

> Over the past fifteen years, we have been engaged in a slow, often painfully faltering, process of redressing injustices committed against our Negro population during the past three centuries. Not only is this crucial undertaking incomplete; its eventual success remains seriously in doubt.
>
> To name at this time to any high-level Federal post a man whose views on racial equality are open to question would be a grave error. To make such an appointment to the nation's highest tribunal—the very institution in which most black citizens have, plausibly, deposited maximum confidence—would bring incalculably tragic consequences.

Now, you can resolve as you want what the nominee's views on racial equality may be to you, and I can to me. But they are open to very fair debate and question, and the point of concern voiced to me by this very responsible citizen from Michigan is that no such person should be considered as a potential occupant of the Supreme Court seat.

I remind my colleagues again of the statement made by President Nixon when he was accepting his party's nomination at Miami. He said then:

> Let those who have the responsibility for enforcing our laws, and our judges who have the responsibility to interpret them, be dedicated to the great principles of civil rights.

We have before us a nominee about whose whole attitude there is fair question—the nominee who said:

> I yield to no man, as a fellow candidate or as a fellow citizen, in the firm, vigorous belief in the principles of white supremacy, and I shall always be so governed.

The Senator from California rose and said:

> Yes, and look what he said before the Judiciary Committee. He repudiates that.

Is it prudent or right or wise or responsible to place on the one court to which we appeal to the black American to turn for relief of injustice a man over whom will hang that kind of statement?

Is not such a man precisely opposite of what the President, as candidate Nixon, told his party's convention he would look for when he accepted his nomination; that we should look for men who are dedicated to the great principles of civil rights? "Dedicated," Mr. President.

There was a great hangup around here about the apparent conflict of interest of Judge Haynsworth.

I think we can read the RECORD during the debate over Judge Haynsworth's nomination to establish the proposition that an apparent conflict of economic interest may not have affected or colored the judgment of the nominee, but the appearance of such conflict was sufficient, in itself, to bar his approval by this body because it would undermine faith in the fairness of the Supreme Court.

Now, the apparent conflict then was economic—money. We can accept Judge Carswell's statement that he no longer believes in the principles of white supremacy, that he repudiates his statement that he will always be governed by the principles of white supremacy. But our action in the Haynsworth nomination would suggest that that apparent conflict, now, not money, but people, not portfolio but people, bars him from a seat on our highest Court—that the appearance of prejudice or insensitivity is such that the black American who loses a case should not be asked to believe as you may choose to believe, my colleagues, that Judge Carswell was not influenced by that pledge of support to the principle of white supremacy. Do we wish to put on the Court a man to whom we must say to 20 million black Americans, "Take our word for it, he really does not believe it any more."

In my book, that, in and of itself, should persuade at least a majority of this body to say, "We do not consent. We do not consent."

It is on that note that I came to the floor with that purpose, persuaded by the letter I had just received that to name at this time to any high level Federal post a man whose views on racial equality are so seriously open to question would be a grave error.

I share the opinion of my friend who wrote me that thoughtful letter and I hope that a majority of us shall.

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

Mr. HART. I yield.

Mr. BAYH. The Senator from Indiana is always moved by the thoughtful and well-reasoned presentations made by my distinguished friend and colleague from Michigan.

It has been the good fortune of the Senator from Indiana to sit on the Committee on the Judiciary for 8 years and watch my friend from Michigan approach the problems that are ours, as individual Senators and as a committee.

I have never been more moved by his presentation than that made by the Senator from Michigan this evening.

As I have heard him discuss this previously on the floor, it goes back to the old legal adage that justice must have the appearance of justice. To those of us concerned about the trying times in which we live and who have, as the Senator from Indiana has, I have talked to large groups of people in terms of working in the system, making it respond, making it better, making it possible for all our dreams to come true, to bridge the gap between rhetoric and reality, promise and performance.

If my face were a different color and a Member of the U.S. Senate approached me with the reasoning that I should not resort to violence, that I should stay out of the streets, and redress my grievances through the system, I feel certain that I would be tempted to say, "What do you mean, Senator? We have just put a man at the top of the system who spoke very plainly about what he thinks the possibility is of my getting equal justice or treatment as a citizen of this country."

I salute the Senator from Michigan and ask to have myself associated with everything he said.

Mr. HART. I thank the Senator from Indiana very much. I am delighted to have had the opportunity to be on the floor when he was making his speech. I think he wrapped up pretty well the reaction of most of us to the President's letter.

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

Mr. HART. I yield.

Mr. DOLE. I want to say briefly that I am certain the Senator from Michigan does not mean to leave the impression

that there cannot be redemption in our lifetime. I am certain the Senator does not mean that those who may do something wrong may not be redeemed later on, that those who say something one day may not find redemption in finding themselves wrong, or during the course of some kind of conduct that they will not later be able to redeem themselves. That is the impression I have, but I am certain that the Senator from Michigan realizes and recognizes that there is that very real possibility. It happens. It happens many times. It happened to Hugo Black. According to the Senator from Michigan, he would have opposed that nomination based on the statement he made this evening.

Mr. HART. Mr. President, the Senator from Michigan hopes prayerfully that redemption is possible, in a very personal sense. I hope my view of that concept never weakens, because I will have to appeal to it many a time.

But I am also troubled in connection with a flat, hard-nosed white supremacy statement. Again, I must go back to a basic observation: What we were is part of what we are, and what we are tonight is part of what we will be.

If I were a black American, would I ever be able to convince myself that that little part of G. Harrold Carswell, in his pledge always to support white supremacy, might not be a part of him tonight and tomorrow when I am in front of him? And in that sense, while you and I can believe, and in my remarks I indicated and suggested that we operate on the assumption that he has changed, is it prudent to put on the Supreme Court a man who, having made that statement, we must now say of him to 20 million black Americans, "Oh, he did not mean it," or "Honest, he has changed. Have faith in the system."

So far as Hugo Black is concerned, there was never a hard-nose white supremacy statement. It was an early membership in the Klan and there was a record as a municipal judge, I am told, in Alabama, where Hugo Black, contrary to the mood of the community during those years, aggressively assisted minority groups in the city in which he was a municipal judge, in search of equal treatment.

Mr. DOLE. Well, the only point I make is that there is that hope——

Mr. HART. There is.

Mr. DOLE. I would hope that we would judge one another and judge Harrold Carswell, if he is confirmed, on what he does on the Bench and not on what may have happened 30 years ago.

Mr. HART. How many years ago?

Mr. DOLE. Twenty-two years ago, I believe.

Mr. HART. Twenty-two years ago, right. And in that interval, what was his record. This is another one of the problems for those who advocate the nominee but who are eager, as all of us are, that the President gets what he told the Miami Convention we should have, a man dedicated to the great principles of civil rights.

In those intervening 22 years, as the able Senator from Indiana so graphically portrayed in his remarks, there is a very poor track record on which to find rehabilitation—a very poor track record. When I rose some 2 weeks ago and asked my colleagues who are advocating the confirmation of this nominee, "Where is the record of his dedication to the great principles of civil rights in his record?" I got no answer. I am still waiting for an answer.

I can repeat the question. I asked in the words of President Nixon at the Miami Convention, where is this record of dedication. I was told that he was nice to a mess boy and was understanding of the problems of a group on the ship. And there was one other thing.

Mr. BAYH. There was the airport case to which the Senator from Indiana referred.

Mr. HART. And there was the black lawyer who said that as far as he was concerned, his treatment has always been decent.

Mr. DOLE. Mr. President, I might suggest that tomorrow morning at 10 o'clock the senior Senator from Michigan might listen to the junior Senator from Michigan discuss this very question.

Mr. HART. Mr. President, the reason I spoke at this late hour was that there is a possibility that I would not be able to be present tomorrow morning. I will do my best to be here. However, it involves an early appointment and I doubt that I can.

I would suggest—indeed, I have the deep conviction—that if the President of the United States had known that this nominee had nailed himself in concrete with this kind of pledge, he would never have sent his name here.

Why blink at it? Why kid ourselves? Does anyone want to stand up here and say, "You bet. Given that knowledge, my President would have sent in the name."

I doubt it very much. I hope very much that we can rescue him and the country from the consequences.

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

Mr. HART. I yield.

Mr. BAYH. I think the record will show that I started in the hearings searching for this chain of events following the terrible racist statement of 1948, searching for the chain of events which would lead me to believe that there had been a reversal, a reincarnation, or new spirit.

I might suggest to the Senator from Michigan, inasmuch as there has not been one statement on the record denying the authorship or, indeed, denying that the statement accurately expressed its author's views, that perhaps the strong denial by the nominee is just a bit self-serving when it comes 22 years after the original statement and then only after the nominee's name had been sent to the Senate to sit on the highest court of the land.

Mr. HART. Well, I know that has been suggested, and I think it can properly be suggested.

In my own mind, I tend to assign less reason to that particular circumstance than the chain of events which the Senator from Indiana has described.

We then have a series of judicial opinions and the unusually substantial number of reversals in the area of civil rights which the Senator from Indiana has identified, together with some of the other activities that the Senator from Indiana and others have described in the separate views of the report.

This later evidence confirms the basic feeling I have that the country would be best served if there were not present on the Supreme Court of the United States in the seventies anyone who had pledged himself always to be a believer in the principle of white supremacy.

I think it is just wrong in principle to face the people of this country with that kind of hangup as a man goes on the Court.

I think we all know that there are men in the Federal judicial system and outside, in the South as well as elsewhere, who have some mark of excellence about them, whether in their performance as judges, their skill in writing, their work as law school faculty members or deans, superior performance or—some manner of distinction which this nominee, conspicuously lacks acceptance as outstanding members of the bar. And there is also in this land, happily, a large number of Americans who do not have to explain, who do not have to ask to be believed that they no longer support the principle of white supremacy which they once pledged they always would.

If we have not learned anything in the last few years to caution us against putting that kind of problem on the Supreme Court, we have not learned much.

Mr. President, I yield the floor.

THE PENDING BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is Calendar No. 745, Senate Resolution 211, a resolution seeking agreement with the Union of Soviet Socialist Republics on limiting offensive and defensive strategic weapons and the suspension of test flights of reentry vehicles.

ADJOURNMENT

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 9 o'clock and 16 minutes p.m.) the Senate adjourned until tomorrow, Friday, April 3, 1970, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 2, 1970:

DISTRICT OF COLUMBIA COUNCIL

The following-named persons to be members of the District of Columbia Council for terms expiring February 1, 1973:

Stanley J. Anderson, of the District of Columbia.

Henry S. Robinson, Jr., of the District of Columbia.

Carlton W Veazey, of the District of Columbia.

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

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

PURPOSE OF THE BILL

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

NEED FOR LEGISLATION

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

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

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

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

HISTORY OF LEGISLATION

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

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

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

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

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

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

DESCRIPTION OF THE BILL AND FURTHER DISCUSSION

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

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

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

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

ORDER OF BUSINESS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. GRIFFIN. The Senator is absolutely correct.

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

Mr. GRIFFIN. The Senator is absolutely correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Judge Carswell is such a man.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APRIL 1, 1970.

Senator ROBERT P. GRIFFIN:

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

MASON LADD.

APRIL 2, 1970.

Senator ROBERT P. GRIFFIN:

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

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

JOHN E. CHAMPION.

APRIL 2, 1970.

Senator ROBERT P. GRIFFIN:

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

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

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

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

Respectfully,

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

Senator ROBERT P. GRIFFIN:

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

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

Respectfully,

Mrs. DIANE DUBOIS TREMOR,
Law Clerk.

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

Mr. GRIFFIN. I yield.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. GRIFFIN. I yield.

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

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

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

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

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

Mr. GRIFFIN. It is a fine school.

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

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

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

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

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

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

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

Mr. GRIFFIN. I yield.

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

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

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

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

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

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

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

Raymond Maguire has been there just short of 2 years.

John Yetter has been there just short of 2 years.

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

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

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

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

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

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

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

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

STUDENTS SHOULD SUPPLY CONSUMER'S VOICE

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

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

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

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

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

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

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

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

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

A LOOK AT THE RECORD

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

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

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

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

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

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

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

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

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

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

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

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

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

sources and how much imported oil should we use?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I yield the floor.

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

ORDER FOR RECOGNITION OF SENATOR GURNEY AND SENATOR HANSEN TODAY

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

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

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

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

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

THE NOMINATION OF JUDGE CARSWELL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

MARSHALL R. CASSEDY.

HOLLYWOOD, FLA.,
March 20, 1970.

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

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

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

Very truly yours,

LEONARD ROBBINS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We thank you for your prompt attention.

Sincerely yours,

MARSHALL R. CASSEDY.

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

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

MIAMI, FLA.,
March 25, 1970.

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

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

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

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

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

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

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

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

Very truly yours,

ROBERT L. BELL.

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

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

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

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

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

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

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

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

MIAMI, FLA.,
March 25, 1970.

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

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

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

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

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

Sincerely yours,
WM. ROYALL MIDDELTHON, JR.

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

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

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

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

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

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

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

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

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

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

MIAMI, FLA.,
March 30, 1970.

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

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

CHARLES B. FULTON,
Chief Judge.

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

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

SANFORD, FLA.,
March 25, 1970.

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

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

VOLIE A. WILLIAMS, JR.
Circuit Judge

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,
WINSTON E. ARNOW.

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

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

TALLAHASSEE, FLA.,
March 24, 1970.

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

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

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

Very truly yours,

J. LEWIS HALL.

DALLAS, TEX.,
March 17, 1970.

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

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

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

JACKSONVILLE, FLA.,
March 26, 1970.

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

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

DELBRIDGE L. GIBBS.

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

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

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

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

KEELHAULING AN HONORABLE CAREER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The record shows that George Lewis, Sr., that is the father, was a stockholder and a director in the Tallahassee Country Club when it was originally organized, as shown at pages 335 and following of the printed record. Senators will remember that this club deeded the golf club facility to the city of Tallahassee in 1935 with a reversion understanding under which this club received back the club property from the city under a long-term lease in 1956. The record is completely clear on this point.

The record shows that B. Cheever Lewis, president of the Lewis State Bank, was an incorporator and treasurer of the new Capital City Country Club. See pages 352 and following of the printed record. The record also shows that Judge Carswell, the district attorney, and former Gov. Leroy Collins and other fine and fairminded citizens were members of the new golf club which took over from the Tallahassee Country Club the long-term lease back from the city in order to assure the construction of a new and handsome club building, an adequate swimming pool, and the reconstruction and modernization of the golf course itself. The record shows that somewhere between 300 and 400 of the citizens of Tallahassee joined in this successful effort to finance an adequate golf course, clubhouse and other facilities for Tallahassee, which is the capital city of Florida. The record shows also these objectives have been attained through the joint effort of these many fine citizens of Tallahassee. See the testimony of Mr. Julian Proctor, pages 107–111 of the record.

I want the Senate to know that Mrs. Clifton Lewis, the maker of the affidavit appearing in the record speaks only for herself and her husband and not for the Lewis family or the Lewis State Bank group or any other large and reputable group known to me in the city of Tallahassee, Fla.

The fact of the matter is that if the leaseback to the Tallahassee Country Club, the original owner of the property, was, as stated by Mrs. Clifton Lewis and by others in the course of the hearing an "obvious racial subterfuge" to deprive Negroes of the opportunity of using the golf course, every lawyer in this Senate must know full well that such a subterfuge would be ineffective and that since the title remained in the city of Tallahassee a successful Federal suit would have been brought long ago to avert any racial injustices growing out of this transaction. The plain fact is that the city of Tallahassee would not go to the expense of building a modern clubhouse and swimming pool and of modernizing the golf course and that the original club, the Tallahassee Country Club, the original owner of the golf course, had the clear right under its conveyance to the city in 1935 to request the city to lease the golf course property back to it for the purpose of accomplishing its improvement and development as an adequate golf course and club facility for our capital city.

Mr. President, I shall not take the time of the Senate to read a number of editorials and articles appearing in the newspapers regarding the nomination of Judge Carswell. There are a number of them, however, that are worthy of reading by all of the Senate. Therefore, I ask unanimous consent to have the following editorials and articles printed in the RECORD at this point.

I want to make it clear that I have many more of these editorials which I am not asking now to have printed in the RECORD:

First, an article appearing in the Washington Post under date of January 27, 1970, by B. J. Phillips, entitled "Carswell: 'Eisenhower Philosophy' ";

Second, an article appearing in the Washington Star under date of January 27, 1970, by David Lawrence, entitled "Carswell and 'the Law of the Land' ";

Third, another article by David Lawrence entitled "What Presidents Once Said About Racial Equality," appearing in the February 9, 1970, issue of U.S. News & World Report;

Fourth, an editorial appearing in the Orlando Evening Star, January 29, 1970, entitled "Carswell Critics Need To Remember Hugo Black";

Fifth, an editorial appearing in the Tampa Tribune, January 31, 1970, entitled "This Supremacist The Court Needs";

Sixth, an article appearing in Today, February 3, 1970, written by Columnist Malcolm Johnson entitled "Carswell Meets Nixon Wishes";

Seventh, an article appearing in the Chicago Tribune, February 10, 1970, entitled "Digging for Dirt in Carswell's Record";

Eighth, an editorial appearing in the Orlando Sentinel of February 20, 1970, entitled "Carswell's Qualifications";

Ninth, a column appearing in the Tampa Tribune, March 14, 1970, written by William F. Buckley, Jr., entitled "Carswell Critics Aren't Being Fair With Charges";

Tenth, an editorial appearing in the Pensacola Journal, March 19, 1970, entitled "Why Carswell Delay?";

Eleventh, an editorial appearing in the Pompano Beach Sun-Sentinel, March 19, 1970, entitled "Bickering Over Carswell Anti-Man or Anti-South?";

Twelfth, an article appearing in the Fort Lauderdale News and Sun-Sentinel, March 22, 1970, entitled "Ex-Law Dean Says Carswell Unbiased";

Thirteenth, a letter to the editor appearing in the Orlando Sentinel, March 22, 1970, entitled "Control of Supreme Court is Real Goal of Liberals";

Fourteenth, an article appearing in the Orlando Evening Star, March 23, 1970, by Ernest Cuneo, entitled "Power Struggle Over Court";

Fifteenth, an editorial appearing in the Fort Lauderdale News, March 23, 1970, entitled "Not so Speedy Congress Really Drags its Feet on Carswell Voting";

Sixteenth, a column by Malcolm Johnson appearing in the Tallahassee Democrat, March 24, 1970, entitled "Carswell Praise is Overlooked";

Seventeenth, an article appearing in the Miami Herald, March 24, 1970, entitled "An Unenthusiastic Vote for Judge Carswell," written by James L. Kilpatrick;

Eighteenth, an article appearing in the Florida Times-Union, March 25, 1970, entitled "Could Carswell Be Any Worse Than the Others?" written by John Chamberlain;

Nineteenth, an editorial appearing in the Florida Times-Union, March 26, 1970, entitled "Neo-McCarthyism and Carswell";

Twentieth, an article by David Lawrence appearing in the Tampa Tribune, March 28, 1970 entitled "Lack of Special Interests 'Hurts' Carswell";

Twenty-first, an editorial appearing in the Florida Times-Union, March 29, 1970, entitled "Where Are Carswell's Defenders";

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington (D.C.) Post, Jan. 27, 1970]

CARSWELL: "EISENHOWER PHILOSOPHY"

(By B. J. Phillips)

"You don't always get your first choice, and this just shows how it can work out sometimes."—Wilbur Council, Ordinary (records clerk), Wilkinson County, Ga.

World War II took George Harrold Carswell out of the law school that is first choice for aspiring Georgia politicians. He was defeated the first time he, a young man whom his friends thought would be governor some day, ran for public office. He changed states and political parties. He was not the first choice for his seat on the Fifth Circuit Court of Appeals, gaining it after President Johnson's nominee, Judge William McRae, lost the post in one of the few political disputes of the Johnson-Nixon transition.

Today, hearings before the Senate Judiciary Subcommittee open on his nomination for the Supreme Court seat vacated by Abe Fortas and denied Clement Haynsworth.

In one respect, his career is, like fellow Southerner Haynsworth's, marked by an orderly progression through the federal judicial branch under the aegis of Republican politics. Judge Haynsworth was a Democrat for Eisenhower and was named to the Fourth Circuit Court of Appeals. Judge Carswell, too, was a Democrat for Eisenhower, an organizer of the group in Florida, was appointed United States attorney, federal district judge and was elevated to a Circuit Court, the Fifth.

Behind these similarities, however, can be seen the twists and ironies and the reordering of choices.

Haynsworth, 56, is an aloof, shy man who shunned the rough-and-tumble of politics to fill a position of business and legal leadership in the tradition of his aristocratic family.

Judge Carswell, 50, was once an active political candidate, the heir to a political tradition born of malapportioned statehouses and nurtured on suspender-snapping oratory. A portion from one of his political speeches and its compromise with Georgia racial rhetoric has come back to haunt him.

Judge Carswell, his relatives in Tallahassee, Fla., and his friends there, his home since 1949, have refused to grant interviews since his nomination Jan. 19.

"I suppose it is the Haynsworth thing," one of the family spokesmen said. "After all, everything he (Haynsworth) said was used against him by the liberals, and, under the circumstances, I can understand the way they (the Carswells) feel."

Friends and relatives from his home town do not share this reticence and describe young Harrold Carswell as a bright, eager follower of his father, George Henry Carswell.

George Henry Carswell was the descendent of a pioneer Irwinton, Ga., family. The family fortunes were up and down as slavery, Sherman's march through Georgia and the boll weevil dictated. The Depression came early to Irwinton and Wilkinson County, but by that time George Carswell was one of the state's most prominent politicians.

At the time that the elder Carswell, a progressive state lawmaker sponsored legislation that revolutionized Georgia's educational system, provided workmen's compensation and protected child labor, he was without a namesake and heir. Two daughters were in their teens when George Harrold was born, Dec. 22, 1919. Another son, Hubert, followed, but he died at the age of 2.

When Harrold Carswell was 5, his mother died of tuberculosis.

His sister, Ellen (Mrs. Ramsay) Simmons said their mother "contacted TB after getting all run down nursing Hubert. Daddy sent her off to North Carolina to sleep on (sanatorium) porches, but it didn't help and she died when Harrold was just 5. Our older sister, Claire, was living at home then; I was in college and so she looked after Daddy and Harrold until she married."

Harrold's father, who was to serve a total of 30 years in the Georgia legislature, became secretary of state. He ran against and lost to Richard Russell in the 1930 gubernatorial campaign. Harrold was 11.

Mrs. Simmons described this period: "Harrold definitely came under the spell of my father. After all, Mother was gone and he spent a lot of time with him.

"He would tell funny stories at the supper table and talk to us about his cases. Every chance we got, we would go down to the court house and listen to Daddy argue a case."

County Ordinary Wilbur Council remembers "young Harrold coming around the courthouse when he wasn't in school to watch his daddy defend."

Shortly after this, Harrold moved to Bainbridge, Ga., to live with Mrs. Simmons.

"After my sister married and left home, we thought that Harrold ought to have a woman's influence, so he moved in with us. I had a 2-year-old daughter, a baby 8 weeks and I was 24. It was a handful. But my husband just took Harrold in like he was his own and took great pride in educating him and helping to rear him."

Four years later, Harrold's father died at 61, like his wife, a victim of tuberculosis. Ironically, the senior Carswell, as president of the Georgia Senate, had broken a tie vote for the establishment of a sanatorium for tuberculosis victims with, in one Georgia historian's words, "the speech of his life . . . an impassioned plea for those 'wasting away' from the disease."

Harrold graduated from Bainbridge High School and as a youngster there, met Virginia Simmons, the daughter of Jack Simmons, of Tallahassee. Jack and Ramsay Simmons (Harrold's brother-in-law) are brothers. They helped run crate-and-box factories started by their father in Tallahassee, Fla., Bainbridge, Tennille and Macon, Ga.

Although not related by blood, the future Judge and Mrs. Carswell shared mutual bonds of family—strong bonds, often found in the South, that last to the present.

"They sort of grew up together," Mrs. Ramsay Simmons said.

"We built a house in 1938 in Panacea, Fla., big enough for the whole family and we used to spend the summers there. All the Simmonses.

"Somebody always had to be taken to the store or to the train station and I started noticing that Harrold was asking Virginia if she didn't want to ride with him when he went. This was when he was in college."

Harrold Carswell graduated from Duke University, then entered the University of Georgia Law School—a matriculation once considered such a necessity for would-be politicians in the state that it was called "the club"—in 1941.

After Pearl Harbor, he joined the Navy, serving as an officer on a heavy cruiser at the battles of Tarawa, Kwajalein and Iwo Jima. In 1944, he married Virginia Simmons and left the Navy in November, 1945.

Then he entered law school at Mercer University in Macon, Ga., less than an hour's drive from the old Carswell home in Irwinton. He edited a small newspaper started by his father and uncle, The Bulletin, and organized the Wilkinson County Telephone Co.

The telephone company still exists, under different ownership. The newspaper is defunct. But little else has changed in Irwinton. The older generation of politicians are still designated as "Carswell men" or "Talmadge/Boone men" (after Eugene and Herman Talmadge and Alex Boone, the man who beat Harrold Carswell in his only political race).

"He started the paper to begin his political base here," Joe Boone, editor of the Wilkinson County News, successor to The Bulletin, and son of Alex Boone, said.

After graduating from Mercer Law School, he returned and announced his candidacy for the Georgia House of Representatives. He was 28 and it was in this race that Carswell made the statements about his belief in white supremacy that are expected to be an issue at his confirmation hearings today.

He lost the race, some Irwintonians say, "because he was too liberal;" others, "because he was too arrogant, thinking he could come right back here and take over county politics;" still others, "because he was up against one of the wiliest politicians you ever did see."

The winner, Alex Boone, was "far to the right of anyone in the race," son of Joe Boone said. "He had the radical right vote, I guess you'd call it, sewed up."

Friends and enemies in Wilkinson County have proved prophetic about G. Harrold Carswell.

One of his opponents in the 1948 race predicted in a speech that "if he loses, he won't stay in Wilkinson County long (he moved to Tallahassee within a few months of his defeat);" and a little over a year ago, a columnist for the Wilkinson County News wrote about "my dream—Harrold Carswell gets named to the Supreme Court."

Wilbur Council believes young Carswell's failure in his attempt to "carry on in his father's footsteps . . . showed him that he didn't have any political future here. By losing that race, he saw he could never follow the program he had mapped out."

Judge Carswell has declined comment on anything concerning his past, but those who observed him during that period believe that he had definite political ambitions.

"I always thought he'd be governor of Georgia," law school classmate and friend Elmore Floyd said. "And I told him so."

Carswell did not deny such an ambition, Floyd said, "although politics and running for office is a constant source of conversation with law students everywhere, all the time."

The apparent collapse of Carswell's Irwinton political base took him immediately to Tallahassee, his wife's home town, and his law firm of Ausley, Collins and Truett. Former Gov. Leroy Collins was a partner in the firm and it was considered, one Tallahassean said, "a good place for a young man interested in politics to be."

Collins said, "At the time he came, none of us knew him very well, except that he was married to a girl from one of Tallahassee's finest and most prominent families."

Tallahassee, with a society cut into three distinct divisions—government officials (it is the state capital), academics (Florida State University is located there) and old-line families—is the kind of Southern city in which the proper marriage can be very important.

Harrold Carswell's marriage to the daughter of the city's largest private employer helped to smooth his path to the socially elite. Collins added, "I don't know of any man who has come to Tallahassee who has been more popular. He has an engaging personality and is well liked."

Judge Carswell's role in the 1952 Democratic presidential primary in Florida pitting Sen. Richard Russell, old political foe of his father, and Sen Estes Kefauver against each other, is unclear. Reports that he "masterminded" the Russell campaign are denied by the Georgia senator. After Adlai Stevenson won the nomination, Carswell switched his allegiance to the Republicans and Dwight D. Eisenhower.

"I was for Stevenson and Judge Carswell was for Eisenhower," former Gov. Collins said. "I suppose a wise way to sum it up would be to associate him with the Eisenhower philosophy of an approach to government."

He left Ausley, Collins and Truett to start his own firm of Carswell, Cotten and Shivers. He practiced law a total of four years with both firms before being named U.S. Attorney for western Florida in 1953.

The same year, he and his wife officially changed their registration from Democratic to Republican.

Both Carswell's private law practice and two terms as federal prosecutor are unmarked by the spectacular. His practice was described as "good, but ordinary in terms of the kinds of cases he handled." As U.S. Attorney, he had "just one case make headlines—an interstate numbers operation that was the closest we ever came to having a gangster in our midst," according to Tallahassee Democrat editor, Malcolm Johnson.

In 1958, he was named to the federal district court by President Eisenhower. He was, at 38 the youngest federal judge in the country. He served on the court until he was named by President Nixon to the Fifth Circuit Court of Appeals last spring.

Judge William McRae, district judge for eastern Florida, had been nominated in the fall of 1968 to the Appeals Court vacancy by former President Lyndon Johnson. Judge McRae's nomination was allowed to lapse during the transition in a controversial move that in effect, cancelled several Johnson selections for the bench. Carswell was confirmed in June with belated and ineffective opposition from civil rights leaders.

Judge Carswell and his wife live a quiet, family-oriented life in Tallahassee. Their secluded house on a lake 10 miles north of the city is surrounded by the homes of family members. Mr. and Mrs. Fenton Langston (she is the Carswell's 24-year-old daughter; he is a legal aide to Fla. Gov. Claude Kirk) live in a small house on the same lot. Mrs. Carswell's brother, Jack Simmons Jr., lives a few doors away.

Judge Carswell rises early to walk down a dirt driveway to the Langstons to play with his infant granddaughter before anyone else is awake. The White House called Judge Carswell around 1 p.m. Jan. 19 to tell him he had been selected for the Supreme Court.

He was not at home; he was having lunch with his wife's aunt in the company of two other generations of Simmonses and Carswells.

"They are a very, very close family," Leroy Collins said.

Tallahassee insurance executive William Moor said, "Family closeness is kind of a thing here anyhow, but the Simmonses and Carswells are extra close. He's just a family man. He loves his children and their children and his friends' children."Judge Carswell is the godfather of one of Moor's daughters.

The Carswells have three other children, Nan (Mrs. Redford) Cherry, of Tampa, George H. Jr. and Scott Simmons, both students at Florida State University.

Judge Carswell is a gardener. "He has just reclaimed that yard from the woods; that's all it was when they moved out there and now it's a show place," according to Mrs. William Moor. Mrs. Carswell runs the house with the help of a full-time cook and a handy-man.

The house is filled with antiques. Most of the downstairs is panelled and looks out on a sweeping view of Lake Jackson. The Carswells often shoot ducks from the edge of their lawn. Their primary hobby is bridge, a game they "play well, but nicely." Mrs. Carswell is a former president of the Junior League and is now a sustaining member.

Judge Carswell is the former president of the Cotillion Club, an elite, segregated social group that sponsors four dances each year. They were once members of the local country club but resigned because they rarely used the club's facilities. Most of their entertaining is informal, at-home and centers around bridge tables.

Entertaining is altered when quail are in season.

"There's certain people who come down here to shoot birds during the wintertime," William Moor said, "who believe in eating dinner in black tie. When they're here, all of us, including the Carswells, put on formal dinners, but that's the only time."

Mrs. Carswell, an attractive brunette of 44, is noted for outgoing personality. "Vivacious" and "cheer-leader type" are the words her friends most often use to describe her. She served as social secretary to Gov. Claude Kirk for a brief period between his inauguration and remarriage.

While Judge Carswell was U.S. attorney, he became friends with then-assistant Attorney General William Rogers.

Mrs. Carswell described Secretary of State and Mrs. Rogers as "old friends in Washington."

The move to Washington is one that old friends of Carswell expected, although there is a significant split in opinion about how he would reach the capital. The split exists between those who knew him before he had given up active politics and those who knew him after.

Douglass Shrivers, a former law-partner, said, "I always felt he would be on the Supreme Court."

Law school classmate Elmore Floyd "always thought he'd be governor of Georgia and maybe senator later."

"The difference," Wilbur Council said, "is that Harrold learned how to make other opportunities for himself when he got disappointed."

[From the Washington (D.C.) Star, Jan. 27, 1970]

CARSWELL AND "THE LAW OF THE LAND"

(By David Lawrence)

Why should Judge G. Harrold Carswell—who has been nominated for the Supreme Court of the United States—be criticized now for making a political speech in 1948 which was in accordance with "the law of the land" at that time? Millions of people have read the following quotation from an address by Carswell delivered to an American Legion audience on Aug. 2, 1948:

"I am a Southerner by ancestry, birth, training, inclination, belief and practice. I believe that segregation of the races is proper and the only and correct way of life in our state. I have always so believed and I shall always so act."

But segregation was sanctioned by "the law of the land" in 1948, and it was not overturned until May 1954. Up until then, the Supreme Court in six decisions over a period of 75 years had upheld the doctrine of "separate but equal" facilities.

In the famous 1896 case known as Plessy v. Ferguson, the Supreme Court had upheld the validity of a Louisiana law which provided for "equal but separate accommodations for the white, and colored races," on railroad trains. It was not until 1954 that the Supreme Court ruled in Brown v. Board of Education that "separate educational facilities" are "inherently unequal" and unconstitutional.

Segregation was commonplace throughout the South in the years before 1954, and many states outside the South had had segregated schools for a long time. When the Supreme Court in 1896 declared that "separate but equal" was constitutional, the South continued its segregated schools. Doubtless many speeches were made in 1948 and thereafter, along with that of Carswell, supporting the principle of what was then "the law of the land" with respect to segregation.

Carswell's speech was delivered while he was running for the Georgia Legislature, six years before the Supreme Court handed down its desegregation ruling in 1954. Yet he has been condemned all over the country in recent days for expressing views on segregation which were in compliance with "the law of the land" when he spoke. Now—more than 21 years later—he has publicly repudiated the statement and says it is abhorrent to his personal philosophy. Various organizations nevertheless are trying to block his confirmation in the Senate on the ground that his speech in 1948 makes him ineligible for the high court.

To punish anybody today for upholding what was interpreted at the time as within the bounds of the Constitution is surprising. Undoubtedly it results from a failure to look up the record and read what happened prior to 1954 when the Supreme Court made its momentous decision ordering segregation in the public schools to be abolished.

Incidentally, when Senator Hugo L. Black of Alabama was nominated to be an associate justice of the Supreme Court of the United States by President Franklin D. Roosevelt on Aug. 12, 1937, some objection was raised to him because of his alleged membership in the Ku Klux Klan, but he was confirmed within five days. He subsequently acknowledged that he had once been a member of the Klan, but said that he had resigned from the organization and repudiated its purposes. Black in 1954 joined with the other eight justices of the court in rendering a unanimous decision banning segregation in public schools.

Thurgood Marshall—an associate justice of the Supreme Court of the United States since 1967 and the first Negro to hold such an office—was one of the principal attorneys who argued the "desegregation" cases in 1954. He was chief counsel for the National Association for the Advancement of Colored People. But nobody has ever raised any objection in the high court to his having since decided cases which involved his former employer. Logically, there should be none, for he is a man of integrity.

Because a person at one time was identified with a company that has litigation before the court does not necessarily disqualify him. There are many people in Congress, however, who seem to feel that the judges should disqualify themselves when such cases arise. Perhaps the American Bar Association ought to draw up a set of rules which would clarify the whole problem.

[From U.S. News & World Report, Feb. 9, 1970]

WHAT PRESIDENTS ONCE SAID ABOUT RACIAL EQUALITY

(By David Lawrence)

The controversy recently about Judge G. Harrold Carswell's speech which he made in 1948 in favor of segregation—six years before the Supreme Court ordered desegregation in the public schools—prompts a re-examination of just what was said in public speeches and in utterances of Presidents of the United States on the general subject of racial equality prior to the Court's ruling in 1954. Here are some extracts:

Thomas Jefferson, in a letter to Francois Jean de Chastelleux on June 7, 1785:

"I have supposed the black man, in his present state, might not be in body and mind equal to the white man; but it would be hazardous to affirm that, equally cultivated for a few generations, he would not become so."

Jefferson's Autobiography, published in 1821:

"Nothing is more certainly written in the book of fate than that these people are to be free; nor is it less certain that the two races equally free, cannot live in the same government. Nature, habit, opinion have drawn indelible lines of distinction between them."

Abraham Lincoln, in a speech at Ottawa, Ill,. on Aug. 21, 1858:

"I have no purpose to introduce political and social equality between the white and the black races. There is a physical difference between the two, which in my judgment will probably forever forbid their living together upon the footing of perfect equality, and inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong having the superior position.

"I have never said anything to the contrary, but I hold that notwithstanding all this, there is no reason in the world why the Negro is not entitled to all the natural rights enumerated in the Declaration of Independence, the right to life, liberty and the pursuit of happiness. I hold that he is as much entitled to these as the white man. I agree with Judge Douglas, he is not my equal in many respects—certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man."

Abraham Lincoln, in a speech at Charleston, Ill., on Sept. 18, 1858:

"I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and black races—that I am not nor ever have been in favor of making voters or jurors of Negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race. . . .

"I will add to this that I have never seen to my knowledge a man, woman or child who

was in favor of producing a perfect equality, social and political, between Negroes and white men."

Theodore Roosevelt, in his Seventh Annual Message to Congress on Dec. 3, 1907:

"Our aim is to recognize what Lincoln pointed out: The fact that there are some respects in which men are obviously not equal; but also to insist that there should be an equality of self-respect and of mutual respect, an equality of rights before the law, and at least an approximate equality in the conditions under which each man obtains the chance to show the stuff that is in him when compared to his fellows."

William Howard Taft, in his Inaugural Address on March 4, 1909:

"The colored men must base their hope on the results of their own industry, self-restraint, thrift and business success, as well as upon the aid, comfort and sympathy which they may receive from their white neighbors."

Franklin Delano Roosevelt, in a letter to Cleveland G. Allen on Dec. 26, 1935:

"It is truly remarkable, the things which the Negro people have accomplished within living memory—their progress in agriculture and industry, their achievements in the field of education, their contributions to the arts and sciences, and, in general, to good citizenship."

Harry S. Truman, to the Democratic National Convention in 1940:

"I wish to make it clear that I am not appealing for social equality of the Negro. The Negro himself knows better than that, and the highest type of Negro leaders say quite frankly they prefer the society of their own people. Negroes want justice, not social relations."

How many of the foregoing statesmen could be confirmed as Justices of the Supreme Court today if their statements of earlier years such as the above were cited against them by members of the Senate?

[From the Orlando (Fla.) Evening Star, Jan. 29, 1970]

CARSWELL CRITICS NEED TO REMEMBER HUGO BLACK

Is Harrold Carswell destined to suffer the same fate as Clement Haynsworth in the Nixon administration's attempt to seat him on the U.S. Supreme Court?

It has been little more than a week since the President nominated the Floridian, and already there are distinct rumblings which indicate Carswell's confirmation is in jeopardy.

Much of the criticism being directed at the Tallahassee jurist stems from a speech he made in 1948, which has stirred racist fears.

Judge Carswell was 28 years old at the time and a student at the University of Georgia. His endorsement of white supremacy in that speech has since been repudiated by the judge. And his rulings during his many years on the bench would indicate no leanings in that direction.

Those who are rushing to the attack against Carswell need to be reminded of the case of Justice Hugo Black.

Back in the 1930s, President Franklin D. Roosevelt nominated Black for the high court and stirred up even more of a hornet's nest than that produced by Nixon's nominations of Haynsworth and Carswell.

Black, a native of Alabama, had been a member of the Ku Klux Klan. Great pressure was applied to Roosevelt to withdraw the nomination and a heated battle followed before the Senate finally confirmed Black.

Now, more than 30 years later Black is still a member of the Supreme Court and one of its foremost liberals. Those who were spouting about Black's racism later were shocked to find the Southern jurist voting on the side of civil rights groups in most cases which reached the Supreme Court.

It has been 22 years since Judge Carswell made his white supremacy speech. Few of us would care to be judged today by words we uttered 22 years ago.

Arguments against Carswell are weak, and insufficient to deny him a seat on the high court.

[From the Tampa Tribune, Jan. 31, 1970]

THE SUPREMACIST THIS COURT NEEDS

Judge Harrold Carswell apparently will survive charges that he is both a white supremacist and a male supremacist.

The first charge arose from a resurrected speech the Supreme Court nominee made while running for the Georgia Legislature 22 years ago. (He lost the race, he said, because the county voters considered him too "liberal"—he hadn't been a backer of Gene Talmadge.)

The second charge was thought up by Hawaii Congresswoman Patsy Mink. She said Carswell showed discrimination against women by voting, along with eight other judges of the Fifth Circuit Court of Appeals, to deny a rehearing of a woman's complaint that she had been refused a job in a defense plant because she had small children.

Judge Carswell repudiated as "abhorrent" white supremacy sentiments he expressed on the political platform in 1948. He had on his behalf a persuasive witness, former Governor LeRoy Collins, a fellow townsman and former law partner in Tallahassee, who has suffered unfair abuse because of his stand for Negro rights.

Men and times change. Nothing in Judge Carswell's record as a U.S. District Attorney or Federal Judge suggests racial or other bias. Civil rights lawyers construed his decisions as hostile; but they would so interpret the decision of any Southern judge who ruled against them, however valid his grounds.

The "male supremacy" complaint hardly needs reply. It is an example of the silly stones likely to be cast at any man who may be nominated for the Supreme Court, especially if he is a conservative from the South.

In his testimony before the Senate Judiciary Committee and in his conduct generally Judge Carswell made a favorable impression. He was calm, articulate and candid—all qualities which are desirable in a judge.

His sponsors do not contend he will prove to be another John Marshall or Oliver Wendell Holmes. They do expect him to be an honest, conscientious interpreter of the law as written, not as he might wish it to be. As Judge Carswell aptly told the Senators, in discussing his philosophy, he does not believe the Supreme Court should act as "a continuing Constitutional Convention".

Senators Walter Mondale of Minnesota and William Proxmire of Wisconsin have announced they will vote against Judge Carswell's confirmation. Other down-the-line liberals, like Birch Bayh of Indiana and Ted Kennedy of Massachusetts, can be expected to join them.

But their ranks are thinner now than in the battle which defeated Judge Clement Haynsworth. Some Republican Senators who went against Haynsworth, ostensibly because of "conflicts of interest" in stock holdings, already have announced support of Carswell.

Senate Republican Leader Hugh Scott predicts Carswell will be confirmed with no more than 20 votes against him.

We trust Senator Scott's analysis is correct.

Judge Carswell, we think, is the kind of Supremacist the Supreme Court can use—a judge who believes in the supremacy of Constitutional principles over social theories.

[From the Tallahassee (Fla.) Democrat, Feb. 3, 1970]

CARSWELL MEETS NIXON WISHES

(By Malcolm Johnson)

TALLAHASSEE.—Harrold Carswell's severest critics are doing a good job of establishing that he meets the major philosophical qualification which President Nixon said, in his campaign, he would seek in naming men to the U.S. Supreme Court.

"I believe we need a court which looks upon its function as being that of interpretation rather than of breaking through into new areas that are really the prerogative of the Congress of the United States," Nixon said in the campaign.

"Since I believe in a strict interpretation of the Supreme Court's rule, I would appoint a man of similar philosophical persuasion," he pledged to the people whose vote he was asking.

Now, his nomination of Judge Carswell is before the U.S. Senate for confirmation, and read what is being said about him in opposition to the judge's seating:

The New York Times, predictably, jumped out instantly in opposition and commented that a review of his decisions as a lower court judge—

NO LEGAL PIONEER

". . . reveal a jurist who hesitates to use judicial power unless the need is clear and demanding; who finds few controversies that cannot be settled by involving some settled precedent, and who rarely finds the need for reference to the social conflict outside the courtroom that brought his cases before him."

The Times indictment, then, is that Judge Carswell has decided litigation according to the law and precedents instead of striking out on his own to dictate rulings based on his private conscience or the persuasion of someone else's social values.

And William Van Alystyne, a Duke University law professor testifying against Carswell before the Senate Judiciary committee, said his examination of Carswell civil rights rulings revealed to him that when the judge ruled favorably for minority groups the law and court precedents were so clear he could not have ruled otherwise.

Well, so what? Even according to the fallacious dogma of judicial activists, "the Supreme Court makes the law of the land," and lesser judges are not allowed to question it.

There is the whole issue, plainly stated by the two sides—President Nixon in his criterion for judges who are what he calls "strict constructionists," and the opponents who want courts to make up the law as they go (as long as it fits their particular desires and philosophy).

President Nixon won. The advocates of judicial activism lost (and ignobly, if you count the George Wallace votes against them, too). They are fighting a last-ditch battle in the Senate to keep a man of the winning philosophy off the court.

The zealousness with which they hold to the liberal bigotry that only their side can ever be anything but right, and deserving of instant judicial acceptance, approaches a religion (as our contemporary flexibility allows us to define a religion). Some even make racial integration a tenet of their religions.

In that sense, their fervor in opposition to Judge Carswell because of his judicial philosophy approaches a religious test—which would be in violation of Article Six of the Constitution which says "no religious test shall ever be required as a qualification to any officer or public trust under the United States."

There really is more to the Constitution than the 5th and 14th amendments.

[From the Chicago Tribune, Feb. 10, 1970]

DIGGING FOR DIRT IN CARSWELL CASE

It must be deeply disappointing to the opponents of G. Harrold Carswell's Supreme Court nomination that he has been unable to build up a fortune in the last 17 years while he was a United States district attorney, a federal district judge, and a judge of the United States Court of Appeals. Extensive digging into his background has shown that

instead of a fortune, the judge has acquired debts.

In 1953, when he became a United States attorney, the pay was $8360 a year. Two years later it rose to $12,500. In 1958, when he became a federal judge, his salary rose to $22,500. Now he gets $42,500 as an Appeals court judge.

His expenses have included the rearing and educating of four children. Two daughters are now married and two sons are students at Florida State university. He has managed to make ends meet by mortgaging and selling off portions of his homesite, which he obtained from his wife's family. Mr. and Mrs. Carswell now have 7.06 acres in their Tallahassee homesite after selling four lots for $30,000 and after giving 2.44 acres to their daughter and her husband.

Judge Carswell told the judiciary committee he valued his house at $90,000. It has a mortgage of $50,347. The Carswells also have a debt of $48,000 secured by his wife's stock in her family's business. Friends of Carswell say that if the judge is confirmed he plans to liquidate his debts and move to Washington.

There is no pay dirt in this record for the opponents of Judge Carswell. They can't scream that he has made fortunate investments and therefore is unfit to be a judge.

[From the Orlando (Fla.) Sentinel, Feb. 20, 1970]

CARSWELL'S QUALIFICATIONS

The worst thing Judge Harrold Carswell's detractors have found to say against him is that he is a Southerner.

The next worst is that he "is run-of-the-mill."

We don't think Carswell needs defending because of his birthplace and place of residence. Being a Southerner, and a conservative one at that, is bad in the eyes of no one except those who are liberal beyond redemption.

The charge of run-of-the-mill can be interpreted as meaning that Harrold Carswell is an average if not ordinary man.

We see this as an asset rather than a liability. If there is anything the Supreme Court needs, it is more down-to-earth decisions and interpretations.

A man of Carswell's background is more likely to insist upon a strict interpretation of the Constitution rather than a will-o'-the-wisp approach to legal matters.

The American people have had enough sociology in their Supreme Court during the last two decades. Let us now restore the balance by approving the appointment of a man who is dedicated to sound law.

[From the Tampa (Fla.) Tribune, Mar. 14, 1970]

CARSWELL CRITICS AREN'T BEING FAIR WITH CHARGES

(By William F. Buckley Jr.)

I do not know Judge Carswell, and could not vouch for it as a matter of personal knowledge that he knows the difference between a lessor and a lessee. I merely take it for granted that someone as thorough as Mr. Nixon is unlikely to nominate anyone to the Supreme Court who is altogether ignorant of the law, and pause to remark that ignorance of the law would appear to have been the principal qualification for service in the Supreme Court over the past dozen years.

But the nature of the campaign being waged against Judge Carswell certainly requires comment.

Mr. Anthony Lewis of the New York Times has discovered that Judge Carswell once told a joke—which joke, one infers, clearly disqualifies Judge Carswell. The joke is as follows (and if you say this joke out loud, you must imitate a Southern accent in order to render it as, one supposes, Judge Carswell rendered it): "I was out in the Far East a little while ago, and I ran into a dark-skinned fella. I asked him if he was from Indo-China, and he said, 'Naw, suh, I'se from Outdah Geowja.' "

Now perhaps judges shouldn't tell jokes. One could as well imagine Earl Warren telling a joke as Mount Rushmore. But great big cosmopolitan newspapermen oughtn't, in the presence of a joke as innocent as this one, to act like Snow White at "Oh! Calcutta!" It is hardly anti-Negro to say of someone that he is "dark-skinned." It is hardly anti-Negro to observe that the body of American Negroes, like the body of American Southerners—like Judge Carswell himself—pronounces "Georgia" as "Jawja." And the fulcrum of the joke, that "Indo" and "Outdah," as pronounced in the South, rhyme, is essential to the mildly amusing story. And Mr. Lewis knows it.

And then another criticism of Judge Carswell. "In 1953 he drafted a charter for a Florida State University boosters club that opened membership to 'any white person interested in the purposes. . .' "

Among the civil liberties of both Southerners and Northerners, back in 1953, in most states of the Union, was the formation of a club with restricted membership. That Mr. Carswell as a practicing attorney drafted a charter for a typical Southern college in which—by state law, because we are talking pre-Brown vs. Board of Education—membership was restricted to white students, was as routine as drawing up a will.

The balance of the charges are of the same order. What the critics of Mr. Carswell fail almost uniformly to bear in mind is that a revolution of sorts has taken place in the South during the past 15 years, that what was only a few years ago altogether routine, is now rejected as obloquy.

Days after the proclamation of the republic, everyone in France was supposed to have been born a republican. Weeks after the triumph of Napoleon, everyone proclaimed himself a lifelong Bonapartist. I do not imply that, like the Vicar of Bray, Carswell would return to the segregationist patterns which were simply taken for granted in the South he grew up in—because, now in the prime of life, he affirms most solemnly his belief that when in the name of morality one catechizes a man who functioned as a royalist back when the king was on his throne, one proceeds, as Anthony Lewis has done, in the spirit not of Abraham Lincoln, but of Robespierre.

[From the Pensacola (Fla.) Journal, Mar. 19, 1970]

WHY CARSWELL DELAY?

Free debate in an unrestricted but reasonable consideration of issues is the essence of the democratic principle in practice. It must always be defended, and its enemies are many.

Those who would destroy the process by direct assault are easily identified and as easily contained; but those who profess to preach the doctrine of democracy and then deliberately use the very guarantees of the system to abuse it are the dangerous ones.

These elements are devious and ruthless. They prefer to work secretly and to create and then manipulate their own political figures. They are less concerned with the nation's welfare than they are with their own limited cause—their political and social objectives.

For overly long the nation has been exposed to such a performance in selection of the ninth member to the Supreme Court, which for many months has been forced to operate one justice short.

Two outstanding nominees have been presented to the Senate by President Nixon. The first, Judge Clement Haynsworth, became a political casualty—a sacrifice to selfish and special interests, although his enemies could not dredge up a single supportable instance of unethical conduct.

The second, Judge G. Harrold Carswell, is receiving like treatment from the same sources, although he too not only is eminently qualified but free of taint.

Any appointee to the federal judiciary must first undergo an FBI investigation which follows him from birth to the date of his consideration for office. This is a routine.

He then is presented to the Senate Judiciary Committee which puts him on the anvil for about as close a scrutiny as a man can get. If approved there, he is given to the Senate which can question his qualifications and record in open debate. Only then is a vote taken.

There is nothing fundamentally wrong with this system. It is in the democratic concept of protecting the public in administration of justice later.

But what is wrong is subversion of the privilege of self-oriented interests.

This is what destroyed Judge Haynsworth, and this is what the same elements intend to do with Judge Carswell, if they can. It matters not at all that both men are clean and that all the hunting and the interpretations of their past statements—in context, of course—have stirred up not even a little lint.

They don't care if the character, of the men is falsely sullied, or if the Supreme Court itself is damaged if in the end they can get a puppet of their own choosing on the court.

Who are these men responsible for interminable and costly delay in appointment of the Supreme Court justice?

They are several, but they represent for the most part organized labor which has boasted it controls senators—shackled through financing of campaigns. And labor makes no secret of the fact that it aspires to control the country politically through one of the major (Democratic) parties, if possible.

And in an uneasy alliance with labor are the professional race zealots and activists who automatically oppose any man from the South.

(We term this an uneasy alliance because between times race leaders are actively fighting organized labor over what they term discrimination against blacks.)

While this insupportable delay goes on, the public suffers and the court is crippled in a pandering to the whims of a few at the expense of the many.

But the public is more numerous and it is time it makes itself felt in demanding the Senate stop dallying and get down to the business of affirming Judge Carswell, labor and racists notwithstanding.

[From the Sun-Sentinel, Mar. 19, 1970]

BICKERING OVER CARSWELL ANTI-MAN OR ANTI-SOUTH?

(By William A. Mullen)

As the battle for control of the U.S. Supreme Court rages over the nomination of Federal Judge Harrold Carswell as associate justice, the opposition debate gets less and less concerned with fact.

The latest gambit is the charge raised hy Sen. Joseph Tydings, D-Md., leader of the anti-Carswell forces, that endorsement of the Tallahassee-hased federal appeals judge by an esteemed colleague had been withdrawn over racial conflict.

Senator Tydings implied that Judge Carswell had failed to disclose that former Chief Judge Elbert Tuttle of the U.S. Fifth Circuit Court of Appeals, had rescinded his endorsement of Judge Carswell.

The purported reason was Judge Carswell's involvement in the organization of an all-White private club.

At this writing, there has been no confirmation from Judge Tuttle that he intended to reverse his position on the Carswell nomination. Nothing has been said by him about the racial overtones. All that is definitely known is that Judge Tuttle informed Judge

Carswell by telephone that he would not be able to testify in his behalf before the Senate Judiciary Committee.

But the Tydings insinuations perpetuate the racial allegations against Judge Carswell, to which have been added contentions by the United Steelworkers Union, AFL–CIO, that confirmation of President Nixon's nominee would indicate that "bigotry and incompetence" would not disqualify a man for the court.

The union, Senator Tydings, Sen. Edward Kennedy, D-Mass., Sen. Edward Brooke, R-Mass., the Senate's only Negro member, and a number of others opposing Judge Carswell for supposed bigotry all conveniently overlook an entry in the Feb. 16 Congressional Record that records support of the jurist by the former president of the Cleveland, Ohio, chapter of the National Assn. for the Advancement of Colored People (NAACP).

The entry is a letter to the editor published in the Cleveland Plain Dealer and written by Chester Gillespie, presently a member of the chapter's executive committee, urging that unless the NAACP "has very strong evidence against Judge Carswell," it should compromise and support Mr. Nixon's appointment.

The letter further states, in part:

"He (Judge Carswell) has made some mistakes in his several rulings, but he ruled a Negro must be served in a barber shop and that Negroes must be served in public restaurants, both in the State of Florida and his white friends were unhappy about these rulings and the barber closed his shop.

"Judge Carswell should be promptly confirmed so the court can function as the law requires and for the good and welfare of America. We cannot always get everything we desire."

That admonition is wasted upon the liberals who have shown they will fight any Southern conservative nomination, merely because of it being Southern and conservative.

In so doing, they are wholly unrealistic about giving proper regional and philosophical balance to the nation's highest court.

Other than Associate Justice Hugo Black, no southerner is on the bench, and he is 84 years old. Should his place in the court be vacated, the South would be without a voice in the court where a number of cases are brought directly against the South.

The court's only Negro justice, Thurgood Marshall, was born in Maryland, but his appointment was from New York. And he could hardly be regarded as a Southern conservative.

Three of the jurists are from the Northeast, the citadel of liberalism; one is from Ohio and another from Colorado.

Chief Justice Warren Burger resided in Virginia at the time of his appointment, but he is a native Minnesotan.

We believe Senator Tydings, et al., are more in opposition to President Nixon's intention of having, properly, more southern representation on the bench than they are against Judge Carswell, per se.

They would be wiser to heed Mr. Gillespie's views and his counsel that they cannot always get everything they desire.

[From the Fort Lauderdale (Fla.) News and Sun-Sentinel, Mar. 22, 1970]

EX-LAW DEAN SAYS CARSWELL UNBIASED

TALLAHASSEE.—Supreme Court-nominee G. Harrold Carswell represents the "changing views of the South which are becoming strongly favorable to the advancement of Black people," Mason Ladd, former dean of law schools in Iowa and Florida, said Saturday.

Ladd said persons opposing Judge Carswell because they fear he would be racially-biased are "all wrong. On race, he is as fair as any northern judge."

He also said that the 50-year-old Tallahassee jurist, whose nomination is being hotly debated in the U.S. Senate, is competent and qualified to sit on the nation's highest bench "and would expect him to develop into a highly respected member of that bench."

"I firmly believe that were it not for the civil liberties attack upon him, his qualifications would never have been questioned."

Ladd gave up his position as dean of Iowa State University Law School in 1966 to head the new Florida State University Law School here which Judge Carswell helped to found.

Ladd stepped down as dean last year, but still teaches a course in evidence for one quarter each year.

The scholarly dean recalled in an interview that he became dean of the Iowa School in the late 1930's, succeeding the late U.S. Supreme Court Justice Willie B. Rutledge, a Roosevelt judge whom Ladd supported and admired.

He said Carswell, federal district judge here for 18 years before his elevation to the Fifth Circuit Court of Appeals, "took a strong position supporting enrollment of Black students at the new law school."

Carswell was a member of the committee that helped get the school under way, Ladd said, "and there was a question whether Black students would be able to meet some admission requirements, particularly the Princeton National Education Testing Examination.

"Judge Carswell said we should admit Black students whether they met this test or not, if they were otherwise qualified."

"I am certain that, despite anything he might have said 20 years ago, Judge Carswell is not a racist and harbors no feelings of supremacy."

Civil rights leaders base part of their oppositions to Carswell on a 1948 campaign speech he made for the Georgia legislature race in which he spoke in favor of White supremacy. Carswell has since repudiated the remarks.

"On any issue related to civil rights, I feel he would approach the matter with open mind and decide the case with complete fairness and impartiality," Ladd added. "He does not have preconceived notions and his decisions show it."

He said he has had occasion to look at some of the judge's rulings in connection with research for his classes.

"He has a high sense of fairness, a sharp mind and sees points quickly. He has had excellent experience in a large federal court that has been overly-loaded with work. The practicing bar, which regularly appears before him, thinks highly of Judge Carswell."

Ladd, who expects to return to Iowa City after taking a short vacation over the Easter holidays, said that Judge Carswell has been criticized by some for not making a scholarly treatise out of every opinion.

"I would expect his opinions to be shorter in length than some, but clear, understandable and sound. He is very hardworking, honest and sincere."

[From the Orlando (Fla.) Sentinel, Mar. 22, 1970]

CONTROL OF SUPREME COURT IS REAL GOAL OF LIBERALS

EDITOR: Now we have another group of immature whatnots demanding via petition that Judge Carswell's nomination be withdrawn. Does this bunch of young liberals, with minds still needing a bit of fertilization and experience, really believe or dream that they are qualified to pass judgment on the abilities of a man such as Judge Carswell, who has been on the bench for about 15 years and in practice longer than they are old? These young heads are so swollen with overdoses of protest and dissent that they have lost all sense of direction.

Now that the people do know that it is not Carswell's qualifications that are in question, it positively must be the extreme liberal anxiety to keep control of the U.S. Supreme Court. With this power they control the lives of all people in this nation. If these liberals are not stopped now, there is no telling how far they will carry this nation down the Marxist road.

WALTER H. VEH PAULT.

NEW PORT RICHEY.

[From the Orlando (Fla.) Evening Star, Mar. 23, 1970]

POWER STRUGGLE OVER COURT

(By Ernest Cuneo)

WASHINGTON.—The fight against confirmation of Judge G. Harrold Carswell, as was the battle against Judge Clement F. Haynsworth, is the mere surface of the terrific power struggle underneath.

Judge Carswell and Judge Haynsworth, as persons, are relatively unimportaut as compared with the much large issue of control of the Supreme Court.

The court has the ultimate power in this republic. When it declares a law unconstitutional, it nullifies an act of Congress because the Constitution, as conservative Chief Justice Charles Evans Hughes declared, means what the Supreme Court says it means.

In the past 20 years, the Supreme Court has placed new interpretations on the constitution which, in effect, changes the law of the land. In this respect, the Supreme Court is legislating new law.

There is nothing particularly new in this practice. It is as old as the republic. However, it does define the importance of the power struggle underneath. Since the Supreme Court is composed of only nine men, and since there are 100 men in the U.S. Senate, each Supreme Court justice has the power of at least 11 senators.

When, as has happened, the high court splits 4 to 4, it means that the vote of a ninth justice may result in the majority opinion of the court.

Thus, the vote of a new justice may decide what is the law and what is not.

While there is nothing particularly new in this, it explains the terrific power struggle. The last knock-down, drag-out battle for Supreme Court supremacy occurred in 1937. The conservative court ruled much of President Franklin D. Roosevelt's legislation unconstitutional.

President Roosevelt sought to overcome this judicial roadblock by adding enough justices to give him a majority which would uphold his legislation. He lost—at the height of his own popularity—the bitter battle.

But the Supreme Court, under this terrific presidential pressure, reversed its posture and held much of the president's new laws constitutional. And another factor entered: man's mortality. The justice were very aged in 1937. They dropped off the court and Roosevelt was enabled to appoint an almost entirely new court before he died in 1945, including moving up Associate Justice Harlan F. Stone to chief justice.

The new court took a much more liberal view than the older one under Chief Justice Hughes, and the court continued this trend under chief justices Fred M. Vinson and Earl Warren.

There is nothing particularly new in this pattern either. Chief Justice John Marshall was a strong federalist. Reversing this, Chief Justice Roger B. Taney, who followed him, was a strong states' rights advocate. For the next 65 years, conservative chief justices Salmon P. Chase, Morrison R. Waite, Melville W. Fuller, Edward D. White and William Howard Taft strongly held for property rights.

The Court was less conservative under Chief Justice Hughes, but it was conservative

enough to bring on the confrontation with President Roosevelt.

The current power struggle, therefore, is not really about Judge Carswell, but over the composition of the Supreme Court. It appears that, to President Nixon, as to President Roosevelt, will come the necessity of naming a large number of Supreme Court justices, particularly if the President is reelected.

Aside from the vacancy caused by the resignation of Justice Abe Fortas, two associate members of the supreme court, Justice William O. Douglas and Justice John Harlan are over 70. Justice Hugo Black is 84 and none of these gentlemen enjoys the health they once had.

The Constitution requires that the President nominate and the Senate confirm nominations for the court. President Nixon has nominated conservatives in Judge Haynsworth and Carswell. The liberal Senate quite aside from the personalities of the President's nominees, wants to continue the power of the liberals on the court.

[From the Fort Lauderdale (Fla.) News, Mar. 23, 1970]

NOT SO SPEEDY CONGRESS REALLY DRAGS ITS FEET ON CARSWELL VOTING

While Congress is moving a bit faster this year with an eye to winding up its work before the fall campaigning gets under way, the spectacle of the United States Senate's delay in acting on the nomination of G. Harrold Carswell to the Supreme Court is not improving the image of our lawmakers in the least.

More than two months has elapsed since President Nixon submitted the nomination of the Florida jurist. That should have been ample time to develop evidence as to whether the nominee is worthy of confirmation.

The situation is important because the Supreme Court is operating with eight justices on the job rather than the full complement of nine. As a result, the court's work is being slowed.

Chief Justice Warren E. Burger is reported to have advised members of Congress of the problems being created and the likelihood that a backlog of cases will slow the processes of justice.

At a time when this nation has more than its share of problems related to maintaining law and order, this certainly cannot help the situation.

Opponents of the nominee have been successful in stalling the Senate vote while striving to dig up just a bit more evidence which might sway additional votes to block confirmation.

Fundamentally, the opposition rests on the fact Judge Carswell is a conservative and a Southerner, and that is distasteful to the liberals.

What is being done is to block representation of the majority in this country. It was quite evident in the 1968 election that some 57 per cent of the people voted a conservative line, favoring either Richard M. Nixon or the third party contender, George Wallace.

In the desperate liberal maneuverings, another aspect of political life was injected by Sen. Birch Bayh, D-Ind., who questioned whether Judge Carswell lacked the "professional excellence" required of the job.

Sen. Russell Long, D-La., answered that question, saying he would prefer having a "B student or C student who was able to think straight," than an A student with "corkscrew thinking."

Sen. Robert Byrd, D-W. Va., added: "Mediocrity cuts across senatorial lines as well as judicial lines. I haven't heard of any senators turning back their paychecks because of mediocrity."

The continued debats on Judge Carswell makes it appear that some of the senators not only are mediocre but afflicted also with corkscrew thinking.

The Senate should get on with its vote on the nomination without further delay. We are anxious to check out the eventual lineup to tally up the mediocre lawmakers and the degree of corkscrew thinking prevailing.

[From the Tallahassee (Fla.) Democrat, Mar. 20, 1970]

CARSWELL PRAISE IS OVERLOOKED

(By Malcolm Johnson)

Judge Harrold Carswell, it seems, is taking a worse beating from the news reports than he is in the official documents filed for and against his nomination to the U.S. Supreme Court.

The 467-page printed record on the Senate Judiciary committee hearings on his nomination, just received here, provides a powerful refutation of the accusations of bigotry and mediocrity which are being used against him.

Much of it has not heretofore been revealed to his hometown editor who probably has watched the daily reports as closely as anyone.

For example, we have been regaled this last week or so by the supposedly scornful fact that two members of the U.S. Fifth Circuit Court of Appeals have not endorsed his elevation from their bench to the Supreme Court.

Now, mind you, they have not opposed his appointment. They have only not endorsed him. (And retired Judge Tuttle, who praised him highly then withdrew his offer to testify in his behalf, to this day hasn't opposed him, either.)

But have you heard, or have you read, what other members of the Fifth Circuit Court have said about him in official letters now a part of the printed record of the Senate?

Judge Homer Thornberry (who was nominated by President Johnson for this very Supreme Court seat, but it didn't become vacant by elevation or resignation of Justice Abe Fortas in time for a Democrat to get it) had this to say about Carswell:

". . . a man of impeccable character . . . his volume and quality of opinions is extremely high . . . has the compassion which is so important in a judge."

Judge Bryan Simpson, who was held up by civil rights lawyers as the kind of Southern judge President Nixon should have chosen, wrote to the Senate:

"More important even than the fine skill as a judicial craftsman possessed by Judge Carswell are his qualities as a man: superior intelligence, patience, a warm and generous interest in his fellow man of all races and creeds, judgment and an openminded disposition to hear, consider and decide important matters without preconceptions, predilections or prejudices."

Judge Griffin Bell, a former campaign worker for President Kennedy whose own name was mentioned for this vacancy: "Judge Carswell will take a standard of excellence to the Supreme Court . . ."

Judge David W. Dwyer: ". . . great judicial talent and vigor."

Judge Robert A. Ainsworth: ". . . a person of the highest integrity, a capable and experienced judge, an excellent writer and scholar. . ."

Judge Warren Jones: ". . . eminently qualified in every way—personality, integrity, legal learning and judicial temperament."

Most of these statements have been in the record since January, not recently gathered to offset criticism.

There are similar testimonials from a couple of dozen other Florida state and federal district judges in the record, but our newspaper received a news report from Washington about only a partial list of them (without quotation) only after calling news services in Washington and citing pages in the Congressional Record where they could be found.

And on the matter of antiracial views, the printed record of the committee contains numerous letters and telegrams disputing contentions of a few northern civil rights lawyers who said Judge Carswell was rude to them when they came to his court as volunteers, mostly with little or no legal experience.

Foremost among them is this letter from Charles F. Wilson of Pensacola:

"As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court," he said, "there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions.

"I represented the plaintiffs in three of the major school desegregation cases filed in his district. He invariably granted the plaintiffs favorable judgments in these cases, and the only disagreement I had with him in any of them was over the extent of the relief to be granted."

Why such statements in the record have been overlooked by Washington news reporters while they are daily picking up any little crumb from the opposition is hard to explain to the public.

It could be that the organized forces opposing Judge Carswell are more alert to press agentry than the loose coalition in the Senate that is supporting him.

The press agent offers fresh news, while the record brings it stale to the attention of news gatherers upon whom there is great pressure to start every day off new with the abundance of news you know is going to develop that day.

That, really, could be a better explanation than the common assumption that our Washington reporters are just naturally more anxious to report something bad about a man—especially if he is a conservative—than something complimentary. But it isn't a very good explanation, at that.

[From the Miami (Fla.) Herald, Mar. 24, 1970]

A COMPETENT, NO-NONSENSE PRACTITIONER: AN UNENTHUSIASTIC VOTE FOR JUDGE CARSWELL

(By James J. Kilpatrick)

WASHINGTON.—Some of the attacks that are being made upon Judge G. Harrold Carswell, and some of the impressions being pumped up in the phony groundswell against him, prompt a few words of rejoinder by one of the judge's unenthusiastic supporters, namely me.

The charges have to do with his record as a U.S. district judge, and with the testimoniale for and against his elevation to the Supreme Court.

Carswell served as a federal judge in the Northern District of Florida from 1958 to 1969. The complaint is made that he left an "undistinguished" record behind, that he was frequently reversed by his circuit court, and that his written opinions in this period are the products of a mediocre mind at work.

Such an appraisal, it seems to me, is predicated upon a fundamental misunderstanding of the function of a district judge. His duty is not to erect great landmarks of the law. He does not sit as a philosopher, innovator, or architect. His principal responsibility is to dispose efficiently of the great mass of routine litigation coming before him.

Viewed in this light, the Carswell record suggests a competent, no-nonsense practitioner on the bench. As a district judge, he tried some 2,000 civil cases and an estimated 2,500 criminal cases. He kept his backlog down. And if he fired off no Roman candles of obiter dicta, so much the better.

For an example of the absurdity of some of the criticisms voiced against him, consider this heavy-breathing accusation from the Ripon Society: "Carswell's printed Dis-

trict Court opinions average 2.0 pages. The average length of printed opinions for all federal district judges during the time period in which Carswell was on the district bench was 4.2 pages." These calculations were made, at heaven knows what tedious labor, "to the nearest tenth of a page." The analysis tells us more of the desperation of the Ripon critics than it does of the mediocrity of Judge Carswell.

The big push against the nominee last week had to do with testimoniale pro and con. It is being made to appear that nobody, but nobody, has had a good word to say of him. Great weight is being attached to a full-page ad signed by 350 lawyers and law professors opposed to hie confirmation. It is remarked, significantly, that Carswell's colleague on the Fifth Circuit, Judge John Minor Wisdom, has come out publicly against him.

By way of response, it may be suggested that most of the anti-Carswell crowd take one view of the law—a sort of flexible view—and they surmise, by the fact of President Nixon's sponsorship of the nominee, that Carswell on the high court would take a different view. They do not want such a judge confirmed; and that is their privilege. But their hostility to a Southern strict constructionist is not necessarily evidence of Carswell's unfitness.

As for Judge Wisdom, he is known to conservatives as a kneejerk liberal, and some say the appellation could be shortened. Carswell has the solid endorsement of the Florida State Bar Association, though its unanimous board of governors. Professor James William Moore of the Yale Law School, who got to know Carswell closely in formation of the Tallahassee Law School, describes him as a man of "great sincerity and scholarly attainments, moderate but forward-looking, and one of great potential."

My own enthusiasm for Judge Carswell is diminished by his evasive account of his participation in the golf club incident of 1956. He then took an active role, not a passive role, in transfer of the Tallahassee municipal golf course to a private country club. Forgive my incredulity, but if Carswell didn't understand the racial purpose of this legal legerdemain, he was the only one in North Florida who didn't understand it. But it was "never mentioned to me," and "I didn't have it in my mind, that's for sure."

Okay. Let it pass. On the whole record, Carswell is better qualified by experience than scores of nominees who have successfully preceded him. The high court is hurting for want of a ninth member. The sooner he is confirmed, the sooner he can get on with the business of building a new record to prove his critics wrong.

[From the Florida Times-Union, Jacksonville, Mar. 25, 1970]

COULD CARSWELL BE ANY WORSE THAN THE OTHERS?

(By John Chamberlain)

I am no student of the judicial opinions of Judge G. Harrold Carswell, but it amuses me to think that any lower court justice in the land could be deemed unfit to mingle on the Supreme Court bench with some of the alleged great brains that have been confusing the legislative function with the judicial for lo! these many years.

Quite privately I have long been convinced that one of the qualifications for a modern Supreme Court justice in the age of the Great Society must be that he is unable to read. How, save on the basis of functional illiteracy, can one explain the eight-to-one decision in the Mrs. Madalyn Murray school prayer case of 1963? Justice Tom Clark, who wrote the majority opinion which effectively made voluntary prayers or Bible-reading in the schools illegal, could hardly have had Article One of the Bill of Rights clearly before him when he spoke for the Court.

What this First Amendment to the Constitution says, quite explicitly, is that "Congress shall make no law respecting the establishment of a religion." Well, Congress never has tried to establish a national church; Congressmen, even the mediocrities among them, have been able to read. The First Amendment, however, conveys no hint of an instruction to state and the local communities about legislating on religious matters. (When the Bill of Rights was adopted some states actually had what amounted to local state churches.)

Presumably Articles Nine and Ten of the Bill of Rights, which defend rights "retained by the people" and "reserved to the States," leave it entirely up to the local voters in the local communities to do as they please about school prayers provided, of course, that individuals are not coerced into praying against their will.

If words mean what they say, eight Supreme Court justices should have been sent back to school for remedial reading instruction after the "Mad Murray" decision.

Then there is the case of Justice William O. Douglas, who has just come out with a book called "Points of Rebellion." Douglas, as a judge, is sworn to uphold the Constitution, the established fundamental law of the lands. This has not stopped him from writing this astounding passage: "We must realize that today's Establishment is the new George III. Whether it will continue to adhere to his tactics, we do not know. If it does, the redress, honored in tradition, is also revolution."

In my innocent way I had always thought the way to change our basic laws is prescribed in the Constitution which Justice Douglas is supposed to be protecting. The fundamental constitutive document of our Republic has been amended 25 times, proving that it can be done when the urge to depart from the older established law is compelling.

Should not one assume that any right-minded Supreme Court justice would insist that "revolution" is not to be supported in preference to amendment by anyone speaking as a member of the high bench? You can't very well advocate illegality out of one side of your mouth and presume to be taken seriously as a defender of the law when you sit on the cases brought before your court.

Let me say it again that I am not a competent judge of G. Harrold Carswell's legal acumen. To make a proper study of his record I would have to take a month off from my work as a commentator on affairs. Since I am under contract to deliver a certain number of columns to editors each week, no such time is available to me.

However, I do have time to look at individual court opinions and to refresh myself on the wording of the Bill of Rights. I would be willing to gamble that Judge Carswell couldn't do worse than five or six justices who have been legislating for us from the high bench for years. And I am sure that Judge Carswell would never, in his right mind, write a book condoning revolution when the amending process is open to those who want to change the law.

Some of our senators, speaking in defense of Carswell, have said the Supreme Court might benefit by the addition of a representative of "mediocre citizens." This is hardly the most felicitous way to put it. What we do have the right to expect is that judges should at least be able to understand English.

[From the Florida Times-Union, Mar. 26, 1970]

NEO-MCCARTHYISM AND CARSWELL

One of the most salient factors bearing upon the career of Judge G. Harrold Carswell, nominee to the Supreme Court of the United States, has been overlooked completely.

The smear and innuendo continue. The condescending deprecation continues with descriptions of his career as "pedestrian" and "mediocre."

But what did his fellow judges think of him even when there was no thought of his being nominated for the Supreme Court? That is a real criterion upon which to judge the worth and ability of the man.

They thought enough of him to elect him as their representative to the Judicial Conference of the United States from the Fifth Circuit on April 18, 1968.

The conference is composed basically of the chief judges of each of the 11 judicial circuits plus one representative elected by the circuit and district judges in each circuit and is presided over by the Chief Justice of the Supreme Court.

The conference itself might be called the "Cabinet" of the judiciary—one of the three distinct branches of the federal government. It is the governing body of the United States courts.

Carswell was one of two judges nominated for the post and his opponent was also a respected judge. The vote was 33 to 24 in favor of Carswell.

This is hardly the type of position to which the judges would want to send somebody who was "mediocre" or "pedestrian."

And it certainly stands as a far more persuasive testament to his competence than the statements of Ivy League law school deans or even the nine members of the Florida State University Law school faculty—five of whom have taught at FSU less than a year, one just short of two years and two more for four years. There is only one full professor in that group, five associate professors, two assistant professors and the librarian. Not a single one of them is even a member of the Florida Bar, according to Sen. Edward Gurney.

On the other hand, Carswell has been strongly endorsed by FSU Law School Dean Joshua Morse and former dean, Mason Ladd who is now in a teaching position.

Last July the Senate approved without dissent the elevation of Carswell to the Fifth Circuit Court of Appeals bench but now some of the Senators purport to have discovered that he is racially biased and/or incompetent.

What disturbs us most about some of the opposition is its utter lack of rudimentary fairness or perspective. The most trivial things are blown out of all proportion and innuendo is often stated as fact.

For instance, if we were to say that Senator Frank Church inserted into the record a letter from Moscow urging him to oppose Carswell, we would be factually correct. But, standing by itself, the statement would be utterly unfair because the fact that the letter came from Moscow, Idaho certainly clarifies the picture. We liken some of the tactics used to discredit Carswell to such an incomplete and misleading statement.

Creeping into this entire picture is a new McCarthyism being practiced by some of those who most decried the tactics of the now-deceased Senator Joseph R. McCarthy. The term—coined by Washington Post cartoonist Herblock—was defined in an unfriendly biography of McCarthy by Richard Rovere as "a synonym for the hatefulness of baseless defamation or mudslinging."

The charge of "racist" is hurled freely about by some of those who 15 years ago decried any imputation of sympathy with the Communists to anybody—even if it was based on evidence much less tenuous than that which attempts to paint Carswell as a racist.

Some of the ultraliberals who painted membership in subversive organizations during the Twenties and Thirties as harmless youthful flirtations with Communism in keeping with an intellectual fad of the times, now see dark racist conspiracies in almost every move of Carswell's.

Their pious pleas for fairness toward the

political Left in those days, go unheeded today when they face the political Right.

There is a double standard applied and it is applied by some on both sides in the Senate—depending upon the political philosophy of the nominee.

In this case, let Sen. Jacob Javits of New York harken back to the transcript of his defense of the nomination of Constance Baker Motley to the U.S. District Court against unsubstantiated allegations and then let him contrast his own words then and his readiness now to draw sweeping conclusions without giving weight to the pro-Carswell testimony.

Some found Carswell to be evasive before the Judiciary Committee or refused to believe his contention that his part in the private club purchase of the former Tallahassee Municipal Golf course was not based on racism.

Yet, some of these same senators warmly praised the performance of Abe Fortas before the judiciary committee in 1965. They said nothing about evasiveness.

Here is a passage from the Fortas hearing transcript as printed in the Congressional Record:

Chairman: "Did you have any connection with the Southern Conference of Human Welfare?"

Fortas: "Mr. Chairman, I probably did in the early New Deal days. I am a little vague as to whether I was—I am a little vague as to whether I was a member of the Southern Conference, but I remember in the early New Deal days I, like a number of other southerners, thought it was a fine organization, dedicated to bringing the South out of the depths of the depression."

Chairman: "When did you quit the Southern Conference of Human Welfare?"

Fortas: "As I say, Senator, I am not sure I was ever a member of it. I am just giving you an attitude that I had along with many other southerners in those days."

Chairman: "You do not know whether you were a member or not?"

Fortas: "That is correct."

Now the question arises as to what kind of pillory would be applied to Carswell if he had answered any question in that manner?

We do not ask those senators who truthfully and honestly do not believe Carswell should sit upon the Court to go against their own consciences to vote for him. We rather ask that all of the senators put each bit of testimony pro and con into a proper perspective and refrain from political buzzardry in their consideration of the nomination.

Weigh the statements of those attorneys and others who said they received or observed fair and impartial treatment by Carswell as against those who said they did not.

Consider whether Carswell as a District Judge did what a judge in this position is charged to do—conscientiously and consistently follow the law rather than make it. We believe he did. That may not be the "brilliant" course but it is the correct course for a district judge.

Take the reversals of Carswell's opinions and examine them. See how many were due to changes in higher court rulings after Carswell made his own decisions.

Consider the case load of the court and the amount of territory served by Carswell—alone for most of the time he was a district judge.

Take it all into consideration—the bitter and the sweet—and make a determination based on the entire record.

There are indications that the smear campaign has been more effective than even those who did the smearing dared to hope. If so, this plea—even though it would hardly be heeded anyway—comes too late.

If so, with the nomination dies a little more of the integrity of those senators who bowed to pressure rather than to conviction. We believe there are more than a few of those.

Let those who decided to sacrifice Carswell on the altar of political expediency—and this does not include all of his opponents but certainly does include some—live with the knowledge.

To those who held to the courage of their real convictions in the face of the liberal avalanche, whether they opposed Carswell and thus rode the crest or stood by him and were crushed, our admiration and respect. Would that the Senate contained more like them.

[From the Tampa' (Fla.) Tribune, Mar. 14, 1970]

LACK OF SPECIAL INTERESTS 'HURTS' CARSWELL

(By David Lawrence)

WASHINGTON.—The American people are being given an example of how a nationwide lobby is being conducted in an effort to prevent Judge G. Harrold Carswell from being confirmed as a Justice of the Supreme Court just because he doesn't hold views satisfactory to racial groups and some labor union partisans.

Although he was nominated more than two months ago, certain members of the Senate have managed to delay action to get time enough to carry on a campaign in various states where constituents have been influenced to send word to their Senators that Judge Carswell should not be confirmed.

After Judge Clement F. Haynsworth's nomination was rejected—also because of objections raised by civil rights and labor groups—and Judge Carswell's name was submitted to the Senate, it was generally agreed that the latter would probably be confirmed without difficulty.

But his opponents immediately adopted tactics of delay while lobbying campaigns were organized. Now rumors are being spread that the vote will be close, and attempts are being made again to put off action in the belief that the longer the motion to confirm is blocked, the better the chance of winning more Senators to the negative side.

During all the time that the campaign against Judge Carswell has been going on, nothing substantial has been revealed against him. The primary objection raised has been that 22 years ago he made a speech on the race question to which civil rights leaders object. But many other persons in public life today made speeches of the same kind in the years before the 1954 decision on public desegregation.

What the current controversy really means is that a President of the United States now is not supposed to appoint fair-minded and objective men to the Supreme Court and that only those who have partisan views are presumed to be suitable.

It is significant that, when Thurgood Marshall, a Negro who served as counsel for the National Association for the Advancement of Colored People in the school desegregation cases, was nominated to the High Court, there was no lobbying movement against him. If, however, civil rights groups stir up racial feelings, it is doubtful whether in the future another Negro will ever be appointed and confirmed to the Supreme Court without controversy.

Voters generally are not familiar with lobbying tactics. But the defeat of two nominees for the Supreme Court by civil rights groups and their allies—namely, certain labor union leaders—could create a feeling of widespread resentment throughout the country.

It seems strange that members of the Senate are trying to tell the President the views a man must hold before he can be confirmed as a Supreme Court Justice. Maybe this means that the highest court in the land hereafter will be a political body and appointees will have to show their support of various "causes."

Throughout our history the Supreme Court has prided itself on indifference to party politics and devotion to basic principles of law as set forth in the Constitution. But in recent years even these precedents have been broken down, and the Supreme Court has undertaken at times to "rewrite" the Constitution. Small wonder that partisan groups are anxious to make sure that newly appointed Justices will rule their way.

[From the Florida Times-Union and Jacksonville (Fla.) Journal, Mar. 29, 1970]

WHERE ARE CARSWELL'S DEFENDERS?

One of the distressing aspects of the attack on Judge G. Harrold Carswell has been the failure of the Nixon administration to mount a defense.

The judge himself can hardly do so. Judicial protocol decrees that he sit back and take what is thrown at him.

It may be that the administration concluded that it went too far in defending Judge Clement Haynsworth and that some senators were angered by administration pressure.

With the Carswell nomination it seems to have gone to the other extreme and left Carswell out on a limb alone. Yet much of the case against Carswell is built upon clever propagandizing of the testimony of persons who started out prejudiced against him. It can be easily refuted, mitigated or at least put into context.

The opposition is well organized and has all the research facilities it needs. Carswell's life has been meticulously researched, for the most part by persons anxious to find something which will damage him.

Sen. Alan Cranston of California has now said that he will hold a news conference tomorrow to disclose some new damaging information. We have no idea what it will be but if it is of the same quality as the rest, it can be answered.

Let's look at the plus side of the ledger for a moment. If we wait for the New York Times, the Washington Post, Time, Newsweek or Life Magazine—or the national television networks—to do so, we'll be sadly disappointed.

The American Bar Association's standing committee on the federal judiciary found Carswell qualified for appointment in 1958 to the U.S. District Court, in 1969 to the Fifth Circuit Court of Appeals and in 1970 to the U.S. Supreme Court.

"In the present case," the latest ABA committee report states, "the committee has solicited the views of a substantial number of judges and lawyers who are familiar with Judge Carswell's work, and it has also surveyed his published opinions. On the basis of its investigation, the committee has concluded, unanimously, that Judge Carswell is qualified for appointment as Associate Justice of the Supreme Court of the United States."

Dean Louis Poliak of Yale Law School doesn't agree. He says that Carswell "presents more slender credentials than any nominee for the Supreme Court put forth in this century." That statement is repeated lovingly by the Carswell opposition—it has become their rallying cry.

The dean is a scholar. And one could be persuaded by his testimony if it is viewed as the dispassionate work of a scholar. But the dean is also an advocate, whether consciously or not. He is listed in Who's Who as a member of the board of the NAACP Legal Defense and Educational Fund and President Nixon hardly had the word "Carswell" out of his mouth before the NAACP came out in opposition.

That fact doesn't negate the dean's testimony but it should be borne in mind in considering whether the testimony might not be affected—even unconsciously—by the all out campaign of civil rights groups to defeat Carswell's nomination.

Let's look at another view from Yale, from a scholar with much more in the way of credentials than even Dean Pollak. This view is from Yale's Sterling Professor of Law, first recipient of the Learned Hand medal, former member of the Supreme Court's Advisory Committee on Civil Rules and author of numerous law tomes.

Professor James William Moore testified:

"I have a firm and abiding conviction that Judge Carswell is not a racist, but a judge who has and will deal fairly with all races, creeds and classes. If I had doubts, I would not be testifying in support, for during all my teaching life over 34 years on the faculty of the Yale Law school I have championed, and still champion, the rights of minorities.

"From the contacts I have had with Judge Carswell, and the general familiarity with the Federal judicial literature, I conclude that he is both a good lawyer and a fine jurist . . ." He concludes by saying that Carswell should be confirmed for the Supreme Court.

The so-called record of reversals—one drawn up by the Ripon Society and the other by some students of the Columbia School of Law—also needs a good going over.

Many reversals were over the issue of summary judgment, and in most of these summary judgment cases Carswell's decision was affirmed after an evidentiary hearing.

The testimony of one black attorney and several other civil rights attorneys that Carswell was brusque towards them should be accompanied by an investigation of their own attitudes in court—did they give the judge reason to be brusque?

Any attempt to tie this in to an antipathy on Carswell's part toward black attorneys or toward civil rights in general is effectively countered by the testimony of the black attorney of whom the Baltimore Afro-American newspaper said: "If it's integrated in Florida, Attorney C. Wilson helped to do it."

Attorney Charles F. Wilson wrote to the Senate Judiciary Committee:

"As a black lawyer, frequently involved . . . in civil rights cases in his (Carswell's) court, there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions. I represented the plaintiffs in three of the major school desegregation cases filed in his district. He invariably granted the plaintiffs favorable judgments in these cases and the only disagreement I had with him in any of them was over the extent of relief to be granted."

The administration should present Carswell's defense without further delay.

Mr. HOLLAND. Mr. President, I also ask that the article appearing in the April 4, 1970, issue of Human Events entitled "Stakes Are Big in Carswell Fight" be printed in the RECORD at this point. This article comes to grips with the problem confronting some Members of the Senate, and I feel it would be well worth the time and effort of Senators to read it.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

STAKES ARE BIG IN CARSWELL FIGHT

(Liberals could well succeed with vicious propaganda campaign.)

It has come down to the wire for Judge G Harrold Carswell. The Senate unanimously agreed last week to put President Nixon's nomination to the test by scheduling at 1 p.m., April 6, a vote on a motion to send Carswell's name back to the Judiciary Committee. Everyone knows that the outcome will all but determine whether Carswell will be confirmed (pro-Carswell readers, therefore, should write or wire their senators *now*).

If the move to recommit wins, Carswell—barring a miracle—almost certainly will be out and the President will have to choose yet a third nominee to succeed the discredited Abe Fortas.

The liberals, of course, smell blood, as Carswell's support has reportedly dwindled from 70-odd to 50-odd senators, and by April 6 the balance may have even shifted against the nominee. The nation's major news media have poured out tons of anti-Carswell propaganda, and the Capital's morning metropolitan daily, the Washington *Post*, has outdone itself in printing slanted news stories, editorials, cartoons and columns. Everywhere the liberal litany is the same: Carswell, the racist; Carswell, the mediocre.

The sound and fury, however, are not being directed against the Florida judge because of his qualifications. What is really being staged in the Senate is a monumental battle over who will control that extraordinarily powerful institution of government, the Supreme Court: President Nixon's "strict constructionists" or the social engineering activists so beloved by the liberals.

As Alan L. Otten, a liberal columnist for the *Wall Street Journal*, recently put it:

"The Northern Democrats, Negro leaders and other liberals who fought the Supreme Court nomination of Clement Haynsworth and are now opposing that of G. Harrold Carswell have frequently appeared to be battling with an intensity out of all proportion to the matter involved.

"And yet they know precisely what they are about: Not merely to block one man's confirmation, but to prevent a dramatic rightward shift in the High Court's decisions, a shift that would affect the nation for decades."

The case against Judge Haynsworth, concluded Otten, was "remarkably thin" and men "of unimpressive learning have been named to the court before."

The liberal forces, Otten stressed, "desperately want to block the Nixon Administration's obvious intention to name as justices, one after another, men almost sure to turn the High Court sharply away from the liberal expansionist policies laid down over the past 17 years by the Warren court.

"Such a turn would probably mean more restrictions on the use of government power to solve racial problems, less government intervention in business affairs, a less friendly attitude toward labor unions, a more sympathetic view of police power, coupled with less sympathy for the rights of criminals and protesters and less aggressive emphasis on racial integration."

That, indeed, is what the furor is all about. And those who vote to kill Carswell's nomination—and a vote to recommit is the indirect and cowardly way to do so—should be held strictly accountable at the ballot box.

It is perfectly clear that President Nixon will not be able to achieve crucial domestic reforms until the philosophical complexion of the Supreme Court drastically changes. One of the President's most important campaign promises—and one that he has diligently tried to carry out—has been his vow to wage a war on crime. But he can *never* win that war so long as the current liberal majority on the court continues to unchain criminals on the tiniest of technicalities.

The President is eager to clamp down on violence-prone radicals who are now engaged in sabotags and terror tactics against government officials, businesses and the American people, but his program won't go anywhere so long as the Senate keeps torpedoing conservative jurists who are likely to endorse—rather than strike down—reasonable anti-subversive laws.

A vote against Carswell—either directly or through a recommital motion—is, in our firm opinion, tantamount to a vote encouraging criminals and political acts of terrorism. If your senator wants that on his conscience, so be it.

If Carswell were truly unfit to be on the High Court, we wouldn't want him there either. At the risk of being repetitious, however, we contend that both the "racist" and "mediocre" charges are nothing but part of a full-blown smear campaign to discredit the nominee. And look at who's questioning Carswell's qualifications!

First there's that pillar of virtue and integrity, Sen. Edward Kennedy. The hero of Chappaquiddick, who was chucked out of Harvard for cheating and who unsuccessfully tried to foist on the federal bench Francis X. Morrissey—a Kennedy family crony and an American Bar Association reject—has had the gall to insinuate that the *nominee* is "unworthy of respect" and "honor." Frankly, there are many who think that Teddy should gracefully retire when weighty issues involving morality arise.

Organized labor's pawn in the Senate, Birch Bayh of Indiana, has tarred Carswell with the racist brush, but Bayh himself, it turns out, was a member of Alpha Tau Omega at Purdue and received its Thomas Arkle Clark "man of distinction" award in 1951, when its charter limited membership to "white Christian males."

Former Vice President Hubert Humphrey, another critic of Carswell's supposed lack of sensitivity toward minorities, lived in a house with a restrictive racial covenant for 16 years when he was a U.S. senator. All the while, of course, Humphrey was beating his breast about what others should do for Negroes.

Certainly one of the smuggest Carswell critics has been New York gubernatorial candidate Arthur Goldberg, who modestly enough, recently asserted that Carswell was "not fit" to sit in the same judicial seat once held by Goldberg himself. His old seat, Goldberg contended, had been held by such illustrious judicial heroes as Joseph Story, Benjamin Cardozo and Felix Frankfurter. Goldberg conveniently omitted that it had also been held by Justice Samuel Chase, who was impeached hy the House, and by Abe Fortas, who resigned rather than face impeachment proceedings.

Goldberg, furthermore, had a rather, well, mediocre career on the bench. A high-priced union lawyer much of his adult life, Goldberg had had no judicial experience when he ascended to the High Court.

Once having arrived, Goldberg compiled a lackluster record, junking his judgeship in 1965 for a remarkably undistinguished career as ambassador to a most undistinguished organization, the United Nations. Carswell's own judicial background, in point of fact, is clearly superior to that of Goldberg's.

There is nothing wrong with the present nominee that a fair hearing by the press wouldn't cure. Carswell, as we have pointed out before, has had a wide variety of legal and judicial experience. He has been in private practice, was appointed U.S. attorney for the Northern District of Florida in 1953 and five years later became the youngest judge in the country. Considered an exceptionally competent practitioner on the bench—he tried some 4,000 civil and criminal cases—Carswell was elevated to the 5th Circuit Court of Appeals last year. Bear in mind the fact that the Senate continued to endorse his way up the judicial ladder, while the American Bar Association also repeatedly gave him its stamp of approval.

When President Nixon nominated Judge Carswell for a position on the Supreme Court,

the ABA's Standing Committee, on the Federal Judiciary twice concluded, unanimously, "that Judge Carswell is qualified for appointment as associate justice of the Supreme Court of the United States." Judge Walsh, who heads the committee, stated that the committee's judgment was based upon the views of a cross-section of the best-informed lawyers and judges as to the integrity, judicial temperament and professional competence of the nominee.

In his so-called "mediocre" career, Judge Carswell has actually had three times the combined bench experience of all the Kennedy-Johnson appointees to the Supreme Court.

Judge Carswell has also been active in the field of judicial administration. He has served as a member of both the Judicial Conference's Committee on Statistics, which plays an important role in recommending to Congress the creation of additional federal judgeships, and its Committee on Personnel, which deals with problems relating to the administration of the Judiciary. So well thought of was Carswell by his colleagues that in April 1969 he was chosen by the circuit and district judges of the 5th Circuit to be their representative to the Judicial Conference.

The charge of racism stems largely from his "white supremacy" statement uttered 22 years ago in the heat of an election campaign. Standard Southern rhetoric at the time, the statement, made in response to criticism that he was too liberal, has been thoroughly repudiated. How do the liberals find this incident so different from Bayh's "white-only" fraternity membership or Humphrey's restrictive covenant?

Critical mention has also been made of Judge Carswell's purchase in 1956 of a $100 interest in the Capital City Country Club. It was charged that the municipal golf course in Tallahassee was transferred to Capital City, a private club, for the purpose of avoiding the Supreme Court decisions of November 1955 requiring municipally operated recreational facilities to be desegregated. Yet the hearings show that the transfer move had been under serious discussion since 1952—long before the 1955 decision.

The majority report of the Judiciary Committee concludes that "Carswell's brief and insubstantial connection with Capital City furnished no valid basis for criticism. Even if it be assumed that some of those involved were improperly motivated, the fact remains that Judge Carswell was not. The extent of Judge Carswell's participation was comparable to that of former Gov. Leroy Collins, who appeared before the committee. No suggestion has been made that Gov. Collins acted improperly in purchasing an interest in the country club, and the same standard should be applied in regard to the nominee." The Carswell hearings, in fact, are replete with testimony refuting the "racist" contention.

Joseph H. Lesh, formerly special assistant to Attorneys General Herbert Brownell and William P. Rogers as executive officer in charge of all U.S. attorneys, has said: "Shortly following the controversial *Brown* decision on segregation, I held a conference in Washington of all the Southern U.S. attorneys to help the Department of Justice to implement the decision. Harrold Carswell was the only U.S. attorney who was helpful to me and the department in this respect."

Prof. James W. Moore, Sterling Professor of Law at Yale University, who is part Indian himself, testified in support of Carswell's confirmation. Recounting that Carswell about five years ago was instrumental in setting up a first-rate law school at Florida State University, Prof. Moore said:

"I was impressed with his views on legal education and the type of law school that he desired to establish: a law school free of all racial discrimination—he was very clear about that; one offering both basic and higher legal theoretical training; and one that would attract students of all races and creeds and from all walks of life and sections of the country."

Charles F. Wilson, a Negro currently employed as deputy chief conciliator for the U.S. Equal Employment Opportunity Commission, wrote a letter to the Senate Judiciary Committee in defense of Carswell's conduct on the bench.

"As a black lawyer frequently involved with representation of plaintiffs in civil rights cases in his court," said Wilson, a civil servant who originally obtained his job with the EEOC when LBJ was President, "there was not a single instance in which he was ever rude or discourteous to me, and I received fair and courteous treatment from him on all such occasions.

"I represented the plaintiffs in three of the major school desegregation cases field in his district. He invariably granted the plaintiffs favorable judgments in these cases and the only disagreement I had with him in any of them was over the extent of the relief to be granted."

Testimony of this nature saturates the hearings. The truth about Judge Harrold Carswell was actually summed up in the New York *Times* on Jan. 21, 1970. Before Senate liberals unleashed their barrage of charges, *Times* writer Fred P. Graham wrote: "Judge G. Harrold Carswell, President Nixon's new nominee to the Supreme Court, has a virtually unblemished record as the type of 'strict constructionist' that Mr. Nixon promised to appoint when he campaigned for the presidency. . . .

"In 11 years as a Federal District judge in Tallahassee, Fla., and in six months as a member of the United States Court of Appeals for the 5th Circuit Judge Carswell sprinkled the lawbooks with opinions on matters ranging from civil rights to the legality of Florida's poultry law.

"Throughout these opinions runs a consistent tendency to view the law as a neutral device for settling disputes, and not as a force for either legal innovation or social change. . . .

"These opinions [on the Court of Appeals] reveal a jurist who hesitates to use judicial power unless the need is clear and demanding; who finds few controversies that cannot be settled by invoking some settled precedent, and who rarely finds the need for referring to the social conflict outside the courtroom that brought his cases before him."

A study in 1968 analyzed the civil rights decisions of the 31 Federal District judges appointed to posts in the Deep South between 1953 and 1963. When the study rated the 31 judges in terms of the number of times they had ruled in favor of Negro plaintiffs, Judge Carswell ranked 23rd. The study showed that of his civil rights decisions to be appealed, 60 per cent were reversed. Though these reversals have been used to reveal Carswell's supposed "racism," Graham stated the essential facts of the matter:

"In most of these cases, Judge Carswell would have had to move beyond clearly settled precedents to rule in favor of the civil rights position. When those precedents have existed, he has struck down segregation in crisp, forthright opinions."

In short, Carswell is what President Nixon and Atty. Gen. John Mitchell say he is: a strict constructionist. The Administration needs him to help tip the balance of the High Court to the conservative side. And that is the reason—and the only reason—the liberal lynch mob in the Senate and in the press is now going after Judge Harrold Carswell's scalp.

Mr. HOLLAND. Mr. President, since there has been some reference to the fact that certain junior law professors at Florida State University are opposing Judge Carswell, I want the record to show again that former Dean Mason Ladd, who was before that the dean of the Iowa State Law School, strongly supports him, and that this is shown in the record; and that the dean of Florida University Law School, Dean Frank E. Maloney, strongly supports him. That, too, is in the record in writing as well as the fact that the present dean of the Florida State University Law School, Joshua Morse, strongly supports Judge Carswell.

Mr. President, I do not know of any case where one could hope to obtain a more unanimous verdict of the outstanding lawyers and judges in a nominee's own State. We have a bar of about 12,000 members, the third largest in the Nation, which is shown to be behind this nominee. Yet Senators on this floor, who do not know Judge Carswell, are asking other Senators who do not know Judge Carswell to knock him down because some people from other States, who have come in there, are complaining of his attitude in a limited number of cases during his years of service since 1953 as district attorney, district judge, and judge of the Circuit Court of Appeals.

Mr. President, there is a strong case for the confirmation of the nomination of Judge Carswell, and I want the Members of the Senate to realize that never in my life have I seen such a unanimous endorsement by men of the highest character—and the Judges on our Supreme Court and on the district courts of appeals of Florida and our circuit judges are men of the highest character. The deans of our law schools are men of high character. The present president of the Florida Bar Association and the three immediate past presidents, all of whom are endorsing Judge Carswell, are men of high character.

Mr. President, shall we rely on endorsements of that kind, or ignore them and take these slanted attacks which are made on him, and place our confidence in them?

Mr. DOLE. Mr. President, will the Senator yield?

Mr. HOLLAND. I am happy to yield to the Senator from Kansas.

Mr. DOLE. As the Senator indicates, there is strong sentiment throughout the country for Judge Carswell. Some reference has been made to a newspaper advertisement by 400 or so lawyers and law professors. On checking the list, I find that 126 are practicing lawyers. There are some 300,000 practicing lawyers in America; about 150,000 of these are members of the American Bar Association. There are some 4,500 law professors, in some 145 law schools, in America. Yet we are asked to give consideration to this list, which contains about 300 of their names.

I think one might again ask the question, are we to take the word of three-tenths of 1 percent of the lawyers, or to rely upon men like the Senator from Florida, who have known Judge Carswell throughout the years; or those who have served in the same circuit, and who have practiced before his court?

There is a strong case for the nomination of Judge Carswell. Every Senator, this morning, had a letter on his desk indicating that a majority of the members of the Committee on the Judiciary believe there is no need for further hearings. This makes an even stronger case for the defeat of a motion to recommit.

Mr. President, only twice before in our history has there been a motion to recommit a nomination of a Supreme Court Justice to the Committee on the Judiciary. Once was in 1922, when Pierce Butler's name was before this body, and the other instance was in the case of Sherman Minton in 1946.

In both those cases, the motion to recommit was defeated by an overwhelming vote. I would say of the Senator from Florida, who has served here much longer than I probably will, and who has the great respect of everyone in this body, that he would not stand on this floor today and ask anyone to support Judge Carswell unless there was strong foundation for the request, and unless he really and truly believed, based on objective analysis, that Judge Carswell is qualified to serve and that he is a man of excellence.

So I say, as the Senator from Florida has said most eloquently, that it is our right, our privilege, and above all, our responsibility to face issues in the Senate, and not try to duck or dodge the issue by sending this nomination back to committee.

I would agree with one line in the Washington Post editorial of yesterday, wherein they quoted Robert Morris, at the time of the Constitutional Convention, to the effect that we in the Senate have a responsibility, in voting to be "open, bold, and unawed by any consideration whatever," or by any pressure which might be applied.

The Senator from Florida has made an excellent case this morning.

Mr. HOLLAND. I warmly thank my distinguished friend.

Mr. President, again, in closing, I would remind the Senate that Dean Maloney, a respected educator, is strongly supporting Judge Carswell; that Dean Morse of the State University Law School is doing the same; and that former Dean Ladd, who, before he came to Florida, was dean of the Iowa State Law School, is doing the same.

Are we to ignore the verdict of these outstanding men of this time?

Mr. President, I yield the floor.

THE RULE OF GERMANENESS

Mr. MANSFIELD. Mr. President, are we in the morning hour?

The PRESIDING OFFICER (Mr. STENNIS). The Senator is correct. Under the previous order, as the Chair understands, the Senate is now in the morning hour, with a 3-minute limitation on statements.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. Has the time been set for the Senate to meet at 10 o'clock on Monday morning next?

The PRESIDING OFFICER. The Senator is correct. It has been set.

Mr. MANSFIELD. Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. MANSFIELD. A question arose today with respect to a ruling of the Chair with which I found myself somewhat surprised. Specifically, a ruling was made by the Chair earlier that the Pastore rule of germaneness is in effect even if a measure is taken up by unanimous consent and is noncontroversial. The effect of the ruling, I understand would be to allow speeches made that are not germane to the unfinished business even though they are delivered shortly after the unfinished business is laid before the Senate.

Based on prior interpretations of the words "pending business" contained in paragraph 3 of rule VIII, I must admit that the ruling of the Chair is the correct one. But before the precedents were cited to me, the Senator from Montana, as the majority leader, was acting under a misapprehension. Unless the matter is worked out, therefore, it will be the intention of the leadership, from this time forward, not to call up bills under a unanimous-consent agreement before or during the morning hour, because of the fact that, under the present rule and the precedents, the germaneness rule is operative as to any business, however noncontroversial, that happens to come before the Senate first in a given day.

I think it is most unfair and I think it is most inappropriate to operate on that basis, because as I have understood the term "unfinished business," and as I have tried to operate under the germaneness rule, it would apply to the first business on which there would be an extended debate. It is my intention to ask the Committee on Rules and Administration to review the present procedure with a view to changing the rule to apply to major pieces of legislation and not to noncontroversial legislation about which there is no argument and no debate.

Therefore, until further notice, it will be the intention of the leadership not to bring up these noncontroversial bills until sometime after time under the rule of germaneness has expired as to major items under debate. If other items are brought up under unsual circumstances, a special unanimous-consent request will be made to the effect that the Pastore rule of germaneness not apply.

I commend the Chair for the correct decision. I am sorry that I was not aware of just what "pending business" had been construed to mean. I did not realize that it applied to a noncontroversial bill. But with that explanation, I wanted to make my position clear, and to indicate how the leadership would operate from now on, on noncontroversial bills on which there would be no debate.

I would hope, however, that for today, with the consent of the distinguished Senator from Wyoming and the distinguished Senator from Florida, we would allow the rule of germaneness to operate. I do not think the full 3 hours will be taken, and the time allocated to those two Senators would then be taken up on the basis of the request granted earlier.

Mr. HANSEN. Mr. President, if I may, I ask unanimous consent that we may proceed for today as has been suggested by the distinguished majority leader. No one has been more generous, more kind, or more fair than he has been, and I am delighted indeed to acquiesce in his wishes.

I would hope that the Senate will agree that there may be a withholding of the implementation of the rule for today, until an appropriate time, so that the distinguished majority leader may be able to give the other Senators who would like to speak an opportunity to do so, before I speak and before the distinguished junior Senator from Florida (Mr. GURNEY) speaks.

I am very happy to accede to the wishes of the majority leader.

Mr. MANSFIELD. The distinguished Senator from Wyoming is always most understanding, gracious, and considerate. May I say that I do not expect the 3 hours to be taken up under the rule of germaneness, and as soon as we can, we will accommodate the distinguished Senator.

May I say also that it has been the intention of the leadership throughout this session, for Senators who have speeches of any length, to give them primary consideration before we get into morning business, so that they could proceed uninterrupted.

With that explanation, I shall take my seat. Again I commend the Chair and the Parliamentarian for making the correct decision. We will try to rectify the situation some time in the future.

The PRESIDING OFFICER. Is there further morning business?

THE NOMINATION OF JUDGE G. HARROLD CARSWELL

Mr. DOLE. Mr. Pre
who wrote that "a foo
a hobgoblin of little minus may
had the Washington Post in mind, but
I doubt it.

The Post lacks any consistency at all. Rather, it has developed to perfection the knack of making the argument fit the nominee.

What it likes, it argues for. What it does not like, it argues against, using the exact, same argument.

Yesterday was a prime example of this peculiar Washington Post syndrome.

First of all, the Post took a part—not all, but just a part—of a letter from the President to Senator SAXBE, and from this portion it deducted that the President had insulted the Senate and gone beyond the limits of constitutional propriety by insisting on his right to name a qualified man to the Supreme Court.

This, the Post says, must not be. The Senate, it says, shares the appointive power. In other words, it no longer has

the power to advise and consent, but it actually shares in the appointive process.

That is the Post's opinion today, because today the Post does not like Judge Carswell. But what about the past? Let us take a look.

On Friday, November 21, 1969, in an editorial, the Post said:

> But the right to put a name in nomination is given by the Constitution to the President. The Senate should not be in the position of asking whether the President could have chosen more wisely than he did but whether the man he picked is qualified to serve.

Note, Mr. President, not whether he is the best man, not whether his philosophy is properly liberal, but if he is qualified to serve.

The next day, November 22, the Post makes it even clearer:

> But we thought the appointment was his to make for better or worse—and in the absence of any plain evidence of wrongdoing on the Judge's part.
>
> Funny. That is what the President said.

Now, Mr. President, I would like to go to the Post's editorials dealing with the matter of Justice Fortas.

On Thursday, October 3, 1968, the Post said:

> None of this, however, can gloss over the ugly and spurious character of the main thrust against the Fortas nomination. Behind the attack was hatred of the President and a desire to discipline the court for libertarian decisions which protected the basic constitutional rights to freedom of expression and to due process in criminal proceedings.

In the Post's eyes, opposition to Judge Fortas had nothing to do with honor and ethics, only with hatred and desire to get even.

Let me continue, Mr. President. On September 6, 1968, the Post said the confirmation of Justice Fortas "is the most important obligation currently confronting the Senate. It is an obligation because only the crassest political partisanship could explain a failure to confirm the President's nomination of a man already confirmed as an Associate Justice."

Now, to make one final point about the vagaries of the Washington Post. September 16, 1968: "All we urge," the Post urges, "is that in the end the Senate vote the nomination up or down."

Mr. President, that is all many of us are urging. Vote the Carswell nomination up or down, not sideways.

It will be interesting to see where the Washington Post stands in the next controversial issue. We can be sure, I think, of only one thing—that it will not stand where it stood before, wherever that might have been.

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

Mr. BYRD of Virginia. Mr. President, I ask unanimous consent that I may speak for 10 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

VIOLATION OF THE FOREIGN ASSISTANCE ACT

Mr. BYRD of Virginia. Mr. President, many times I have stood on the floor of the Senate and expressed my concern over continued free world shipping into North Vietnam.

Nations that are presumably our friends continue to allow ships flying their flags to carry cargo into the Port of Haiphong. In so doing, they give aid to a nation with which we are at war.

The United States has suffered 350,000 casualties in Vietnam. Of these, 50,000 have been killed. The casualties are continuing, and totaled 9,411 dead and wounded during the past 3 months—yes, during the past 3 months, 9,411.

We are asking our young men to sacrifice their lives; yet we cannot prevail upon our allies to stop shipping into North Vietnam.

Congress has taken notice of this problem before and has written into the Foreign Assistance Act provisions denying aid to those free world countries which allow ships flying their flags to trade with North Vietnam—and with Cuba.

Legislation on this subject was first introduced in 1966, when the Senate passed an amendment sponsored by myself and Senator DOMINICK.

The essence of this amendment has been part of both the authorizing and appropriating legislation for foreign assistance since that time.

It has come to my attention that the administrators of our foreign aid program have violated this legislation.

I speak specifically of the aid extended to the Somali Democratic Republic.

The Somali Democratic Republic is a country about the size of Texas on the East Coast of Africa. It has a population of about 2.7 million.

The country is made up of former Italian and British colonies and has been independent since July 1, 1960.

Somalia is currently governed by a Supreme Revolutionary Council of 25 members which seized power in October 1969. The governing constitution was abolished by the Supreme Revolutionary Council when they assumed control.

Somalia has pursued a policy of nonalinement and received economic aid from the United States, Russia, and Communist China. Russia has provided about $35 million in military assistance.

Since 1967, the United States has extended $24.7 million in aid to the Somali Republic. During the same period, she has allowed ships flying her flag to enter the ports of North Vietnam on 20 occasions. Somali registered ships have also stopped at Cuba 20 times during this same period.

To extend even $1 of aid to this country contradicts the mandate of Congress. The language is clear and unambiguous. Section 620–N of the Foreign Assistance Act states:

> No loans, credits, guaranties, or grants or other assistance shall be furnished under this or any other Act, and no sales shall be made under the Agricultural Trade Development and Assistance Act to any country which sells or furnishes to North Vietnam, or which permits ships or aircraft under its registry to transport to or from North Vietnam, any equipment, materials, or commodities, so long as the regime in North Vietnam gives support to hostilities in South Vietnam.

How, Mr. President, can we continue to give aid to the Somali Republic when she has clearly violated the terms of the basic foreign aid legislation passed by Congress?

How can our State Department completely ignore the expressed will of Congress embodied in clear and precise legislative language?

The fiscal year 1970 foreign assistance budget requests clearly point out the blatant attempt to ignore the legislative restrictions on our foreign aid program.

AID included an item for $2.5 million for grants to Somali. But in the first quarter of this year, Somali flag vessels have called on North Vietnam on three separate occasions.

I will say at this point that my attention was called to the Somali ships by one of the outstanding newspapermen in the United States who was writing a series of articles and was in Haiphong, in North Vietnam.

ORDER OF BUSINESS

The PRESIDING OFFICER, (Mr. STENNIS). Two hours having expired, I am sorry to have to interrupt the Senator from Virginia, but we are now at the point of taking up the pending business. The clerk will state the pending business.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from Virginia may proceed for an additional 3 minutes.

Mr. TOWER. Mr. President, will the majority leader include in his request 2 additional minutes, so that I may proceed?

Mr. MANSFIELD. I make that same request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

VIOLATION OF THE FOREIGN ASSISTANCE ACT

Mr. BYRD of Virginia. Mr. President, section 107(b) of the 1970 appropriations bill, now Public Law 91–194, clearly states:

> No economic assistance shall be furnished under the Foreign Assistance Act, as amended, to any country which sells, furnishes, or permits any ships under its registry to carry items of economic assistance to Cuba, so long as it is governed by the Castro regime, or to North Vietnam.

Yet, not only does the aid continue for this year, there is also a request for an additional $2 million for fiscal year 1971.

The only conclusion I can draw from these facts is that the clearly expressed mandate of Congress has been violated and that our own Government will not utilize all of the tools available to it to make our so-called friends cooperate with our effort in Vietnam.

I invite the attention of the Senate to

ORDER OF BUSINESS

Mr. DOLE. Mr. President——

Mr. MANSFIELD. How much time does the Senator from Kansas want?

Mr. DOLE. Five minutes.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from Kansas be allowed to proceed for 5 minutes, and that after that, the unfinished business be laid before the Senate, when time will begin to run on the Pastore germaneness rule.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana? The Chair hears none, and it is so ordered.

NOMINATION OF JUDGE G. HARROLD CARSWELL

SOME OF THE OPPONENTS OF CARSWELL

Mr. DOLE. Mr. President, Michael E. Tigar, whose signature appears on page 15 of the petition dated March 12, 1970, opposes the nomination of Judge Carswell. Tigar appeared on the Martin Agronsky show, shortly after the nomination and confirmation of Warren E. Burger to be Chief Justice of the United States. He expressed some reservations about Burger during the program, but after the program, he made the following statement:

> What I wanted to say was that I considered the Burger appointment a disaster, a disaster. (The Washington Post, "Potomac," Sunday, June 22, 1969, page 11.)

Tigar does not oppose just Carswell, but Burger also. Does he oppose all conservative nominees?

Perhaps. Here is a list of some of his clients, as stated in the Potomac article of June 22, 1969:

> Since then Tigar has advised or represented clients whose names make up a partial roll call in the battalions of the New Left—Yippie leader Abby Hoffman (for conspiracy in the Chicago convention disorders), Karl-Dietrich Wolff (a German leftist who was summoned to testify before the Senate Internal Security Subcommittee); demonstrators arrested in the October, 1968, march on the Pentagon; ten George Washington University law students who allegedly took part in the seizure of the Sino-Soviet Institute and the members of the Students for a Democratic Society regional office in Washington. (Page 9.)

While in school, Tigar also worked for a radio station in Los Angeles.

> At one point, on principle, he quit the air for eight months because the station stopped carrying the shows of Herbert Aptheker, a member of the Communist party and a historian. ("Potomac", June 22, 1969, page 13.)

Tigar says:

> Since there are house counsels for large corporate interests skirting the edges of the antitrust laws, why shouldn't there be lawyers talking with people skirting the edges of disorderly conduct laws? ("Potomac", p. 12.)

Tigar, representing Abby Hoffman, one of the defendants in the Chicago conspiracy trial, was ordered arrested by Judge Hoffman and held in contempt of court on September 25, 1969, as a result of his failure to comply with the provisions of the rules regarding withdrawal of counsel—Washington Post, September 27, 1969.

Tigar was the attorney who incorporated the Washington regional chapter of Students for a Democratic Society.

I might say here, Mr. President, that I am very much pleased to know that this particular attorney opposes the nomination of Judge Carswell. I would hate to have him on the other side.

Let me take another name who opposes Judge Carswell and who signed the petition.

Thomas I. Emerson, a professor of law at Yale Law School, likewise signed the petition opposing Judge Carswell's confirmation. Mr. Emerson has had a long record of association with the far left. He is perfectly entitled to his political views, but one wonders whether he, any more than Tigar, could really approve any Court nominee other than a doctrinaire liberal.

Emerson was the candidate of the Independent Peoples Party for the governorship of Connecticut in 1948. In 1949, he was State chairman of the successor organization, the Peoples Party of Connecticut. He was prominent in the National Committee To Secure Justice for Morton Sobell, the convicted Communist spy. In the Smith Act trial brought in New York City against the second-string Communist Party leaders, Emerson represented 16 of the 17 defendants in pretrial matters. He was later a defense witness in the Smith Act trial of the Seattle defendants.

Mr. President, I invite attention to these facts because there has been so much discussion on the Senate floor by opponents of Judge Carswell that we should listen when any opponent speaks, that we should vote against the nomination of Judge Carswell based on advertisements in the newspapers signed by, as I stated before, three-tenths of 1 percent of the lawyers of this country—including the two specifically referred to.

It seems strange that we, as Senators, should abide by the wishes of this very, very small minority, when considering that there are some 300,000 practicing attorneys in America today and some 148,000 members of the bar.

I certainly recognize we all have the right to differ and the right to disagree. But it might be well to indicate, as I have in the past few minutes, two persons who oppose this nomination. I am pleased they do oppose the nomination. If they were supporting Judge Carswell, I would have second thoughts.

Mr. President, I yield the floor.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. ALLEN) laid before the Senate the following letters, which were referred as indicated:

APPROVAL OF LOAN FOR CERTAIN TRANSMISSION FACILITIES

A letter from the Administrator, Rural Electrification Administration, transmitting, pursuant to law, information relative to the approval of a loan to the Sho-Me Power Corp. of Marshfield, Mo., for the financing of certain transmission facilities (with an accompanying paper); to the Committee on Appropriations.

REPORT ON NATIONAL INDUSTRIAL RESERVE

A letter from the Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report on the National Industrial Reserve, dated April 1, 1970 (with an accompanying report); to the Committee on Armed Services.

LIST OF PRINCIPAL AND ALTERNATE CANDIDATES FOR THE 1970 REGULAR NAVAL RESERVE OFFICERS TRAINING CORPS PROGRAM

A letter from the Chief of Naval Personnel, Department of the Navy, transmitting, pursuant to law, a list of principal and alternate candidates selected for the 1970 Regular Naval Reserve officers training program (with accompanying papers); to the Committee on Armed Services.

REPORT OF THE SECURITIES AND EXCHANGE COMMISSION

A letter from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, the annual report of the Commission for the fiscal year ended June 30, 1969 (with an accompanying report); to the Committee on Banking and Currency.

REPORT OF THE FEDERAL POWER COMMISSION

A letter from the Chairman, Federal Power Commission, transmitting, pursuant to law, the annual report of the Commission for the fiscal year ended June 30, 1969 (with an accompanying report); to the Committee on Commerce.

REPORT ON FEDERAL WATER RESOURCES RESEARCH PROGRAM FOR FISCAL YEAR 1970

A letter from the Chairman, Federal Council for Science and Technology, transmitting, pursuant to law, a report of the Council entitled "Federal Water Resources Research Program for Fiscal Year 1970," dated December 1969 (with an accompanying report); to the Committee on Commerce.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the examination of financial statements of the U.S. Government Printing Office for fiscal year 1969, dated April 3, 1970 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on the examination of financial statements of the Commodity Credit Corporation, for fiscal year 1969, Department of Commerce, dated April 3, 1970 (with an accompany report); to the Committee on Government Operations.

SUSPENSION OF DEPORTATION OF ALIENS—WITHDRAWAL OF NAME

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, withdrawing the name of Mr. Git-Chuen Henry Wong from a report relating to aliens whose deportation has been suspended, transmitted to the Senate on February 1, 1969 (with an accompany paper); to the Committee on the Judiciary.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

Two letters from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders suspending deportation of certain aliens, together with a statement of the facts and pertinent provisions of law pertaining to each alien, and the reasons for ordering such suspension (with accompanying papers); to the Committee on the Judiciary.

me briefly so that we may conduct a necessary report to the Senate?

Mr. GURNEY. I am glad to yield to the Senator.

STATEMENT OF POSITION OF SENATOR BENNETT AND SENATOR PELL ON NOMINATION OF JUDGE CARSWELL AND EXPLANATION FOR ABSENCE FROM SENATE NEXT WEEK

Mr. BENNETT. Mr. President, the Senator from Rhode Island (Mr. PELL) and I have been selected to represent the Senate as observers at the meeting of the Asian Development Bank to be held next week in Korea. We have both waited until this late date to make sure there would be no hindrance that would prevent either of us from going because we want our absence to have no effect on the voting on any of the Carswell motions.

If I were here next week to vote I would vote against recommital and if given an opportunity I would vote for the confirmation of Judge Carswell.

The Senator from Rhode Island (Mr. PELL) can explain his position but I think we can now go on and fulfill our assignment abroad on the assumption that we have a true dead pair which will not change the result of the vote.

Mr. PELL. Mr. President, will the Senator yield?

Mr. BENNETT. I yield.

Mr. PELL. Mr. President, I rise at this time to state that the senior Senator from Utah (Mr. BENNETT) and I will be accompanying Secretary of Treasury Kennedy to a meeting of the Asian Development Bank in Korea next week.

Since the Senator from Utah is a supporter of President Nixon's nomination of Judge Carswell to fill the current vacancy in the Supreme Court, and I am an opponent of that nomination, we will be paired.

In this regard when it comes to referring the nomination back to the Committee on the Judiciary I would vote to refer back this nomination just as the Senator from Utah would oppose doing so. And, if this motion to report back the nomination is defeated and the Senate is called upon to vote upon Judge Carswell's confirmation, I would vote "no" just as the Senator from Utah would vote "yea."

Finally, if the plans of either of us should change at the last minute so that either of us cannot accompany the Secretary of the Treasury, we have agreed that the other would not go either.

Thus, by agreeing to pair, the actions of the Senator from Utah and I will have no effect whatsoever upon the action of the Senate with regard to Judge Carswell's nomination.

THE NOMINATION OF JUDGE CARSWELL

Mr. GURNEY. Mr. President, one of the main arguments that has been advanced by the opponents of Judge Carswell concerned a statement, which was circulated widely among the Senators and also in certain newspapers, made by lawyers and law professors scattered around the country who oppose Judge Carswell.

I thought it would be well perhaps to spend some time discussing this statement today and analyzing it.

Mr. President, to the accompaniment of a press conference and other fanfare, a petition has been circulated to all Senators by persons describing themselves as "practicing lawyers and members of law school faculties in various parts of the country." The statement opposes confirmation of Judge Carswell.

From reading the press accounts of this petition, before I actually got around to considering the signatures in detail, I got the impression that it was a collection of representative and distinguished practicing lawyers as well as law school faculty members. But a careful study of the signatures has convinced me otherwise. It would be difficult to imagine a more unrepresentative collection of names than that which appears on this petition.

I count a total of 461 names on the copy of the petition which I received. Of these, only 126 are those of practicing lawyers, and the balance are law school professors.

The directory of American law school professors indicates that there are slightly more than 4,000 professors who teach at the 145 law schools approved by the American Bar Association. The American Bar Association estimates that as of last year there were approximately 305,000 lawyers practicing in the United States.

Thus already we see a marked imbalance in the signatures on the petition. Law school professors, who comprise only slightly more than 1 percent of all lawyers in the United States, have furnished more than 75 percent of the signatures to the petition circulated to the Senate. The 334 professors who signed comprise somewhere between 8 and 9 percent of the 4,000 professors who teach at law schools in this country. But the practicing lawyers who signed comprise a fraction of the total lawyers in the country—other than law school professors—which is so small that it is rather difficult to state. It is one twenty-fifth of 1 percent, or 0.04 percent of practicing lawyers other than law professors. Because several signatures on the petition appear to be those of law professors, though they are not indicated to be such on the petition, it is impossible to state with accuracy the precise number of law professors who have signed the petition, in their capacity as professors.

To sum up, it appears this way to me: Out of 304,978 lawyers in America, 461 or two-thirds of 1 percent signed this petition. Out of 4,062 law professors, 334 or 8 percent signed this petition. Out of 300,916 practicing lawyers—the total number less law school professors—126 or one twenty-fifth of 1 percent signed this petition—not a very impressive total any way we look at it.

Now let me turn to this figure on practicing lawyers, and break it down a little more. While there may be some dispute as to how a couple of these signers should be classified, I counted 126 practicing lawyers—that is, lawyers who are not school professors—on the petition which I received. More than half of the States in our Union—31 in number—were not represented by a single signatory in this class of practicing lawyers—specifically Alabama, Alaska, Arkansas, Delaware, Florida, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming had no practicing lawyers signing this anti-Carswell petition. While it may be accurate for these signers to say that they come from various parts of the country—and that is using their words—there is certainly a great big part of the country from which they do not come.

Now, what is the explanation for the entire lack of support for this anti-Carswell petition among practicing lawyers in 31 of our 50 States? Judge Rosenman, whom the New York Times said acted as principal spokesman for the petitioning group, gave this explanation as to why individual practicing lawyers in the South were not solicited:

> Frankly, we didn't want to waste the postage. We thought that many would start with a Southern prejudice. But we will welcome with open arms any who are willing to join us.

So far as I understand it, Judge Rosenman's arms still remain open and empty.

But, Mr. President, you will notice that if you exclude the States of the so-called Old Confederacy—11 in number—there remains 20 States from which not a single practicing lawyer signed the petition against Judge Carswell.

Now I am sure that time was a factor to these people who are trying to line up support against confirmation, and they had to use some selectivity in mailing. I am not sure just how much selectivity they used, since I have had an opportunity to examine one of the form letters that was sent out by the group trying to organize this opposition. The letter begins "Dear Sir," and then apologizes for this "discourteous xerox form of letter." It goes on to say that the enclosed statement "has been circulated to a small list of prominent lawyers in the city of New York and throughout the United States."

A story in the New York Times dated Friday, March 13, states that copies of the statement were circulated to the "major law firms in all cities of more than 100,000 population, excluding New York."

The New York Times story also states that:

> In all, copies of the statement were submitted for signatures to about 800 law firms, 100 law schools, all of the State bar associations and many of the major local ones.

Whichever version of how the statement was circulated is accepted, it is quite obvious that the organizers have had a catastrophic lack of success.

We are told by the sponsors of the petition that it was sent out to "major firms" in cities of 100,000 or more throughout the country. It looks as though it may have been sent to a few other places, too, however.

I think this is important because one of the charges in the petition is lack of credibility on the part of Judge Haynsworth. It seems to me the petitioners show a lack of credibility also.

For example, the town of Wayne, N.J., has a population of just under 30,000. Martindale-Hubbell indicates that the firm of Hoffman and Humphries, located in Wayne, consists of three partners and one associate. Two of these partners—Walter F. Hoffman and Burrell Ives Humphries—have signed the petition. Messrs. Hoffman and Humphries, of course, have a perfect right to express their views on this subject. But their signatures on the petition have raised several questions in my mind.

First, how representative is a petition like this, when 2 percent of the total signatures come from two members of a three-man firm in Wayne, N.J.? It is doubtful whether these two are representative of Wayne or of 300,000-odd other practicing lawyers in the rest of New Jersey and in the other 49 States of this Nation.

The second question that comes to my mind is whether false information was put out at the press conference by the organizers of this opposition group. They obviously did not circulate it just in major firms and just in cities of over 100,000. It looks like they circulated it wherever they thought they could get a couple of signatures. And they still ended up with only 126 practicing lawyers out of the 300,000 in the whole country.

Who is to say that lawyers in small firms, or lawyers in cities of under 100,000 should be excluded from a circulation like this. Indeed there is something very unrepresentative about a program which in its conception speaks of circulating only to lawyers in "major firms" and only in cities of over 100,000 to sign the petition. We can see just how badly the sponsors did in big law firms in big cities—126 practicing lawyers.

They did get another signer from a small town—Mr. George R. Davis of Lowville, N.Y. Lowville is the county seat of Lewis County, N. Y., and has a population of 3,616. They got Mr. Davis to sign this petition, but what we do not know is how many other people in Lowville were asked to sign, and refused?

How many other lawyers in cities under 100,000 in the other 49 States of the Union were asked to sign, and refused?

We know only that Mr. Davis signed.

There is also representation on the petition from a three-man firm in Hackensack, N.J.—Messrs. Shedd, Gladstone, and Kronenberg. Now Hackensack, Martindale tells us, is located in Bergen County, N.J., and has a population of about 30,500.

Now when we see three partners of a three-man firm in Hackensack, N.J., signing a petition which contains a total of 126 names of practicing lawyers throughout the United States, I think we are entitled to ask just how representative these signers are. Are they prominent among the 300,000 lawyers throughout the United States? Are they partners in major firms in cities of over 100,000?

That is what Mr. Rosenman said he was petitioning in his press conference. No, all they represent are three of 300,000 practicing lawyers of various sizes, shapes, and descriptions, who are entitled to have their views considered, but no more and no less than any of the 300,000 practicing lawyers in the United States.

Let us go to the State of Ohio, one of the biggest States in the Union, which produced the signatures of two practicing lawyers out of an estimated total number of lawyers in the State of 14,368. One of these signers was a partner in a law firm in Columbus, Ohio, and another is a partner in a law firm in Cleveland, Ohio. The Cleveland firm in which Mr. Freedheim is a partner consists of 14 members—the other 13 did not sign. The Columbus firm of which Mr. George is a partner consists of 13 members—the other 12 did not sign.

And look at the rest of Ohio. By the sponsor's own account the petition was circulated to major law firms in all cities. Now this would include, besides Columbus and Cleveland, where the opponents obtained one signature each, Akron, Cincinnati, Dayton, Canton, Toledo, and Youngstown—where they obtained not one single signature.

So here is the State of Ohio—with about 14,000 practicing lawyers and about 6,000 members of the American Bar Association, and eight cities with a population of more than 100,000. And the opponents of confirmation come up with a grand total of two signatures from Ohio. That is how representative this petition is of Ohio.

It is worth noting that if the opponents had done what they said they did—circulated only to cities over 100,000—not only would all smaller cities be summarily excluded, but entire States would be excluded. Alaska, Idaho, Maine, Montana, Nevada, New Hampshire, North Dakota, South Dakota, Vermont, West Virginia, and Wyoming are automatically disregarded under the plan set up by the sponsors of this petition.

That is hardly representative of the feeling of members of the American bar about Judge Carswell. However, as I have noted, apparently getting desperate for signatures, the sponsors departed from their plan and reached out for signatures wherever they might be found. The results, throughout the length and breadth of this Nation, with its more than 300,000 practicing lawyers, turns out to be a total of 126 practicing lawyers.

Some of these practicing lawyers have signed themselves as past presidents or past chairmen of various associations and committees. This apparently done in an effort to show that they indeed are a "small group of prominent lawyers." But I think we all know that in State and local bar associations, even as in other kinds of business associations, offices turn over on the average of once a year, and there are anywhere between 10 and 30 living ex-presidents of almost any local bar association. So bear in mind, when John Doe signs a petition like this as a past president of the county X bar association, that there are somewhere between 10 and 30 equally prominent past presidents of that association who did not sign this petition.

Now I do not suggest that people who did not sign this petition are all urging that Judge Carswell be confirmed. I suspect that a lot of lawyers who received the petition, and refused to sign it, did so because they were unwilling to accept on faith the five pages preceding the signature line which are devoted to characterizing Judge Carswell's testimony before the committee—characterizing it, I might say, in an extraordinarily one-sided and unfair manner. Lawyers are by tradition skeptical, and able lawyers like to hear both sides of a case. That would be good enough reason for rejecting a petition such as this.

The signatures of practicing lawyers on this petition show the healthy skepticism with which the American bar regards high pressure lobbying tactics such as those engaged in by the organized opposition to Judge Carswell.

There is another fact about this petition that is interesting and is worth exploring. This has to do with hypocrites and hypocrisy.

A main thesis of the petition deals with Judge Carswell's connection with an allegedly segregated golf course in Tallahassee. The petitioners point the long, accusing finger at Judge Carswell, charging that he helped organize this club for the purpose of avoiding court-ordered desegregation of public facilities. Of course, these petitioners conveniently omit some facts: that Carswell signed a charter of an original group that never functioned; that he attended no meetings of any kind; that in fact the initial corporation never got off the ground; that an entirely new and different corporation was organized which carried out the functions and purposes of the golf club.

Judge Carswell was not a member of the second group—he had no connection with it; he had absolutely nothing to do with it. Many years later, after it was established, he joined it for a brief period so that his children could play golf. When they went off to school, he resigned.

None of this true story is recited in the petition. What sort of lawyers and law professors lend their names and signatures to this kind of deliberately distorted presentation?

We might take a look at a few of the "distinguished lawyers" who signed such a petition. Two of them are Bernard Webster and Francis T. P. Plimpton.

I did a little checking in Who's Who to see what clubs these gentlemen belong to.

Here is a list:

Mr. Plimpton belongs to the following clubs: Union, Century, Brook, Downtown Association, Coffee House, Economic—New York City; Piping Rock, Cold Spring Harbor Beach, Metropolitan—Washington; Ausable Chasm—Adirondacks; Mill Rey—Antigua.

Mr. Webster belongs to: Century, Downtown, Coffee House, and Metropolitan—Washington.

These are among the most exclusive clubs in the world. Now, I do not know whether they have segregation clauses in their charters. Probably not—self-interest would make sure that there were no such specific clauses.

But believe me, you will not see many black faces among the members, either.

Only in recent years, after a big flap, did the Metropolitan Club of Washington let in a token few black members.

I have tried to find out if black members belong to the other clubs, but have met with a very polite but decided veil of secrecy.

I have called upon these clubs today by telegram yesterday to state here, publicly in the U.S. Senate, and to advise us how many black members they have—for that matter, how many Jews, how many Catholics, and how many members of other minority groups.

This point of the club association of these organizers is very important because it goes right to the heart of their argument. They base their argument against Judge Carswell upon a segregated golf club.

I say these petitioners, like one who seeks equity, must come into court with clean hands. Under our Anglo-American system of jurisprudence, no litigant with soiled hands is entitled to be granted equitable relief.

Their own hypocrisy reveals their true motive—which is simply that they do not want to approve a Southern conservative jurist for appointment to the Supreme Court.

As far as I am concerned, they can belong to any club they want to. I have no quarrel with that. But when they come before the U.S. Senate and seek to influence its high constitutional role to advise and consent, let these gentlemen come with clean hands and argue in full view of the public, not behind a hypocritical smoke screen.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. GURNEY. Yes, I yield.

Mr. CRANSTON. On the matter of the golf club, since I myself have referred to that incident, I would like to clarify what were my own concerns about Judge Carswell's participation in that event. I think this may well reflect the concern of some of those the Senator is referring to. Part of my concern was certainly the matter of involvement in a club that had rules of segregation. My main concern was that of Judge Carswell's involvement in preparing the bylaws of the incorporation of that club, which was obviously a move designed to get around the law of this land, occurring when he was a U.S. Attorney charged with responsibility for enforcing the law of the land.

Mr. GURNEY. May I interrupt to say there is not a single shred of evidence that Judge Carswell had anything to do with preparation of the bylaws.

Mr. CRANSTON. Let us limit it to the incorporation.

Mr. GURNEY. Or the incorporation papers.

Mr. CRANSTON. The statements in regard to the incorporation of the club are in the record, I believe.

Mr. GURNEY. I understood the Senator's statement to be that he had something to do with the preparation of that. If the Senator can point out in the record where that appears, I would be interested to read it. I read the record of hearings very carefully, and I never saw it.

Mr. CRANSTON. The direct participation was the contribution of $100 by Judge Carswell to the club at a time when he was U.S. attorney. Is that right?

Mr. GURNEY. That is right.

Mr. CRANSTON. And at a time when he was sworn to uphold the law of the land. The club was being established to get around what was the law of the land.

Mr. GRIFFIN. Mr. President, will the Senator from Florida yield to me for the purpose of my directing a question to the Senator from California?

Mr. GURNEY. I am glad to yield.

Mr. GRIFFIN. I wonder if the Senator from California and others who are attributing such motives to Judge Carswell would attribute the same motives and criticisms to the then Governor of the State of Florida, Leroy Collins, who later served with great distinction as an official in enforcing the civil rights laws of this land in the Johnson administration, and who also contributed $100 at approximately the same time to the same club, along with three or four other prominent and distinguished citizens of the city of Tallahassee.

Mr. CRANSTON. Mr. President, if the Senator will allow me, I am limiting my comments to the nomination that is before the U.S. Senate for consideration, the nomination of an Associate Justice of the Supreme Court. The President criticized the Senate as if we were suggesting other nominees for the Supreme Court. We are not. I have resisted the temptation to name other conservative and strict constructionists whom I deemed to be qualified to sit on the Supreme Court. I am not making a judgment of other people. I am restricting my comments to the man who is before us for consideration as a nominee to the Supreme Court.

Mr. GRIFFIN. I am not suggesting that the Senator from California suggests that Mr. Collins should be appointed to the Supreme Court. I am only saying that great attention has been focused on this point. I pointed out to him that another very distinguished member of his party, whom I greatly admire and for whom I have great respect, and who was the top official of the State of Florida, testified before the committee and on the record that he also contributed $100. I assume the Senator would also be critical of anyone else who did the same thing.

Mr. CRANSTON. I am most critical of a man whose sworn duty was to uphold the law of the land but who was involved in a transaction that was designed to circumvent that very law.

Mr. GRIFFIN. Former Governor Leroy Collins testified before the committee that he had no such intentions or motives when he contributed $100 to this club, and I think it altogether possible that that could have been the case with respect to Judge Carswell.

I thank the Senator from Florida for yielding.

Mr. GURNEY. Now, if I might answer the Senator from California—and I know his question was propounded in all earnestness, because this incident has troubled a great many people—I think I have read every bit of testimony in the record surrounding the discussion of this golf club. I have also talked to people outside the record about the facts and circumstances surrounding the golf club; and, as I understand the whole affair, it was thus:

This club was organized in April of 1956. Judge Carswell was approached to see if he wanted to join as a member of the group of people who got it going. He did say he would. He put up $100.

One of the most important facets surrounding this whole transaction is that there were two corporations. There was a first corporation, for profit, the charter of which was filed with the secretary of state, the usual procedure in Florida. That is the one that Judge Carswell signed as an incorporator, and put up $100 for the expenses.

That corporation never functioned. It never got off the ground. The next piece of evidence that happened was that a lease was negotiated by the city of Tallahassee, which owned the golf club, in the fall—I think the month was September—to this first corporation. They had one organization meeting, and then apparently they decided that a corporation for profit was not the way to run the golf club, so they moved in another direction, and organized a corporation not for profit—a charitable corporation, as we call them in Florida. They filed a petition with the circuit court in Leon County, which is the way you organize a charitable corporation. The judge signed an order, and the new corporation was established.

The testimony clearly shows that Judge Carswell never attended a single meeting of any kind of the first corporation. He never had anything to do with it, at all, after the initial contact with one of the organizers, who got $100 from him, and all of the business of the golf club was transacted by the second, charitable corporation.

I think one of the most interesting pieces of evidence regarding this is shown on page 363 of the record, included in the petition of the nonprofit corporation, which contains this information. It says:

> The present officers and directors of Capital City Country Club, Inc.—

That was the first one—

> and the officers and directors of this corporation hereby designated to serve until the first election shall be—

And then it lists the officers and directors of both corporations, and Judge Carswell is not listed thereon, which bears out precisely what he said, that he never had anything to do with the golf club after he put up the $100, and got his $76, I think it was, back from the $100 in February of the next year.

I think his testimony is entirely creditable on the point, and it is ironclad proof of this one basic fact, which is what the argument has been all about, as I understand it, in the debate over Judge Carswell: That Judge Carswell was an active participant in some sort of scheme to operate a private, segregated club. That is what the argument is all about. But the testimony shows that he never had any part in that at all beyond the initial contact and the payment of $100.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. GURNEY. I ask unanimous consent that I may proceed for 15 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GURNEY. One further note about the position of the lawyers and the law professors: I was particularly interested by the fact that among the few practicing lawyers who signed this petition were Mr. Ramsey Clark, former Attorney General of the United States, and several others who had been in the Justice Department at the time that he headed it.

I am reminded of a nominating speech for one of the leading presidential contenders many years ago proclaiming that "we love him for the enemies he has made." I think the same might be said about Judge Carswell.

Putting entirely to one side the many affirmative reasons for supporting his confirmation—his long experience as a trial and appellate judge, his activities in judicial administration, and his endorsement by the American Bar Association Committee on Judicial Selection—I believe that an entirely independent reason for voting to confirm Judge Carswell is that Ramsey Clark does not want him confirmed.

This is not the first time, of course, that Ramsey Clark has spoken out in connection with a Supreme Court nomination. He was the leadoff witness, in support of the confirmation of Abe Fortas as Chief Justice. Here are some of the remarks that Ramsey Clark made before the Federal Bar Association in September 1968, while the Fortas confirmation was pending before this body:

> For the 15th time in the history of the republic, the Senate has been asked to advise and consent on the nomination of the chief justice of the United States. It is an awesome responsibility. It is imperative that the Senate perform its duties prescribed by the Constitution . . .
>
> As human beings we are concerned for Abe Fortas, but diamonds don't bruise.

Now there is an interesting allusion. Quite obviously something happened to Abe Fortas, on his way to the Supreme Court, whether it was "bruising" or something else. Now let us go back to the text of his remarks:

> If certain Members of the Senate are as concerned about pornographic material as they appear to be, and should be, they might work on legislation designed to control it: Not attack the Supreme Court of the United States as if it caused lust.

Former Attorney General Clark may be perfectly well satisfied with the decisions of the Warren court in the field of pornography, but I think a lot of us are not. I think a lot of lawyers, a lot of Members of Congress, and a lot of plain, ordinary people throughout the land are not satisfied with the legal protection accorded to the worst forms of pornography today.

There is certainly good reason to believe that Judge Carswell is a strict constructionist—that is, one who is less inclined than the liberal majority of the Warren court to read into the Constitution his own views of public policy. He would undoubtedly give more weight to legislative judgments as to how pornography may best be dealt with, and not turn the first amendment to the U.S. Constitution into a license for commercial smut peddling.

I recall some other equally interesting statements made by Mr. Ramsey Clark when he was attorney general of the United States. Perhaps his most famous statement was that of May 19, 1967, as quoted in the New York Times:

> Attorney General Ramsey Clark said yesterday that he did not believe there was a crime wave in the Nation.
>
> "The level of crime has risen a little bit," Mr. Clark said, "but there is no wave of crime in the country."

I do not know just what kind of intellectual blinders Ramsey Clark had on that date—but they somehow enabled him to ignore and dismiss as unreal the crime problem in the United States, and the plight of the innocent victim of crime. We have heard him talk at length about the rights of the criminal but very little about the rights of the criminal's victim and society's rights.

I think Judge Carswell's views on the enforcement of the criminal law are vastly different from Ramsey Clark's. For example, his vote to have the entire membership of the Court of Appeals for the Fifth Circuit review a three-judge panel's decision to expand the Miranda doctrine as enunciated by the Supreme Court is an indication that in the area of criminal law he is a strict constructionist. Personally, I much prefer the strict constructionist approach to the maudlin sentimentality of former Attorney General Ramsey Clark.

Ramsey Clark's perforation in his September 1968 remarks to the Federal Bar Association concluded with these words:

> The Senate must vote to confirm or reject Justice Abe Fortas on his personal qualifications. Judge him on the merits. He will not be found wanting.

I would say if Ramsey Clark can embrace Abe Fortas—who fell so far short of Supreme Court standards—I am willing to believe the very best about anyone whom he opposes.

I think Ramsey Clark's opposition is just one more good reason why Judge Carswell should be confirmed as an Associate Justice of the Supreme Court of the United States.

I dwelt at some length on the opposition of Ramsey Clark to Judge Carswell—and for a very good reason. I think men should be judged by the company they keep. I suspect that Mr. Clark is typical of the vast majority of the one twenty-fifth of 1 percent of practicing lawyers who signed the petition against Judge Carswell. They are "representative" only of a small minority of the extremely liberal wing of the American bar. They want beyond anything else, and even over the dead professional career and the carcass of Judge Carswell, to perpetuate the activist Warren-type Supreme Court.

Lawyers and judges spend a lifetime weighing evidence, learning to recognize it for what it is worth.

U.S. Senators also acquire a pretty good feel for what axes are being ground and whose oxen are being gored.

I implore the Members of this great body, in its great constitutional duty to advise and consent, to recognize for its true worth the petition against Judge Carswell of the lawyers and law professors. I think they will find that the weighing of this evidence falls far short of any representative cross section of the American bar. They speak for a small, highly vocal, but very liberal faction, no more and no less; and it is indeed not representative of the American bar in general.

Mr. GURNEY. Mr. President, I ask unanimous consent that certain telegrams and letters I have received in support of Judge Carswell be printed at this point in the RECORD. They are a telegram from W. E. Grissett, Jr., president of the Jacksonville Bar Association; the dean of the Mercer Law School; William N. Long, President of the 8th Judicial Circuit Bar Association in Florida; a letter by W. J. Oven, Jr., who was unable to join the 79 members of the Tallahassee bar who sent a telegram to the Senate supporting Judge Carswell; a letter from Thomas C. Dinard, a lawyer in Fort Lauderdale, Fla., who also used to be an assistant U.S. attorney, chief of the civil division for the eastern district of Pennsylvania during the Eisenhower-Nixon administration, recommended by the distinguished majority leader, Senator SCOTT.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JACKSONVILLE, FLA.,
April 2, 1970.

Hon. EDWARD J. GURNEY,
U.S. Senator,
New Senate Office Building,
Washington, D.C.:

The officers and executive committee of the Jacksonville Bar Association unanimously endorse the nomination of Judge G. Harrold Carswell as a Justice of the United States Supreme Court. Judge Carswell has demonstrated his fine judicial abilities during this years of service on the Federal bench. He will serve with distinction as a member of our highest tribunal. We urge his confirmation by the United States Senate.

W. E. GRISSETT, Jr.,
President.

MACON, GA.,
April 2, 1970.

Senator EDWARD J. GURNEY, Jr.,
Senate Office Building,
Washington, D.C.:

DEAR SENATOR GURNEY: As dean and on behalf of the student body of Mercer University Walter F. George School of Law, I would like to urge the confirmation of Judge G. Harrold Carswell to the seat of the Supreme Court Justice; I had pleasure of teaching Judge Carswell as a student and have been acquainted with Judge Carswell since his law school days and hold him in very high esteem. I believe I can unequivocally state that Judge Carswell is extremely well qualified to fill the position of Justice on the U.S. Supreme Court.

DEAN M. MEADFIELDS,
Mercer Law School.

GAINESVILLE, FLA.
April 3, 1970.

Senator ED GURNEY,
New Senate Office Building,
Washington, D.C.:

Having practiced before Judge Carswell I strongly endorse his appointment to the Supreme Court.

WILLIAM N. LONG,
President, Eighth Judicial Circuit Bar Association.

Tallahassee, Fla., March 30, 1970.
Hon. EDWARD J. GURNEY,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: According to newspaper accounts, a telegram was forwarded Friday to all one hundred Senators, signed by some 79 members of the Tallahassee Bar, announcing their support for Judge Carswell.

I did not have an opportunity to join in this communication, probably because I was out of my office most of last Friday. I would certainly have added my name to this telegram if I had been given the opportunity.

I have practiced before Judge Carswell since his appointment back in 1958, and consider him eminently qualified. I hope your efforts to secure his confirmation will be successful.

Respectfully yours,

W. J. OVEN, Jr.

THOMAS C. DINARD,
Fort Lauderdale, Fla., March 23, 1970.
Senator EDWARD J. GURNEY,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR GURNEY: May I urge the immediate and affirmative vote by the Senate of President Nixon's nomination of Judge G. Harrold Carswell as Associate Justice of the Supreme Court.

The long and unwarranted delay by the Senate in ratifying the President's appointment will cause irreparable damage to the judicial process and to law enforcement upon which the future progress of our country depends.

With best wishes.

Sincerely yours,

THOMAS C. DINARD.

Mr. GURNEY. I yield the floor.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. GURNEY. I yield.

The PRESIDING OFFICER. The Chair suggests that the floor has been yielded, and the present schedule is for the Senator from Wyoming to have the floor for a period of time not to exceed 1 hour. The Chair would suggest that if it is desired that any more time be taken up on the subject, the Senator from California would have to seek the permission of the Senator from Wyoming.

Mr. CRANSTON. I ask unanimous consent that I may have about 2 minutes to ask one question of the Senator from Florida relating to matters we discussed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. On the matter of the incorporation of the golf club, perhaps there was a difference over technical language. But I should like to ask the Senator to comment on the fact that page 32 of the hearings indicates that Senator KENNEDY said to Judge Carswell, "Did you in fact sign the letter of incorporation?"

Judge Carswell said, "Yes, sir. I recall that."

The certificate of incorporation appears on page 348, and on page 353 Harrold Carswell's signature appears on that document. That would seem to me evidence that he was an incorporator of that golf club, by his own testimony to the committee.

Mr. GURNEY. If the Senator from California will yield, at no time did I contend that Judge Carswell was not an incorporator of this corporation. In fact, I think I stated that he was.

Mr. CRANSTON. I must have misunderstood the Senator, then. I thought the Senator questioned my statement that he was.

Mr. GURNEY. No. I said there were two corporations, and he had no part in the second corporation, which was the one that carried on the business of the golf club. There was a change a few months after the formation of this corporation. This corporation never did any business, and the judge never participated in any meetings of any sort. As a matter of fact, I am not even sure—and the testimony really does not go to that evidence—that the first corporation really got itself into business under Florida law, corporation law, besides filing the charter of the corporation. They do have to have an organizational meeting, a meeting of directors and officers, and approve initial steps—the issuing of stock.

For example, the testimony, as I read it over all, was that Judge Carswell never received any stock at all. He put up a hundred dollars and got $76 back. The whole evidence, when viewed in full perspective, indicates that, even though Judge Carswell technically was an incorporator of the first corporation because he signed the corporation papers, but that he never was an active member of any organization that ran a private segregated club that was organized for that purpose, he was not a part of that at all, and this is what he was testifying to before the committee.

Mr. CRANSTON. The allegation did not go to that point. It went to the point that he incorporated, and we agree that he did.

CALIFORNIANS KILLED IN ACTION IN VIETNAM

Mr. CRANSTON. Mr. President, on September 19, I first read into the CONGRESSIONAL RECORD the names of California men killed in action in Vietnam. Almost weekly since then, I have risen on the floor of the Senate to continue this tribute to the memory of our fallen men.

Last Friday—Good Friday—two California families, one in San Diego and the other 95 miles away, in Fullerton—received their notifications of tragedy from the Defense Department.

These two latest casualties brought to 4,000 the number of Californians who have lost their lives in the jungles and swamps of Southeast Asia since the first Californian fell in Vietnam on April 20, 1961, nearly 9 long years ago.

And the war goes on.

The following men have been reported as casualties between Monday, March 9 and Friday, March 27:

Pfc. Daniel Aguilera, son of Mrs. Elixa E. Aguilera, of Cutler.

Pfc. James D. Anella, husband of Mrs. Nedra M. Anella, of Spring Valley.

Radarman Charles E. Brooks, husband of Mrs. Jeanne B. Brooks, of San Diego.

Cpl. Thomas C. Chaney, son of Mrs. Lydia S. Chaney, of Greenfield.

Pfc. Robert W. Culver, husband of Mrs. Glenna F. Culver, of Eureka.

Lt. Joseph W. Devlin, husband of Mrs. Norma Devlin, of Orange.

Lt. Vincent E. Duffy, Jr., son of Mr. and Mrs. Vincent E. Duffy, of Arcadia.

Pfc. Jesse C. Frey, husband of Mrs. Adell C. Frey, of Bell Flower.

Capt. James M. Gribbin, son of Mrs. Molly Ondrasek, of Novato.

Sp4c. Garlin J. Hendreson, Jr., son of Mrs. Millie M. Henderson, of Bloomington.

Capt. Ronald Hurt, husband of Mrs. Olga Hurt, of San Diego.

Pfc. Michael C. Jackson, husband of Mrs. Peggy J. Jackson, of Simi.

Pfc. John E. Lockhorst, Jr., son of Mrs. Ruth E. Oswald, of Ontario.

Pfc. John S. Rick, son of Mr. and Mrs. Don L. Rick, of Fullerton.

Sgt. Paul W. Rose, son of Mr. and Mrs. Guy W. Rose, of La Mesa.

Capt. Richard J. Sexton II, husband of Mrs. Marcia S. Sexton, of Pacific Grove.

Sgt. Atilano U. Tovar, husband of Mrs. Patricia T. Tovar, of Van Nuys.

Sp4c. Charles A. Van Horn, son of Mrs. Evelyn A. Conjuriski, of Rialto.

Pfc. Kenneth E. Wedlow, son of Mr. and Mrs. Theodore Wedlow, of Compton.

Pfc. Thomas J. Whitlow, Jr., son of Mr. and Mrs. Thomas J. Whitlow Sr., of Palos Verdes Peninsula.

THE NOMINATION OF JUDGE CARSWELL

Mr. CRANSTON. Mr. President, I will vote to recommit Judge Carswell's nomination to the Judiciary Committee. Some Senators said that they feel a vote to recommit is simply ducking the real issue. I do not agree. I believe that during the Senate debate of Judge Carswell's nomination, many persuasive reasons have been brought forth which justify recommittal.

I believe that Judge Carswell should explain under oath to the Judiciary Committee and to the Senate and above all to the American people new facts which have been revealed which bear directly on his fitness to sit on our Nation's highest court.

A careful reading of the hearings and the many reports concerning Judge Carswell leads inevitably to a list of unanswered questions which have arisen. The Senate cannot vote with full knowledge until these questions have been asked, and properly answered.

These questions go to the very charges which President Nixon labeled as specious—charges of "lack of candor" and "racism." I do not believe that these charges are specious. I do believe, however, that Judge Carswell should be given a full and fair opportunity to refute these charges.

Judge Carswell attempted to answer some of these charges in a letter to the Judiciary Committee after the completion of the hearings. Personally, I find totally unsatisfactory his general and sometimes evasive denials in this unsworn letter.

I believe the following questions among others, should be put to Judge Carswell.

They illustrate both the need for further answers from Judge Carswell, and the wholly inadequate and confused state of the present record concerning both his qualifications and his candor:

1. Is it true that on the evening of January 26, 1969, two representatives of the American Bar Association visited you in your hotel room and showed you the documents relating to your participation in the 1956 Tallahassee Golf Course incident. Did you examine the documents at that time or later and did you discuss this matter with others that evening after the ABA representatives departed or the next morning before testifying?

2. In view of the fact that the ABA representatives discussed the golf course incident with you the previous evening, how do you explain your answer at the Committee hearing the next morning, when Senator Hruska asked you to "tell us just what the facts are", that "I read the story very hurriedly this morning . . ."?

3. In view of the fact that the incorporation papers containing your signature were shown you the night before, how do you explain your testimony the next morning as follows:

"Senator HRUSKA. Were you an incorporator of that club as was alleged in one of the of the accounts I read?"

"Judge CARSWELL. No sir."

4. In view of the fact that one or more of the papers shown you the night before demonstrated your position as director of the golf club, how do you explain your testimony at the hearing the next morning that "I was never an officer or director of any country club anywhere"?

5. With the same background, how do you explain this testimony at the hearing:

"Senator HRUSKA. Are you or were you at the time, familiar with the bylaws or the articles of incorporation?

"Judge CARSWELL. No, sir."

6. With the same background, how do you explain your testimony two days after the discussion in your hotel room, "Senator, I have not looked at the documents"?

7. In this same testimony you stated that the golf club corporation "was a defuct outfit that went out of business." Isn't it a fact, however, that it did *not* go out of business but continued as a non-profit rather than a profit corporation?

8. Toward the end of your testimony on the golf course incident, this colloquy appears:

"Senator BAYH. Were there problems in Florida relative to the use of public facilities and having them moved into private areas——

"Judge CARSWELL. As far as I know, there were none there and then in this particular property that you are talking about."

Would you elaborate on this answer in view of the affidavits to the contrary appearing in the record of the hearings and the statement of your supporter, James J. Kilpatrick, that "if Carswell didn't know the racial purpose of this legal legerdemain he was the only one in Northern Florida who didn't understand."

9. Please explain the circumstances under which you chartered a whites-only booster club for Florida State University in 1953?

10. Have you considered then or since whether your activities in chartering the all-white booster club and with respect to the golf course conflicted with the position of United States Attorney which you held during both incidents?

11. Please explain the circumstances under which you participated in the sale of property containing a racial covenant in 1966.

12. On the morning of January 28, 1970, Judge Elbert W. Tuttle telephoned you to say that he could not testify in support of your nomination. Since this repudiated his earlier letter which you knew was in the record, did you not feel an obligation to report this new information to the Committee when you testified a few hours later or when you wrote the Committee a letter purporting to clarify the record of February 5?

13. Since you testified at the Committee hearings, eight civil rights attorneys who had practiced in your Court—in addition to the two who testified at the hearings—have testified in detail to your extreme hostility to them and their cause. Additional lawyers have made similar statements. Your only answer to date is contained in your letter of February 5th to the Committee which includes the statements that "I do not remember specific colloquies with counsel," but "I emphatically deny such episodes . . .". Would you kindly explain the apparent inconsistency in your letter and, to the best of your recollection, answer the specific charges of these attorneys.

14. In particular, Leroy D. Clark, Professor of Law at New York University Law School testified that Judge Carswell "turned his chair away from me when I was arguing." Are you not able to recall such an incident?

15. Likewise Theodore Bowers, an attorney of Panama City, Florida, informed me that "Judge Carswell turned away from him, looking off to the side, turning his body to the side, when he was presenting an argument. He stated that Judge Carswell stayed turned aside throughout half of his total argument. He argued for 10 minutes, and for 5 of those minutes Judge Carswell was looking away, had turned bodily away, seemed to be totally ignoring the case that he was seeking to make." Is it your practice to turn away from lawyers who argue before you or was this limited to civil rights lawyers?

16. Mr. Ernest H. Rosenberger, one of the civil rights attorneys who testified, stated that you suggestsd to the Tallahassee city attorney that the sentences of 9 clergymen be reduced to the time already served in an effort to deprive them of their standing to continue their habeas corpus proceeding before you and thus clear their records. Did you in fact do this and, if so, do you consider it proper judicial conduct?

17. Sheila Rush Jones, an attorney, has informed me "That in January of 1967 I was employed as a staff attorney for the NAACP Legal Defense Fund, 10 Columbus Circle, New York, New York;

"That as part of my duties as a staff attorney, I represented Negro persons in Florida who sought to desegregate local public school systems. On or about January, 1967, I represented a group of Negro plaintiffs in a school desegregation case at a hearing on a Motion for Further Relief in Tallahassee before Judge G. Harrold Carswell.

"That at this time, Judge Carswell was very discourteous to me, interrupting me with frivolous comments as I attempted to argue the motion. In general he treated me in a mocking, ridiculing way. Only after I began prefacing my remarks with such statements as 'Let the record reflect I am attempting to say etc.' did he cease to interrupt and allow me to complete my argument. I have never before or since received such disrespectful treatment from a federal judge."

Do you recall this incident? If so, can you explain it?

18. At any time prior to your nomination for the Supreme Court did you repudiate directly or indirectly, publicly or privately, your white supremacy statement of 1948 and, in the alternative, can you point to a single writing, public or private, evidencing compassion toward Negroes?

EDITORIALS IN OPPOSITION TO THE NOMINATION OF JUDGE CARSWELL

Mr. President, the distinguished Senator from Florida (Mr. GURNEY) gave a quite long analysis earlier this afternoon of attorneys from various States who have been recorded as opposed to the nomination of Judge Carswell. To complete the record, I ask unanimous consent to insert in the RECORD at this time editorials from around the country on this same matter. Let me add that these are representative of the view of the free press of this country, a press that remains free and that expresses opinions of great moment to us in the fashion that is reported in these editorials.

There being no objection the editorials were ordered to be printed in the RECORD, as follows:

[From the Philadelphia (Pa.) Inquirer, Mar. 12, 1970]

HE FLUNKED THE TEST

When President Nixon nominated Judge G. Harrold Carswell to the U.S. Supreme Court, it was assumed that a thorough search had been made into Carswell's record by the President and the Department of Justice, and that they were completely satisfied with the judge's qualifications.

The harsh experience of the Haynsworth case, if nothing else, should have been enough to justify extreme caution in filling the vacancy on the high court.

It was agreed that the President had the right, if he wanted to exercise it, to name a Southerner, a conservative and someone who could be labeled a "strict constructionist."

Even when it was disclosed that Carswell, in a political speech in 1948, had said that he would yield to one one in his "belief in the principles of white supremacy," his repudiation of a statement made 22 years ago as "obnoxious" to him today, was generally accepted.

The fact that the administration searchers into Carswell's record had not uncovered this revealing bit of information about him, however, impelled others to look more closely into the qualifications of the judge from Tallahassee.

What they found has cast a dismal cloud upon Mr. Nixon's appointee. Carswell's insensitivity on the racial question alone is plain to see. There are 15 cases, when he was a district judge, in which his opinions upholding racial segregation were overruled by higher courts.

In 1953, he drafted a charter for a boosters club at Florida State University which opened membership to "any white person interested in its purposes."

In 1956, he participated in an organization which turned Tallahassee's municipal golf club into a private segregated club.

In 1966, he sold a piece of land with a covenant attached restricting ownerships and occupancy to "members of the Caucasian race."

It is particularly discomforting to know that when a Supreme Court Justice is named, we may be stuck with him for a long time.

Being stuck with a justice who has displayed no visible breadth of wisdom or compassion is a depressing thought.

Since Mr. Nixon announced the nomination—on what misplaced judgment we do not know—Judge Carswell has sunk lower and lower in public esteem as a candidate for a Court where we expect a degree of greatness in its members.

He has not made the grade. The Supreme Court cannot be better for his presence on it.

[From the Montgomery (Ala.) Advertiser, Mar. 27, 1970]

WHY NOT JUDGE JOHNSON?

They said it couldn't be done, but it now appears possible that Judge G. Harrold Carswell may not be the next member of the U.S. Supreme Court.

A move is on to avoid the ritualistic slaughter decreed for Judge Clement F. Haynsworth, a far superior judge in every respect. Instead, opponents of Carswell have opted for what is decribed as a decent private burial, if they can get enough votes to

recommit the nomination to the Judiciary Committee.

The vote on that is to come April 6, and opponents claim they already have enough support to send the nomination back to committee to die. Senate Republican leaders dispute this, but it would be the humane solution.

Although much of the criticism of Carswell has been for the wrong reasons, what changed an expected shoo-in to a cliff-hanger was the undistinguished character of the man. Even southern Senators seem to be feigning their enthusiasm now, and with reason: should Carswell be confirmed after the thrashing he's taken, his lack of strong personal conviction and fortitude would likely make him a follower of the liberal members of the court as he attempted to cleanse his name of all the nasty things said about him.

The irony of it all is that if Carswell had been offered first, Haynsworth, who looks infinitely better by comparison, would not have experienced much difficulty in confirmation.

Nixon, busily covering his tracks in every region, probably couldn't sell it to the South (or wouldn't try), but his best choice—and this may shock a lot of Alabamians—would be Judge Frank M. Johnson, in our judgment.

Now, hold on before you blow your top. Give us a chance to explain why we believe this. First of all, Judge Johnson is an excellent trial judge, as few lawyers will dispute, even those who think he's the devil incarnate. Hs runs a taut ship, but that's the way a court must be run. He is thoroughly grounded in trial procedure, having heard more controversial cases than any judge in the South and been blasted from all sides, including this newspaper from time to time.

But he's tough. He understands the realities of the southern problem and has, time and again, skillfully blunted the thrust of reckless and ridiculous Fifth Circuit rulings, as in the Montgomery school case.

He has walked the narrow ledge between school chaos on one side and open defiance of the Fifth Circuit on the other. He knows what will work and what will not, a knowledge that would be extremely useful in the hermetically sealed atmosphere of the U.S. Supreme Court. Although Johnson projects an obsidian hardness, this obscures the fact that, within the limits imposed on him from the appellate court, he has been as compassionate as the law allows in dispensing desegregation orders, Nixon's overriding domestic concern.

His long record of denunciations of those, white or black, left or right, who riot and take the law in their own hands is better reading than most of Spiro Agnew's statements on the same subject. And he stated years before Agnew was a household word even in Maryland. He was a law & order man before President Nixon.

Outside the South, he is regarded as a civil rights hero, not alone because he has done his duty as he saw it under the law but because of his abuse by George Wallace and the legal confrontations with Wallace as governor and, before that, circuit judge.

Those who are by now apoplectic over the very idea that a newspaper published in the Cradle of the Confederacy, one which has been Johnson's severest critic on occasion, would suggest that this integrating, carpetbagging, scalawagging, et cetera is fit for the Supreme Court should count to 500 and reflect:

There are three federal districts in Alabama—Northern (Birmingham), Middle (Montgomery), and Southern (Mobile). Taking the school issue alone, which of these districts have been hit by the toughest orders from the Court of Appeals? The Birming area and Mobile, right?

Why? Because the judges in those courts attempted to skirt the law of the circuit, and deliberately defied it in some cases.

The inevitable result was appellate overkill, as in the Jefferson decision of Dec. 29, 1966, taking virtually all authority away from district judges, who knew the problem best. Montgomery, by comparison, is not a disaster area because Johnson demanded and got steady, slow evolution rather than sudden revolution.

The appellate court has let him alone, in the main, while rocketing missiles at the other districts. Result: these areas are worse off by far than we are.

Of course, nobody knows how a lower court judge would perform on the Supreme Court. At best, it's a guess based on the probability theory of jurisprudence. But it is our belief that a Justice Johnson could bring some sanity to the high court by virtue of his regional experience and expertise here in the eye of the hurricane.

Strom Thurmond would throw a fit, joined perhaps by both Alabama senators and all congressmen. As we said, it would be hard to sell. Even so, intellectual honesty compels finally saying in print what we have been saying in private since the timely exit of Abe Fortas.

Johnson is a realist. His attitudes and philosophy have been forged in the crucible of real events, real people, real passions and real problems—not in the pale glow of lawyers' briefs which the Supreme Court sees. In most instances, he has taken an uncharted middle course and endured the fury from all sides. It has been a thankless job, subjecting him to villification by many whites and some blacks, to say nothing of actual threats.

If Judge Johnson really wants the job, he probably won't appreciate this. That's his problem. At the same time, we know Wallace will use this to stuff us under that silly bed sheet again. That's his problem. It happens to be an honest belief arrived at over many months. Surprisingly, many to whom we have broached this argument in conversation were first aghast and then grudgingly agreed there might be something to it. Of course, some merely rejoiced at the thought of "getting him out of Montgomery and Alabama."

Johnson is not likely to get the nod. Nixon would not like the job of trying to persuade the South that Johnson had followed the law and, in many cases, tempered and altered it. But he has. Prior to the Montgomery school decision, we confidentaly expected a disastrous order and wrote many thousands of words about the intolerable Fifth Circuit mandate.

Johnson made it tolerable—not to everyone, but to the city as a whole. Although many will never accept it, even they know that Johnson could have made it far worse. The general reaction was one of relief, as in previous years when the Fifth Circuit was issuing direct orders to courts which attempted massive resistance and brought massive defeat.

We doubt that Johnson is a serious prospect for the Fortas seat if Carswell is quietly put to rest. More's the pity: being invulnerable to charges of "racist" and "southern reactionary," he might shake the court to its senses and, in the process, test his steel on the North. Of one thing we are certain: he could not be bullied. Not by other Justices, civil rights firebrands, by the Eastern establishment or public opinion. We would expect that he would perform on the Supreme Court as he has on the Montgomery district court, heedless of pressure and popular outcry.

We are not saying he would he a fine Confederate on the high court. He would be ussless to the South if he were. What we are saying is that he knows the situation, would be free to go his own way (as Carswell would not) and might exert some influence on a court that could benefit by the experience of a scarred veteran of the southern campaign.

If Carswell does expire, Nixon's only alternative may be to look outside the South for a judge who knows nothing and cares less of southern problems.

[From the St. Petersburg (Fla.) Times, Mar. 27, 1970]

THE NOVEL OATH: "CARSWELL QUICKLY AGREED"

In weighing the Supreme Court nomination of Judge G. Harrold Carswell, the U.S. Senate has failed so far to consider one of the most significant incidents in his career.

Before the vote comes up at 1 p.m. April 6 on the growing sentiment to recommit the nomination to the Judiciary Committee, conscientious senators ought to ponder Carswell's willingness to take a strange oath back in 1958.

The incident took place at a sparsely attended committee hearing on March 26, 1958. An Associated Press news report appeared in The Times the following day, and is reproduced in the adjoining column. We noticed the clipping when researching our first editorial on the Carswell appointment, and described it on Jan. 20, 1970.

Now, Sen. Joseph D. Tydings, D-Md., and Sen. William Proxmire, D-Wis., have shown an interest in the incident.

It is easy to understand why Sen. James Eastland, the Mississippi segregationist who was the only senator present at the 1958 hearing, would demand this strange oath. The South, especially Mississippi, still was defiant in its resistance to integration. Clearly Eastland hoped to paralyze the federal judiciary by demanding that every new judge renounce in advance the legal power to pass on the constitutionality of congressional acts. Eastland's purpose, we said in 1958, was "to secure a promise, possibly morally if not legally binding, upon federal judges not to implement any civil rights matters."

The Associated Press reporter described Carswell's reaction to the oath request in these words:

"George Harrold Carswell quickly agreed and took the oath as proposed to him by Senator Eastland . . ."

How could any trained attorney, much less a nominee for a federal judgeship, agree quickly to an unorthodox, illegal oath that would destroy the constitutional separation of powers?

The only answer we have is that the hurried oath-taking fits into the opportunistic pattern of the several changes in Judge Carswell's convictions. Running for the Georgia Legislature in 1948 and chartering a white-only Tallahassee club in 1956, he is a racist. Testifying before the Senate on his high court nomination, he is a civil libertarian. Taking the Eastland oath, he agrees to be a eunuch judge. Before the same committee this year, Carswell quotes the late Justice Benjamin Cardozo that "There is an inescapable grain of lawmaking power within the judge."

In 1958, we called the incident of ths novel oath a "threat to the integrity of the courts."

It is still that, and even more.

It is a reason for senators who place principle above either opportunism or party to vote the Carswell nomination back to the committee that failed to investigate the events of March 26, 1958.

[From the St. Petersburg (Fla.) Times, Jan. 26, 1970]

COURTING THE SOUTH WITH JUDGE CARSWELL

President Nixon's nomination of Judge G. Harrold Carswell of Tallahassee to the U.S. Supreme Court was more confirmation of his Southern political strategy.

The President is using his Supreme Court appointments against the political threat of George Wallace.

That may be clever politics, but it is a poor way to select lifetime appointees to the nation's highest court.

Most Floridians would like to give their unreserved endorsement to Judge Carswell. For many, it will be impossible, for three reasons:

He is not widely known outside Tallahassee. Aside from being a Southerner, his qualifications for the highest court are difficult to ascertain.

He does not have a good record on civil rights. One study of his decisions in civil rights cases ranked him 23rd among the 31 judges of the circuit. The National Association for the Advancement of Colored People opposed his recent elevation to the appeals court.

Judge Carswell has not shown the strength and independence needed on the high court to maintain its independence.

In an extraordinary Senate committee meeting in 1958 on Carswell's initial court appointment, Sen. James Eastland, the Mississippi segregationist, demanded that Carswell take a second oath agreeing not to rule unconstitutional any law passed by Congress.

Surprisingly, Judge Carswell did not decline. As the Associated Press reporter described it at the time:

"George Harrold Carswell quickly agreed and took the oath as proposed to him by Senator Eastland."

In 1958, we called this a "threat to the integrity of the courts." It remains that today.

Members of the Senate who believe in the separation of powers under the American political system will need to be convinced that Judge Carswell possesses the strength to defend the independence of the judiciary.

A judge who kneels quickly to Sen. Eastland would seem to be a poor defender of the integrity of the Supreme Court.

[From the Honolulu (Hawaii) Star-Bulletin, Mar. 27, 1970]

STRIKE TWO?

When Clement Haynsworth was rejected for the Supreme Court and President Nixon telegraphed his intention to find another Southerner for the assignment it seemed sure that the No. 2 choice—whomever he might be—would be confirmed.

It seemed sure both because it was believed the President would find a nominee who was impeccable and because the Senate would not want another bruising battle with the President.

Discovery of a 20-year-old segregationist speech created some setback for the subsequent nomination of G. Harrold Carswell but this was old and quickly repudiated by Carswell. No man should be condemned forever for thoughts expressed 20 years earlier, and Carswell still seemed sure of confirmation.

Now doubts about Mr. Carswell's commitment to civil liberties have been joined by a far more pervasive doubt—Judge Carswell is mediocre. Even men who admit mediocrity in themselves see no place for it on the Supreme Court, Sen. Hruska notwithstanding.

The heightened scrutiny of Judge Carswell has done nothing to counter this criticism—rather the reverse. President Nixon now seems in danger of a second rebuff.

A rebuff, in fact, might be better for the court than a narrow confirmation that would leave a sitting justice (and the court) under a cloud.

President Nixon has good reasons well beyond selfish political ones for wanting a respected Southerner on the court. Such a justice—particularly if he were in the majority on crucial civil liberties decisions—could help to weld national unity.

Whether and where Mr. Nixon will find such a justice if Mr. Carswell is rejected is an interesting question. If he is found, the President will certainly want to know from the Justice Department why he wasn't found sooner.

[From the Honolulu (Hawaii) Advertiser, Mar. 26, 1970]

CARSWELL—NO

Winston Churchill once called the U.S. Supreme Court "the most esteemed judicial tribunal in the world." Well it might be.

Certainly, the high court has been an especially critical factor in American life in the last few decades. It should be even more so in the late 1900s as the rate of change in American society increases and with it the need for responsive laws and interpretation of the Constitution.

Government will either change peaceably and intelligently or be destroyed.

In this context, some feel that only the President has a more difficult and responsible position than a justice on the U.S. Supreme Court.

A justice must cast a vote on more than 3,000 cases a year, listen to arguments on 120 cases and write a dozen or more full-dress opinions.

Right now, more than a dozen very important cases have been delayed because the court, with only eight justices sitting, seems to be at a 4 to 4 impasse.

These cases involve a law dealing with anarchy, the death penalty and especially its relation to interracial rape, laws for punishing protesters, the Fifth Amendment provision against self-incrimination, new uses of electronic eavesdropping, obscenity laws, and the legality of search and seizure action in narcotics cases.

The new justice may well cast the deciding vote on these, as well as countless other matters to come before the Supreme Court in the 1970's.

This more than anything, is why there is growing opposition to President Nixon's appointment of G. Harrold Carswell.

For the longer the debate has gone on the weaker his case has become. There has been a growing list of prominent lawyers and law-school professors opposing Senate confirmation.

Cruel as it may be, the judgment is that this is a mediocre man being boosted far above his intellectual level to one of the most important jobs in the nation.

Even his supporters are hard put to defend him, as might be noted from the William Buckley column on the opposite page.

Senator Roman Hruska, one of Carswell's chief backers, himself made the point. "There are a lot of mediocre judges and people and lawyers, and they are entitled to a little representation, aren't they?"

This has given rise to all kinds of jokes about the need for a justice to represent the pot smokers or dropouts or for US. senators elected to represent mediocrity.

But humor fades in the face of duties of a Supreme Court justice.

It's obvious President Nixon wants a Southern conservative Republican. Although many don't agree on such quotas, the President's right to shape the Supreme Court more towards his philosophy is generally conceded.

But, beyond that right, he has a duty to get the best Southern conservative Republican available. There are some top men in this category, including some deans of Southern university law schools. Carswell is far below them—too far.

President Nixon entered office talking of appointing "extremely qualified men" to the court. Yet the best being said about Carswell is that he is qualified to represent mediocrity.

The U.S. Senate should reject this philosophy.

[From the Salt Lake (Utah) Tribune, Feb. 5, 1970]

CARSWELL AND THE COURT

When the Senate refused to confirm Judge Clement F. Haynsworth as a justice of the Supreme Court it was generally conceded that President Nixon's next appointee, whoever he might be, would probably be confirmed with a minimum of fuss.

That seems to be the way it is working out. Judge G. Harrold Carswell's judicial career could hardly be called distinguished. Civil rights groups and individuals have attempted, with some success, to show that the judge still harbors anti-Negro sentiments he has public disavowed. The net effect has been to display the nominee in an unfavorable light but one of insufficient candlepower to illuminate a determined fight to bring about his rejection by the Senate. After the Haynsworth battle nobody seems to have the stomach for another.

So Judge Carswell will probably be confirmed, barring disclosure of some damaging facets of his career that escaped the usual Justice Department check and the intense prying of those who strongly oppose the appointment. What then?

Since the Supreme Court is both the voice and the symbol of the aspirations of the nation, it follows that its membership should be drawn from citizens of the highest ethical and legal attainments. But that has not always been the case as a check of appointments over the years will show.

Appointees who were widely hailed have turned out to be disappointments and some that were accepted without enthusiasm have blossomed into legal giants. Men considered as political and philosophical kinsmen by the presidents who named them have taken their places on the high bench only to undergo 160 degree changes of mind.

On his appointment in 1953, former Chief Justice Earl Warren was regarded as an amiable politican who would exercise judicial authority with extreme caution. Instead Warren emerged as an activist dedicated to the idea that courts must guard individual liberty against the intrusions of government power. When Franklin Roosevelt named Harlan F. Stone as chief justice in 1941 the appointment was almost universally hailed. But Stone proved to be ineffective as chief justice. History supplies other similar stories.

Even if Judge Carswell neither flips nor flops but serves out his lifetime tenure without distinction, the performance will be closer to the norm than apart from it. Though we would greatly prefer that President Nixon had looked harder and set his standards higher, we cannot view Judge Carswell's confirmation as a major tragedy. He isn't the best but he probably isn't the worst either. And there is always the possibility that, like some wines, he will grow better in the barrel.

[From the Lewiston (Idaho) Morning Tribune, Mar. 24, 1970]

G. HARROLD CARSWELL

The erosion of support for G. Harrold Carswell, President Nixon's latest nominee for the Supreme Court, continues, although even the nominee's foes still agree that he is likely to be confirmed.

One of the latest to announce his opposition to confirmation is Idaho Sen. Frank Church, who said yesterday he found the judge "indubitably deficient."

Senator Church seems to have come to his decision primarily on the basis of Judge Carswell's record on the bench and not because he was offended by the judge's evident racism or his lack of candor in appearing before the Senate Judiciary Committee.

As for the Carswell record, Senator Church told the Senate, "One searches in vain for a mark of excellence. We have yet to be shown

a single decision he has handed down that reveals any exceptional qualifications of learning, any flash of brilliance, or any special insight. Taken altogether, Judge Carswell's service has been utterly pedestrian in character."

This is the potent charge against the Carswell nomination: that the nominee may be good enough for the Fifth Circuit Court of Appeals (many lawyers dispute even that) but that he is not good enough for the United States Supreme Court. If one feels this way about him, his allegedly racist turn of mind and his little deception over the Tuttle letter (see adjoining editorial) become relatively insignificant. Much can be forgiven a man of brilliance and sharp of insight, but it is fruitless to justify minor faults of character in a man with only pedestrian abilities—especially if one is considering him for the most honored bench in the world.

[From the Lewiston (Idaho) Morning Tribune, Jan. 24, 1970]

A Man's Right To Change His Mind

Most of us agree that a man has the right to change his mind—even on an issue as basic as racial equality; many Americans have in recent years. But when he is a nominee for the Supreme Court, and must put his past under senatorial scrutiny, he is certain to face difficulty.

This is the situation involving U.S. circuit Judge G. Harrold Carswell of Florida, who has been chosen for the high court vacancy by President Nixon. In 1948 Carswell was running for the Georgia Legislature when he said in a political speech that "segregation of the races is proper and the only practical and correct way of life in our states. I have always so believed and shall always so act."

Today Carswell says he is revolted by his political philosophy of 22 years ago, that it is inconsistent with his record of service in the judiciary and is in direct opposition to his personal views on the races.

But because of what he believed in 1948, Judge Carswell will be subject to criticism in the Senate, which last year rejected Nixon's first choice for the vacant seat. Judge Clement F. Haynsworth of South Carolina.

There is, however, a sharp difference in the two cases. Haynsworth's nomination was turned down because of his financial dealings while sitting on the bench. Carswell, on the other hand, contends he rejected racism before entering public service 17 years ago—a claim he will have to prove before the nomination comes to a vote in the Senate.

If what Carswell says is true, then Nixon can rightly argue on the basis of this southerner's record of public service that the Senate has no substantive grounds to reject his nomination for holding what was the prevalent view on segregation in the south 22 years ago.

In the nominations of both Haynsworth and Carswell, however, two disturbing truths are evidence. First, that the President has an undisclosed commitment to someone (racist Sen. Strom Thurmond is most often mentioned) to seat a conservative from the South on the court; and second, that it is difficult to find a qualified jurist in the South who, at some time in his past, hasn't followed the segregationist line.

[From the Boise (Idaho) Statesman, Mar. 21, 1970]

A Dismal Situation for All Concerned

Sen. Roman Hruska of Nebraska didn't help the cause of Judge Harrold Carswell when he said that a mediocre record should not disqualify him because mediocrity should be represented on the Supreme Court. It is a dismal situation when supporters of the nomination feel compelled to adopt such logic. It is sad for Judge Carswell, for President Nixon, for the Senate and for the country.

Even though many senators are filled with doubts because of the nominee's undistinguished record, he will probably be nominated.

It is difficult to understand why President Nixon, after the rejection of Judge Haynsworth, turned to Judge Carswell. There should be better qualified men in the South.

Some of the senators who voted against Judge Haynsworth will feel they have little choice. It is hard to vote against a President's choice for the court a second time. Yet if they had the choice to make, they would prefer Haynsworth to Carswell.

President Nixon played a bad trick on the Senate after the Haynsworth defeat. Unfortunately, he may also have played a bad trick on the country and himself. The nomination implies a lack of presidential concern for the caliber of the court or the caliber of its decisions.

[From the Omaha (Nebr.) Sun]

He Gave Up His Responsibility

We ran across an editorial excerpt that added a new and damning note to the Carswell matter. The editorial said:

"In an extraordinary Senate committee meeting in 1958 on Carswell's initial court appointment, Sen. James Eastland, the Mississippi segregationist, demanded that Carswell take a second oath agreeing not to rule unconstitutional any law passed by Congress.

"Surprisingly, Judge Carswell did not decline. As the Associated Press reporter described it at the time:

" 'George Harrold Carswell quickly agreed and took the oath as proposed to him by Senator Eastland.'

"In 1958, we called this a 'threat to the integrity of the courts.' It remains that today.

"Members of the Senate who believe in the separation of powers under the American political system will need to be convinced that Judge Carswell possesses the strength to defend the independence of the judiciary.

"A judge who kneels quickly to Sen. Eastland would seem to be a poor defender of the integrity of the Supreme Court."

This excerpt was part of a longer editorial in the St. Petersburg, Fla., Times. Both the quoted editorial and the 1958 editorial were written by a Southerner. Neither editorial has been refuted or denied by Judge Carswell or his supporters.

In its simplest terms, this 1958 incident meant that Carswell willingly abandoned one of the principal responsibilities of his office, which is to rule on the constitutionallty of laws passed by Congress.

One might be puzzled as to why opponents of the Carswell nomination have not raised this issue against President Nixon's second choice. The best explanation we have heard is the one advanced by the St. Petersburg editorialist, Robert Pittman: An issue involving the limitation of Senate power is not likely to sway the votes of many Senators.

But to us, the knowledge of Carswell's surrender to Sen. Eastland is a substantial piece of evidence against him. We hope the Senate will reject him, that President Nixon will regard his obligation to the South as discharged, and that he will nominate a superior jurist to the Supreme Court.

[From the Cleveland (Ohio) Plain Dealer, Mar. 18, 1970]

Mediocrity on Supreme Court?

Sen. Roman L. Hruska, R-Neb., defending the nomination of Judge G. Harrold Carswell to the Supreme Court, suggests the Senate ignore those critics who contend Carswell lacks the legal achievement and eminance in law expected of a Supreme Court justice.

"Even if he were mediocre," said Hruska, "there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises and Frankfurters and Cardozos."

Of course, not all justices have the brilliance of the distinguished jurists Hruska mentions. But we do not agree with Hruska's implication that a president, with the advice and consent of the Senate, should set about deliberately to find a mediocre judge to balance a court presumably overburdened with sharp legal minds.

Quite the contrary. We think a president should always strive to nominate a man who has attained some eminence in law, and we think the Senate legitimately should examine the nominee's judicial competency, as well as his ethics.

There is a dispute about Carswell's legal qualifications. A committee of the American Bar Association twice looked at Carswell's record and twice found him qualified.

On the other hand, an ad hoc committee of 300 prominent lawyers and law professors said Carswell lacked legal and mental qualifications. A similar conclusion was reached by the Ripon Society, a liberal Republican group, which examined Carswell's record during 11 years as a U.S. district judge and found that he had functioned "signicantly below the average level of competence" of other U.S. district judges.

Carswell's decisions were reversed twice as often as those in a random sampling of decisions by other federal trial judges, the Ripon Society found. It concluded that Carswell is "seriously deficient in the legal skills necessary to be even a minimally competent justice."

This criticism raises questions about how Carswell might perform as a Supreme Court justice, questions that the Senate has a duty to ponder.

[From the Dayton (Ohio) Daily News, Mar. 10, 1970]

Statistics Show Carswell To Be a Mediocre Judge

The Senate vote on G. Harrold Carswell's nomination to the Supreme court is expected this week or next. It is generally assumed that Judge Carswell will be confirmed. That is a shame.

The man's racism has been documented at points throughout his adult life. It has also been shown that his personal prejudice has slopped over into his professional life as a lawyer and his official performance as a judge.

Suppose, however, that Judge Carswell experienced a sudden and profound change of heart after President Nixon nominated him to the Court. Suppose that he was entirely sincere when he testified that he was no longer a racist. Is he otherwise qualified?

The Ripon society, the liberal Republican organization, says no. A statistical study of Carswell's decisions has convinced the society that his record "was significantly below the level of the average federal district court judge."

During his 11 years as a U.S. District judge in Florida, 84 of Carswell's trial decisions wers published in official legal reports. Of these 17, or 11.9 percent, were appealed. Fifty-eight percent of the appealed decisions were reversed.

A random sampling of 400 court decisions in the same 11-year period showed that only 5.3 percent of trial decisions were appealed, and of these, only 20 percent were reversed. Thus, Carswell's record is significantly below average.

The high number of reversals might be excused if some of Carswell's rulings were original interpretations of law—daring attempta at landmark decisions. But if there is any theme central to Carswell's work, it is mediocrity. His colleagues have rarely quoted his decisions in making their own judgments.

Judge Carswell became a U.S. attorney and then a federal judge for largely political reasons. He was a "Democrat for Eisenhower" in one presidential election, and afterwards a faithful Republican. If he becomes a member of the Supreme court, it will also have been for political reasons. By any other

standard—ethical, intellectual, professional—he does not measure up.

[From the Dayton (Ohio) Journal-Herald, Mar. 25, 1970]

DROP CARSWELL NOMINATION—SENATE SHOULD START ANEW ON APPOINTMENT

We have had the hope—shared by many, we believe—that the Carswell nomination would go away. We wish he hadn't been nominated, not so much because he is an outright bad nominee but because he is not an outright good one, and the Supreme Court deserves better.

Our temptation after the Haynsworth debate was to shrug the Carswell nomination off as no more of an outrageous political move than has been traditional with occasional appointments to the court. But as the matter has dragged on, the press of conscience to say what we must has become irresistable.

The nomination of Harrold F. Carswell is a puzzling move on the President's part. Judge Carswell is neither a distinguished jurist, a distinguished politician, a distinguished thinker nor a distinguished lawyer. His principal distinction is as a perfunctory operative whose mind blows with the prevailing wind.

We understand the President's objective of a Southern "strict constructionist" on the high court. We do not ourselves espouse the so-called Southern philosophy on many matters nor would we like to see it dominate the court, but we think it deserves representation on the Supreme Court and that the systematic exclusion of that viewpoint has undermined the court's credibility.

What the President has actually done, however, is to make representation of Southern strict constructionism virtually meaningless by naming a man who has neither the knowledge, the record nor, perhaps, the fortitude to meaningfully represent the considerations his nomination is supposed to reflect.

The whole affair is bad news. The Senate would do well, despite what may be its feeling of guilt over the stridency of the Clement F. Haynsworth controversy, to allow everyone to start by rejecting the nomination of Judge Carswell. And if the President wants what he says he wants—and we think he does—he would do well to pick a man capable of carrying out that function.

[From the University of Cincinnati (Ohio) News, Feb. 27, 1970]

CARSWELL I: JUDGING THE JUDGE

(By Jon Reich)

Nixon's nomination to the Supreme Court of Judge G. Harrold Carswell has been reported out of the Dixiecrat-Republican dominated Senate Judiciary Committee (SJC). Confirmation by the Senate looms around the corner.

It will be a tragedy for the nation. Not merely because the manifestly incompetent and bigoted Carswell is an insult to the Court and country alike, but because of the wider implications. This deserves fuller treatment. First let's examine Carswell's fitness for the Supreme Court bench.

He has violated judicial ethics. This is the bugaboo, you'll remember, that foiled Fortas and hung Haynsworth. At first, however, it appeared that Carswell was free of such taint. But these facts have come to light:

In 1959, and again in 1968, Carswell decided cases in favor of corporations in which large intereste were held by Ed Ball, a powerful Florida entrepreneur. Ball has been called "an old family friend" of Carswell's. In 1964 Carswell dismissed a suit against a bank; his father-in-law was then a director of the bank and Carswell had a loan from it.

His judicial conduct has been deplorable. In 1956, while a U.S. Attorney, Carswell helped organize the takeover of a public golf course by a private group. This was shortly after a Supreme Court ruling which would have opened the facility to blacks. The group's—and Carswell's purpose—was to keep the course lily-white.

Carswell lied about this matter when he testified before the SJC.

He has violated federal law while on the federal bench. In two separate instances in 1964, Carswell connived to manipulate legal proceedings in order to harass and imprison civil rights attorneys and voter-registration workers, whom he denounced as "Northerners."

The details are subtle; suffice it to say that Title 18, Sec. 242 of the U.S. Code makes it a criminal offense to deprive a person of his rights "under any color of the law" precisely what Carswell did. But he refused to answer questions about it directed to him by the SJC.

He is a racist. In December he gave a speech to the Georgia Bar Association. Its racist overtones offended several colleagues, as did the shabby joke he told about "a dark-skinned person."

While U.S. district judge, Carswell on July 12, 1966, sold some resort property with a restrictive clause that stipulated occupants had to be whites. (White House Press Sec'y Ron Ziegler defended this by saying: "this particular situation is not isolated at all.")

From 1956 to 1963, Carswell was an officer of the housing corporation for the Florida State chapter of Sigma Nu fraternity. During that time, and in fact until 1968, the chapter had a clause excluding Negroes and Orientals from membership.

In 1948 Carswell publicly stated, "I yield to no man . . . in the firm, vigorous belief in the principles of white supremacy, and I shall always be so governed . . . I believe that segregation of the races is proper, and the only practical and correct way of life in our states. I have always so believed, and I shall always so act."

He is incompetent and unfit for the bench. Carswell's civil rights rulings have been consistently overturned by higher courts. His judicial opinions are described as "pedestrian." Professor Edward Padgett of Poli. Sci. told me that Carswell "is not . . . of the first order of ability. Haynsworth appears to be superior!"

The most telling judgment was perhaps that of highly respected Derek C. Bock, Dean of Harvard Law School, who wrote:

"The public record of Judge Carswell's career and accomplishments clearly does not place him within even an ample list of the nation's more distinguished jurists. The appraisals that I have heard from lawyers who are familiar with Judge Carswell do not contradict the paper record. On the contrary they suggest a level of competence well below the high standards that one would presumably consider appropriate and necessary for service on the court."

If there were any lingering doubts as to the sincerity and intentions of the President who declared he would "bring us together," they've been dispelled. Nixon has called into question his own fitness to lead by making an appointment so capricious and ghastly.

The political implications alone are frightening. But the social implications are truly terrible. At a time when the justness and fitness of our whole political system are being called into question, whom does the Carswell appointment reassure? How many dissident blacks, and whites, will thus be persuaded to "have faith in the system"?

There are some large issues here, and I mean to explore them. But time is passing. The list of Senators opposing Carswell is growing, but too slowly. (Our own Sen. Young has declared against.) Virtually all of you reading this will be eligible to vote when Sen. Saxbe comes up for a re-election in 1974. WRITE A LETTER. Or just a postcard—four little words will do: THUMBS DOWN ON CARSWELL. Do it today. Be the first on your block to spend six cents for justice.

[From the Chicago Sun-Times, Mar. 18, 1970]

NO PLACE FOR "C" STUDENTS

Lawyers often employ a strategy in a legal suit called "confession and avoidance." If there is a weakness in a case, the strategy calls for admitting it and then trying to avoid it. In some arguments in and out of court, debaters often try to turn a weakness into an advantage, sometimes producing weird results.

The argument about the nomination of Judge G. Harrold Carswell to the U.S. Supreme Court has taken that turn. His mediocrity is admitted by his supporters. And it is being advanced by some as the very reason he should be put on the highest court in the land. Such arguments defy not only reason but derogate the dignity of the court itself.

In calling upon the Senate to reject the Carswell nomination last Sunday, we said on this page that the high court should not be a training ground for mediocre judges, who by some alchemy, might be transformed into great justices.

On Monday, Sen. Roman L. Hruska (R-Neb.) who is leading the floor fight for Carswell, tried to argue that the Supreme Court needs mediocrity.

Hruska didn't even hold out the hope that Carswell might grow in the office. The ranking GOP member of the judiciary committee said:

"Even if he were mediocre, there are a lot of mediocre judges, people and lawyers. Aren't they entitled to a little representation and a little chance? We can't all have Brandeises, Cardozos and Frankfurters and stuff like that there."

Never mind that President Nixon, in his campaign speeches of 1968, said he wanted to appoint men like Cardozo and Oliver Wendell Holmes. Never mind that Judge Carswell's rate of reversal is three times the national average, which means his legal superiors found his mediocre legal thinking faulty to an excess. In the name of politics and giving Southern conservatives a voice on the high court, Hruska would promote Carswell over his legal superiors.

Sen. Russell B. Long (D-La.), who supports Carswell as a fellow Southerner, argues that too much brilliance on the Supreme Court has been a mistake. He would prefer a C student on the high bench to an A student.

How far politicians will go in their loyalty to party or to regional prejudices!

Small wonder that many in the younger generation reject the standards of their elders. The nine men of the Supreme Court can shape the destiny of the nation and affect the lives of every individual. It demands the best of America's brains, individuals with Solomonesque stature and with great understanding of their nation and all its people.

Mediocre lawyers and C studente have a place in the American scheme of things, but not on the Supreme Court.

[From Chicago Today, Mar. 9, 1970]

"NO" ON JUDGE CARSWELL

When President Nixon last January announced he was nominating Judge G. Harrold Carswell of Florida to the United States Supreme Court, we predicted that Carswell would be confirmed. The prediction was based on one fact—that a careful scrutiny had turned up none of the embarrassing financial ties that had led to the rejection of Judge Clement F. Haynsworth—and one assumption that seemed reasonable. This was that Carswell, aside from being a southern Republican, must have had something on the ball personally; some distinguishing quality or ability as a jurist that had caused Mr. Nixon and the justice department to pick him, rather than some other judge.

This assumption appears to be wrong.

Carswell's record as a jurist is unusual in only one way: It would be hard to find another federal judge with such a thoroughly undistinguished career. During his 11 years on the federal bench, Judge Carswell's contribution to legal thinking has been zero. He has written no learned articles, handed down no rulings in any way remarkable for insight or knowledge of law.

According to statistics compiled by the Ripon society, a liberal Republican group, Carswell's record before he became an appellate judge last year is not just mediocre, but strikingly below average.

Of 84 trial-court decisions made by Carswell and printed in official reports, the society found, 17 were appealed and 10 reversed. Thus 11.9 per cent of his printed decisions, and 58.8 percent of those that were appealed, were reversed by a higher court. In a random sampling of 400 district court decisions over the same 11-year period, the comparable figures were 5.3 per cent and 20 per cent. Carswell, in other words, was reversed on appeal nearly 3 times as often as the average.

Carswell's critics have zeroed in on a few actions and speeches of his that can be taken to indicate racial prejudice. He has disclaimed such feelings, however, and we willingly accept his assurance. We are not looking for reasons why he should be rejected as a Supreme Court justice; we have looked earnestly for some reason why he should be confirmed. And we can find none.

There is no point in attacking Judge Carswell, who didn't ask to be nominated. The insistent and alarming question is what kind of standards are guiding this administration in its choices for the Supreme Court. And the short answer is that the standards are just not good enough.

The Senate should serve firm notice on Mr. Nixon and Atty. Gen. John N. Mitchell that they cannot go on picking names out of a hat for Supreme Court—that they will have to take this immense responsibility seriously enough to choose qualified men, and to make sure they're qualified before asking the Senate to confirm them.

Judge Carswell's nomination should be rejected.

[From the Christian Science Monitor, Mar. 26, 1970]

THINKING AGAIN ON JUDGE CARSWELL

President Nixon has a number of strong and logical arguments to support his desire to have a "strict constructionist," a "conservative" and a "Southerner" appointed to the present vacancy on the Supreme Court. He has very few such arguments, however, to support the elevation of Judge G. Harrold Carswell to that high post. We therefore suggest that the President himself reconsider the Carswell nomination, and that the Senate recommit the nomination to its Judiciary Committee for further hearings on Judge Carswell's legal and personal fitness for so exalted an honor.

We agree that there is reason to believe that, in some ways, the present Supreme Court is overbalanced towards liberalism. Although during the past two decades the high court has rendered a number of admirable milestone decisions, nonetheless, there is evidence that court thinking has, at some points, gone too far and eroded national standards, notably in the areas of crime and pornography. A thoughtful conservative could be influential in restoring greater kilter to the balance.

But such a conservative must be in a position to make an insightful and persuasive contribution to the nation's ongoing legal thinking. We see nothing in Judge Carswell's record to lead us to believe that he is this kind of deemer. His judicial record is middling. His racial attitudes, while he has a perfect right to hold them, are not such as to inspire confidence that he will be of much help in extricating America from its deep racial dilemmas.

To this has now come the case of Judge Elbert Tuttle. A onetime chief judge of the Fifth Circuit Court of Appeals, and thus Judge Carswell's immediate superior, Judge Tuttle stated that he would testify on Judge Carswell's behalf. This offer was later withdrawn, but it appears that Judge Carswell did not inform the committee of this fact, leaving the latter to believe that Judge Tuttle's support remained behind him. As one national columnist rightly says, this involves "good faith, perhaps even deliberate deception."

Under such circumstances we do not see how either the President or the Senate can conceivably go ahead with the Carswell nomination. It should be taken out of the full Senate's hands and be put back where it can be studied as thoughtfully as such a major appointment must be.

[From the Boston (Mass.) Globe, Mar. 19, 1970]

WITH FRIENDS LIKE THESE . . .

With supporters like Sens. Russell B. Long (D–La.) and Roman L. Hruska (R–Neb.), solidly in his corner "telling it like it is," the growing opposition to Judge G. Harrold Carswell's confirmation as an associate justice of the Supreme Court should have it made.

No? Well, then, hear their encomiums for a nominee already described by others as the "least qualified in a century," not qualified even for his present seat on a lower court.

Sen. Hruska (pulling out all the stops): "There are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance? We can't have all Brandeises and Frankfurters and Cardozos."

Sen. Long (going Sen. Hruska one better): "Wouldn't it be better to have a B student or a C student instead of another A student? A judge doesn't have all that brilliance to satisfy this senator."

Add this unstinted praise to senior Federal Judge Elbert P. Tuttle's affirmation that, after studying Judge Carswell's attitude on equal justice," he "could not in good conscience" testify in Judge Carswell's behalf, although he earlier had agreed to do so. And shouldn't this, then, be the final frosting on the Carswell cake? When his friends so frankly boast that Mr. Carswell is mediocre, maybe just a C student, is there anything more that his opposition needs to say?

NEW ENGLAND CAN SAVE THE COURT

With the defection of Sen. George Aiken (R–Vt.), it now appears that the Senate vote to recommit to the Judiciary Committee the nomination of Judge G. Harrold Carswell to the Supreme Court could hinge on the votes of three New England senators—Sens. Winston Prouty (R–Vt.), Margaret Chase Smith (R–Me.), and Thomas J. Dodd (D–Ct.). Seven others including Sens. Edward M. Kennedy, Edward W. Brooke and Thomas McIntyre (D–N.H.) will vote to recommit, as they should. Sen. Norris Cotton (R–N.H.) earlier had committed himself to Judge Carswell.

The vote is scheduled for Monday. And if recommital is voted down, Mrs. Smith and the Messrs. Prouty and Dodd, it is indicated, may be the determining factors in the vote to confirm or reject, a vote scheduled for Wednesday. They can save the day—and the Court.

By voting for recommital, or, this failing, against confirmation, they will be demonstrating their awareness of conclusive evidence that Judge Carswell, as his own Chief Justice in the Fifth Circuit has put it, "just isn't up to the job." By voting to confirm "the least qualified nominee in a century," they would be affrming the most demeaning and irrational assessment yet heard of the highest court's proper place in the American political system. This is the preposterous assessment by Sen. Roman L. Hruska (R–Neb.), a supporter of Judge Carswell, that a nominee's mediocrity should not be held against him and might even be in his favor. This would be an astounding affirmation for them to make, just as it was astounding for Sen. Aiken so to affirm.

Sen. Aiken's stated reason for his surprise support of Judge Carswell is that "President Nixon has a good record, and I will not be a party to embarrassing or downgrading him either at home or abroad." But this reason is as shallow as the reason given by the Senate Republican Leader, Hugh Scott. Mr. Scott will vote for Mr. Carswell "because the President nominated him." But neither Mr. Nixon nor the presidency is the issue. The issue is the downgrading of the Court. No senator owes the President blind allegiance. They do owe allegiance to the Court's integrity. They have sworn, as Sen. Brooke so ably has argued, to exercise their own best judgment under the advice and consent provision of the Constitution. They cannot uphold their oath and at the same time consent to a demeaning of the highest court in the land. At the very least, the Carswell nomination should go back to committee.

This is not only because recommitment is a legitimate and honorable device through which Republican senators can be spared reprisals for voting against the President's wishes, or, perhaps, White House orders. Sen. J. William Fulbright (D-Ariz.), himself a Southerner, has advanced other reasons which govern him and should govern others as well. These are the sundry allegations of racial bias and questions of competency raised since the earlier committee hearings. Sen. Fulbright wants these clarified. Considering their nature, it is a puzzle that Sen. Aiken could not wait for clarification, too. They include not only new evidence of the nominee's racial bias and incompetence, but even more alarming confusion between facts, as others have reported them, and Mr. Carswell's testimony under oath.

Even with important unanswered questions dogging the nomination, some Republican senators hesitate to reject Mr. Nixon's second consecutive nomination. But there are precedents for it. It has happened twice before, and, once, three successive nominations were rejected. The fault now, as in the prior instances, is the President's not the Senate's. There are competent men including Southerners from whom he could choose. Judge Carswell is not one of them. The Senate's duty is to the Court and its survival as a respected branch of government.

New England senators especially should remember that the seat to which Mr. Carswell have been nominated was once graced by one of the area's (and the nation's) most estimable citizens, the legendary Oliver Wendell Holmes. Then they should vote their conscience.

[From the Appleton (Wis.) Post-Crescent, Mar. 24, 1970]

THE EMBARRASSMENT OF CARSWELL

When the United States Senate rejected the appointment of Judge Clement Haynsworth to the Supreme Court, there were elements of both party politics and ideologies involved. Democrats and liberals could be expected to disapprove of a Republican conservative southerner. But the primary reason Judge Haynsworth was not accepted was a matter of ethics involving possible conflicts of interest.

Judge Harrold Carswell has no such handicap. He is not a wealthy man and never owned any stock in any company—in fact he has borrowed heavily to finance his rather elaborate home and standard of living. But upon his appointment, spokesmen for the Nixon Administration said that Judge Cars-

well's career and background had been thoroughly examined, presumably so that information like that which cropped up about Judge Haynsworth would not be dug up by others. We must wonder now exactly what sort of an investigation the Justice Department conducted.

There was first the matter of racial prejudice in a campaign statement Judge Carswell made 20 years ago. Although he has stated that he no longer holds white supremacist views, Sen. Edward Brooke pointed out in a floor speech that he has found nothing to indicate that Judge Carswell repudiates his earlier view, other than his current statement. There are charges that the judge was judicially hard on civil rights claimants and decided against them in 15 cases that later were reversed by higher courts.

A number of leading lawyers have requested the American Bar Association committee consider its approval of the nomination. Several hundred lawyers have signed a statement that Judge Carswell is not qualified even for the position he now holds.

But perhaps Judge Carswell's continued silence over the withdrawal of support by a retired judge of distinction in his own area, and in fact Judge Carswell's failure to point out to the Senate that the support had been withdrawn are even more serious because they indicate, at most, an attempt at deception and, at least, a lack of astuteness. How could Judge Carswell not have realized that probing senators and newsmen inevitably would have found out about Judge Tuttle's change of mind?

The investigative machinery of the Justice Department does not appear to be very thorough.

Many opponents to Judge Carswell's nomination have pointed out that there are many judges of distinction who take a conservative view and are strict constructionists. Whatever the outcome of the status of Judge Carswell, the failure by the Nixon Administration to nominate a man of really high caliber has brought unnecessary humiliation to two men who are not essentially evil.

[From the Milwaukee (Wis.) Journal, Mar. 22, 1970]

SENATE SHOULDN'T CONSENT TO CARSWELL NOMINATION

Some supporters of the nomination of Judge Carswell for the US Supreme Court, finding nothing else to extol in the man, are now driven to extol his mediocrity. Since many Americans are mediocre, as the case is put, they should have one of themselves on the court!

To state the premise is to demolish it. Resort to it depicts the poverty of any argument for Carswell's confirmation, and the desperation of his supporters as they contemplate the tide of conviction spreading across the land (outside the South) that he simply won't do.

Carswell's notorious white supremacy speech of 1948 has turned out to be inexcusable as a mere aberration of youth, conforming to the rules of southern white politics at the time. For he did not repudiate it by word or deed throughout his later career; in fact, he gave it life by many actions right down to the present. He now says himself that it was "a matter of convenience"—which only now has become convenient to repudiate.

Even if racial bias were deemed tolerable in a Supreme Court justice, however, lacking the proefssional competence demanded by the position cannot be. Neither can lack of "sensitivity to injustice"—a lack in Carswell to which many legal scholars have attested after studying his record as a US prosecutor and trial judge.

Law Dean Louis Pollak of Yale has concluded that Carswell's credentials are "more slender than those of any other nominee for the Supreme Court in this century." His "level of competence," says Dean Derek Bok of Harvard, is "well below the high standards that one would presumably consider appropriate and necessary for service in the court."

Prof. Gary Oldfield of Princeton: ". . . an obscure judge who has made no visible contribution to the development of the law. His chief qualification appears to be an abiding unwillingness to protect constitutional rights of black Americans." ". . . A judge who would rather risk bad law and repeated reversals than offend the feelings of local segregationists."

Carswell's record of foot dragging in civil rights includes 15 unanimous reversals by courts of appeal, in which he had persistently gone opposite to the guidance of higher courts in parallel cases. This shows him not to be even a conscientious judicial workman.

Danger that such a man may be confirmed stems from an inclination by most of the Republican senators who had blocked President Nixon in the Haynsworth case to feel that they should let him win this one. That puts political etiquette above the country's need for great jurists on the Supreme Court, which Nixon once acknowledged but now denies in practice.

Making Nixon a winner with Carswell would make the court and the country losers. If the role of the Senate to "advise and consent" means anything, it means that a Senate filling the role will not permit this to happen.

[From the St. Louis Post-Dispatch, Mar. 16–22, 1970]

WRONG FOR THE COURT

One of the opponents of the nomination of Judge G. Harrold Carswell for the Supreme Court has asked how any Senator who voted against Judge Clement Haynsworth for that post could go home and explain why he accepted Judge Carswell.

Explanations should not be easy. No doubt most Senators would rely on the point that they had discovered no potential conflict of interest regarding Judge Carswell, as they did against Judge Haynsworth. Yet this explanation would disregard a number of points in which the latter was the superior candidate for the high court.

There is first of all, Judge Carswell's record of obstructionism against civil rights progress. What was mildly questionable in the Haynsworth case is clear in the Carswell case: this judge consistently found against or attempted to delay desegregation actions. A judge so lacking sympathy with the law of the land and the absolute necessity for racial equality before the law has no place on the Supreme Court.

There is what a group of 400 prominent lawyers termed "a mind impervious to repeated appellate rebuke." The lawyers reviewed 15 cases in which Judge Carswell found against Negro or individual claims of rights; in every case his decision was reversed and reversed *unanimously* by a higher court. Is this the kind of record for a man to take to the highest court of all?

There is an evident lack of candor exceeding Judge Haynsworth's hazy recollections of his business dealings. What Judge Carswell insists he never realized was that the incorporation of a Tallahassee public golf course as a private course was done to further segregation. At the time the Judge helped to incorporate the club he was United States district attorney, and several federal suits were already under way in Florida to integrate other public golf courses. If Judge Carswell did not know what was going on, everyone else in Tallahassee seems to have known.

There is, finally, a record of unrelieved intellectual and judicial mediocrity which many attorneys find especially repugnant in a candidate for the highest court. How, they wonder, can a man who has contributed nothing to the law or to the study of the law take a place on a bench that has seated many of history's greatest judicial minds? How, they ask, can President Nixon so demean the court?

Lacking an answer to such a question, we may only observe that it is totally unnecessary to demean the third branch of government. If Mr. Nixon, fixed in his Southern strategy, wants to use the court to woo the South, he can easily find Southern judges, and conservative judges, who are far more distinguished, have far better judicial records and who have demonstrated far less indifference or hostility to the Constitution.

Simply because the President might have done better instead of worse, it should be difficult indeed for Senators who voted against Haynsworth to explain a vote for Carswell. On that point we would hope that more and more members would join the score or so of Senators now determined to stand against the Carswell appointment.

There is no excuse for complicity by the United States Senate in a wrong against the Supreme Court.

[From the Palo Alto (Calif.) Times, Mar. 18, 1970]

MEDIOCRITY KNOWS NOTHING HIGHER

With champions like those who spoke for him when the Senate began debating his nomination to the Supreme Court, Circuit Judge G. Harrold Carswell need not fear challengers.

"Brilliant . . . upside down thinkers" on the court are destroying the nation, Sen. Russell Long, D-La., said. He recommended a straightforward "B student or C student" like Judge Carswell.

Supporting Long's argument, Sen. Roman Hruska, R-Neb., said:

"Even if he were mediocre, there are a lot of mediocre judges and people and lawyers. Aren't they entitled to a little representation and a little chance? We can't have all Brandeises and Cardozos and Frankfurters."

True enough. Or Warrens or Hugheses or Holmeses or Taneys or Marshalls. But the dearth of such men does not excuse not searching for an outstanding jurist when a vacancy is to be filled.

(Speaking of Holmes, Sir Arthur Conan Doyle, creator of Sherlock Holmes, once wrote: "Mediocrity knows nothing higher than itself, but talent instantly recognizes genius.")

The Supreme Court is not an institution meant to be staffed on a representative basis. Would Senator Hruska like to be tried by a mediocre judge? Would he contend that idiots and morons, of whom there are many, are entitled to a little chance on the court, too? The peril of know-nothingism is growing.

Long's admission that Carswell's record on the bench is ordinary (some reviewers say it's below average), should spur senators with higher standards to look long and carefully. While at it, they might well weigh the prevalent impression that he is still a segregationist at heart.

[From the Red Bank (N.J.) Daily Register, Mar. 18, 1970]

SEN. CASE AND JUDGE CARSWELL

When Republican U.S. Sen. Clifford P. Case joined his colleague from New Jersey, Sen. Harrison A. Williams, Democrat, in announcing opposition to the nomination of Judge G. Harrold Carswell, he characteristically did it after extensive study.

He said he reserved his announcement until last Thursday so that he could go over the record of the Senate hearings and supplementary statements of others both in support and in opposition to Judge Carswell's elevation.

"On all the evidence," Sen. Case said,

"Judge Carswell does not measure up to the standard we have rightly come to expect of members of the Supreme Court. It is a standard exemplified by such men as Oliver Wendell Holmes, Charles Evan Hughes, William Howard Taft, Harlan Fiske Stone, Owen J. Roberts, Benjamin Cardoza, Earl Warren, John Marshall Harlan, William Brennan and Potter Stewart—all of them nominated by Republican Administrations in this century."

Thus, Sen. Case is in the ranks of a growing number of Republicans who seriously question why President Nixon selected a man whose service on the bench has variously been described as "undistinguished," "mediocre," "inadequate," "lacking in intellectual stature."

After the embarrassing experience the President suffered in his failure to obtain confirmation for Clement F. Haynsworth Jr., we had expected that his next choice would get—and deserve—better treatment. The said revelations which led to the resignation of Justice Abe Fortas forces the Senate to closely scrutinize presidential selections for the high court, Democrat or Republican.

The vacancy on the court is causing a backlog at a time when its workload is at its heaviest, and it is unbelievable that Mr. Nixon canot find a replacement for Mr. Fortas who could win quicker support. We must conclude that his political interest in the Deep South overshadows his announced concern for the court's jammed calendar.

Sen. Case also had this to say: "It has been argued that Judge Carswell's pledge of undying adherence to the principle of white supremacy made during a political campaign 22 years ago should not be held against him. But his record on the bench . . . gives no evidence of any change of heart or mind . . .

"On the contrary, witnesses appeared to testify to the extreme and open hostility he has shown to lawyers and defendants in civil rights cases. Specifically, it was stated that in 1964 he expressed strong disapproval of Northern lawyers representing civil rights workers engaged in a voter registration project—persons who, it should be noted, would otherwise have had no counsel."

Sen. Case will vote against Judge Carswell's nomination. His fellow Republicans should follow suit.

[From the Star-Ledger, Mar. 28, 1970]

GRACEFUL RETREAT

The swelling opposition to the controversial nomination of Judge G. Harrold Carswell to the Supreme Court would indicate that President Nixon is faced with another rejection of a nominee to the high court.

Rather than face another legislative confrontation, the Administration could opt for a more graceful way out of the dilemma in which it finds itself. A face-saving parliamentary procedure is available to the President; it could soften the blow of an open rejection by the Senate, which has become a strong possibility in the past week.

There is every indication that the foes of the President's nominee are gathering enough votes to send the nomination back to the Judiciary Committee, which would amount to almost certain burial.

This is how those who are torn between their disapproval of Judge Carswell and their reluctance to go against the President can express their disapproval most gently. The President, already politically bruised by the rejection of his first nominee, U.S. Appeals Court Judge Clement F. Haynesworth Jr., will surely get the message.

Sen. Mark O. Hatfield (R-Oregon), who was almost certain a week ago that he would vote to confirm Judge Carswell, appealed to the President in a telegram to withdraw the nomination to help resolve "the crisis of confidence that confronts our governmental process."

A vote on the motion to recommit the nomination to committee is scheduled for April 6.

The President should be angry, not so much with the opposition, but with those in his own administration who advised him on Carswell. The evidence has demonstrated not only that Judge Carswell has an equivocal—to say the least—record on civil rights, but that he is not the caliber of jurist who should even be considered for the highest court in the land.

Surely the President's advisers should have been able to see this before they certified him to the President. The latest evidence shows that Judge Carswell was less than frank in answering Senate committee questions about his role as an incorporator of a segregated Florida country club, and that he had one of the highest reversal averages in his district.

The nation is rich in judicial talent, from the North and South, the East and West, from the conservative to the liberal. Mr. Nixon should have no trouble finding one who suits his taste in geography and philosophy and who is also worthy of the post.

[From the Elizabeth (N.J.) Daily Journal, Mar. 24, 1970]

THE CARSWELL NOMINATION

President Nixon's nomination of Judge G. Harrold Carswell for the Supreme Court is a mistake that, if carried into confirmation, would invite disrespect for justice in America. As Sen. Birch Bayh, leader of the opposition to Judge Carswell has put it, the appointment of a man of such mediocre legal talent would be a sign of retreat that would encourage revolutionaries in their belief that the American system will not work, and would give comfort to racial segregationists.

The time it has taken the Senate Judiciary Committee to consider the nomination has been well spent. Even Judge Carswell's supporters have run out of sound reasons for his nomination. "Even if he (Judge Carswell) was mediocre," said Sen. Roman Hruska, a chief backer, "there are a lot of mediocre judges and they are entitled to a little representation, aren't they? We can't have all Brandeises, Frankfurters and Cardozos." Of course not, but we should be willing to try, no matter whether a judicial nominee represents liberal, moderate or conservative views.

Judge Carswell's record on the bench has been worse than mediocre. His record shows numerous repudiations of his decisions on appeal as a district court judge. From 1956 to 1969, some 59 per cent of his printed opinions that went to appeal were reversed by higher courts, nearly three times the national average for district judges.

While Judge Carswell may no longer believe in racist statements he made during a political campaign in Georgia 22 years ago, he has since demonstrated open hostility to lawyers and defendants in cases involving so fundamental an issue as voter registration rights granted by Congress. And he has further admitted signing a document as an incorporator for a segregated, municipally owned private golf club, an insensitivity to both the law and to the changing mood of the nation.

President Nixon's search for a conservative voice on the Supreme Court has misled him into equating conservatism with the backlash views of the discredited Dixiecrats. They are about as far apart as such Republican nominations as Justice Oliver Wendell Holmes and G. Harrold Carswell.

[From the New York Times, Mar. 30, 1970]

THE SENATE'S CONSCIENCE

Support for the nomination of Judge G. Harrold Carswell as Associate Justice of the Supreme Court has been slipping away. The opposition is now demonstrably nonpartisan. An increasing number of members of both parties, liberals and conservatives alike, stand ready to heed the appeal by Senator Robert W. Packwood, Republican of Oregon: "The right thing, the courageous thing, for members of the Senate to do is to vote their own conscience."

Not a shred of justification remains for the view that Judge Carswell should be confirmed as a routine courtesy to President Nixon. An affirmative vote now is a vote against conclusive evidence that the nominee fails to meet the standards that the country—and the Senate—must demand of any appointee to the highest Court.

Judge Carswell's lack of sensitivity to the human and constitutional rights of black Americans to full equality, under law and in society, is pervasive in his personal attitudes and throughout his judicial career. His belief in white supremacy, far from being the campaign aberration of an ambitious young politician, seems repeatedly to be reflected in his interpretation of the law.

It clearly motivated his role in the transformation of the Tallahassee golf links into a segregated private club, while he was a United States Attorney sworn to uphold the law he helped to circumvent. His subsequent lack of candor concerning this episode merely confirmed that he understood how wrongly he had acted.

The evidence of the professional record is equally bleak. Judge Carswell has made no contributions to the law, either as a scholar or from the bench. His ratio of reversals by higher courts is unusually high. His predilection against hearing the evidence, particularly in petitions by the poor, raises questions of law as well as of human sympathy.

The most convincing objections to Judge Carswell's appointment have been raised not by politicians but by Judge Carswell's peers. Although his backers in the American Bar Association initially placed great emphasis on the allegedly unanimous support for Judge Carswell by his associates, the Fifth Circuit of the United States Court of Appeals, at least two distinguished judges of that court have since withheld their endorsement.

A committee of eminent lawyers, including the president of the Bar Association of the City of New York, has expressed emphatic opposition to the candidate and received the signatures of hundreds of lawyers and law school deans in support of the demand that the American Bar Association reexamine its highly questionable procedure in declaring Judge Carswell "qualified."

The Bar Associations of Philadelphia and of San Francisco have urged the Senate to withhold confirmation. Law school faculties across the country, including the South, have spoken out against the appointment. The entire law faculty of the University of Iowa wrote to President Nixon that, though it concurred with his desire to appoint a conservative, it was deeply disturbed by the choice of a man of "apparent bias and mediocrity."

Can the Senate, having rejected Judge Haynsworth, endorse Judge Carswell without inviting the conclusion that proven insensitivity toward human and civil rights is less objectionable than a possibly loose interpretation of economic conflicts of interest?

The President is clearly entitled to seek out a conservative and a Southerner for the Supreme Court; but to make that search synonymous with the Carswell nomination is to belittle if not ignore the great reservoir of talented Southern conservatives.

Since Mr. Nixon appears unwilling to accept the unmistakable evidence that he has once again been led into making a wrong and divisive choice, it is the Senate's duty to speak for justice and excellence in the nation's public life. Amidst today's crisis of confidence, the Supreme Court remains a symbol of legitimate authority of American institutions. The symbol must not be tarnished nor the authority undermined. This is why we believe that "voting their own conscience" and acting in accordance with their constitutional obligation, the members of the United States Senate should reject Judge Carswell's nomination.

FROM OBSCURE TO UNKNOWN

In naming Judge G. Harrold Carswell to the Supreme Court, President Nixon has displayed more glaringly than ever a talent for seeking out undistinguished candidates for the high bench.

Clement F. Haynsworth, though Chief Judge of a Circuit Court of Appeals, was far below Supreme Court stature in scholarliness, range of mind and sensitivity to judicial proprieties. The man selected after he failed to win Senate confirmation—Judge Carswell, only seven months on the appellate bench—is so totally lacking in professional distinction, so wholly unknown for cogent opinions or learned writings, that the appointment is a shock. It almost suggests an intention to reduce the significance of the Court by lowering the caliber of its membership.

In his election campaign President Nixon promised to put only "extremely qualified" men on the Supreme Court. But one of the principal qualifications he had in mind was a willingness on the part of nominees to see themselves as "caretakers of the Constitution . . . not super-legislators with a free hand to impose their social and politicial viewpoints upon the American people."

No one who cares about the country wants justices or anyone else to impose their viewpoints as such. But, since unanimity of viewpoint is hard to come by, all government involves a degree of imposition by some one. It is the duty of the three branches to check and balance the process, and of the Judiciary in particular to sustain the spirit of the Constitution and see to it that the rights of those imposed on are protected.

It is no recommendation of the Justice-designate to have Senator Richard B. Russell of Georgia say: "He'll follow precedents. He'll follow the doctrine of *stare decisis* (sticking to past decisions)." The Supreme Court is not a place for men who have built their judicial careers on a static approach to history, as civil rights leaders emphatically agree Judge Carswell has done.

He may in time duplicate the growth in wisdom and in stature that others have experienced in their years on the Court. But it is hardly sound policy to name a man to the Supreme Court on the theory that it may do him a world of good.

[From the Washington Post, Mar. 22, 1970]

JUDGE CARSWELL: THE WRONG SIGNAL—AND CHARLES EVERS: A CASE IN POINT

It is a longish leap from the fun and games at the Gridiron Club last weekend to the Senate debate on Judge Carswell. But bear with us because there is a logical connection here between the appointment of a decidedly second-rate judge to the Supreme Court and the ease with which President Nixon and Vice President Agnew stole the Gridiron show. As you may have read, the two men joined in a piano duet, with the President playing a medley of the favorite tunes of his predecessors and the Vice President interrupting him by playing "Dixie." Doubtless you had to be there to get it into the right context, to hear the rough but good-natured jibes at the Administration on race issues that preceded the surprise finale, and thus to appreciate the joke. Almost everybody agreed it was a *tour de force* gracefully done and quite in keeping with the spirit of an affair at which the tensions and antagonisms of the real world are supposed to be set aside.

So it is with no intent to disparage the performance of the President and the Vice President that we take note of this event. Still, at the risk of sounding stuffy, it strikes us as a small piece of a bad scene, and a significant measure of how great is the power of the Presidency to influence a public attitude. All of a sudden, it is all right to joke about something that responsible people in high office used to handle with care and compassion and deadly seriousness.

In theory, a sense of humor is supposed to be a saving grace. So why not make sport of a Southern Strategy? The answer, of course, is that Southern Strategy is a euphemism for something that isn't funny. On its face it is no more than a cynical political tactic designed to innoculate the South against George Wallace for the sake of winning it for the Republicans, the better to secure a second term for President Nixon in 1972. As a political objective, this is fair enough—some people even see in it an admirable toughmindedness. But there is nothing admirable about the logical consequences of this strategy, for to bring it off it becomes necessary for the Administration to cultivate indifference, not to say hostility, toward the fundamental principle of human rights in general, and the equality of education available to black children in particular. Putting it another way, and bluntly, Southern Strategy means a form of racism, tacit or explicit, by people in high places, because there can be no successful effort to undercut George Wallace in the South that does not play the segregation game.

It is important to be clear in our minds about the issue here. We are well aware that the White House will be publishing next week what has been billed as the most complete, the most comprehensive, the most closely argued legal brief ever composed on school desegregation and it is not our purpose here to judge it in advance. For that is not what this is all about. We are not talking just about schools, or doubts held by responsible people about busing or other methods for dealing with the *de facto* segregation which occurs as a result of natural, geographic imbalances. We are talking about what a President or an Administration can do, or not do, to create an atmosphere that is conducive, not to miracles, but to continuing progress against racial discrimination all along the line. And this, in turn, is what is so troubling about the ease with which we now laugh at jokes about a Southern Strategy. It is what links the hijinks at the Gridiron with the nomination of Judge Carswell and a lot of other things—the abrupt removal of a Leon Panneta from HEW because he tried too hard; the effort to subvert Negro voting rights; the insensitivity, in tone and phrase, to black pride; the country club mentality.

Mr. Harry Dent, a presidential assistant, receives a written offer of campaign funds from a Georgia Republican leader in exchange for the restoration of Federal school aid in a Georgia school district. He casually passes it along to HEW—and nobody seems to mind. The Vice President brushes off the idea of quotas for black students by asking the crude question: "Do you wish to be attended by a physician who entered medical school to fill a quota . . .?" Mr. Jerris Leonard, the Justice Department's civil rights enforcer, thinks it clever, or something, to say that one reason blacks just out of law school are not attracted to Justice Department jobs is that they haven't yet bought their first cashmere topcoat. Confronted with a question about Judge Carswell's involvement with segregated clubs, the President thinks it an adequate defense to say, in effect, that everybody's doing it: ". . . if everybody in government service who has belonged or does belong to restricted golf clubs were to leave the service, this city would have the highest rate of unemployment of any city in the country."

And so it goes, right down to the vote on Judge Carswell, with the Administration's men telling Republicans who opposed Judge Haynsworth—in almost every respect a much superior choice—that they can't rebuff their President twice running. They can, of course, and they should, because this is nothing so narrow as a test of party loyalty. It is a test of policy and principle—a kind of Tonkin Resolution on race, if you accept the theory recently advanced in Life Magazine by Hugh Sidey that the race issue could be for President Nixon the disaster that Vietnam was for President Johnson.

The Tonkin Resolution on Vietnam was a fraud, and while that became clearer later, it might have been clearer at the time if the right questions had been pressed, if Congress had not closed its eyes out of misplaced deference to the President and waved him down a wrong road. Therein lies the analogy. Judge Carswell is a bad choice, and the Senate should reject him out of its obligation to safeguard the paramount interests of our highest court. In the process of refusing his confirmation, the Senate has an opportunity, not just to say *No*, but also to say *Enough*—of insensitivity and indifference, of legislative retrogression and of catering to racist tendencies for political gain, of talking about blacks as if there were no blacks in the room. The Senate, in this fashion, could broadcast from at least one seat of government a signal to all races—a signal which at this stage can no longer be broadcast, in a way that would be believable, by anybody else.

Turning from what is cumulative and comprehensive—and no less real or pernicious for that—let us take up cases. Let us consider for a moment what his countrymen and his government have said to Charles Evers, who is the black mayor of Fayette, Miss. Mayor Evers is of course a lot more than that. He was born 47 years ago and raised poor in Decatur, Miss. He served in World War II as an army volunteer in the Pacific and again, in the Korean war, as a reservist. He took a bachelor of arts degree at Alcorn College, and in 1951, with his brother Medgar, he undertook a membership drive in Mississippi for the NAACP. That was to cost him his livelihood: because of his NAACP connection he was forced out of business in Philadelphia, Miss. It was also to cost his brother his life: Medgar Evers was murdered in Jackson on June 12, 1963, and Charles Evers, then living in Chicago, came home and assumed his dead brother's job as field secretary for the NAACP in Mississippi.

One hears a great deal about blacks who have been provoked and abused into despair, a great deal about black men and black women who have bsen forced to the conclusion that separatism or violence or both are the only solutions available to them. On the basis of his experience, Charles Evers would seem a likely prospect for this turn of mind. His recollections of family suffering and humiliation at the hands of white neighbors when he was a boy are vivid; his brother and the political leaders he followed—both Kennedys and Martin Luther King—were murdered; his every attempt to obtain for himself and others the simplest, most fundamental forms of equal justice in his state have been systematically and viciously fought by its citizens and its leaders. And yet this is a man who can still say that he "loves" Mississippi and that he "loves" his country and that he is bent on making justice work—within the system, by means of the traditional American political processes.

Charles Evers has had almost as much trouble on this count from those he describes as the "black extremists" as he has had from his white compatriots. But he has rejected the ridicule and pressures of the one and the ominous warnings of the other. His crime (in the eyes of both) has been his single-minded pursuit of political equity and racial understanding through the instruments of government that are theoretically available to all. A patient campaign led to the accreditation of his delegation at the Democratic convention in Chicago, and he was a stalwart among those who insisted that the delegation and the party it represented be black and white—

not just black. His prodigious efforts to take advantage of the Voting Rights Act of 1965 via registration and get-out-the-vote drives and via the fielding of a number of candidates, led to his election as mayor of Fayette last year. None of this was done without risk, but his observations upon election and since have been wholly lacking in any of the vengeance or retaliatory spirit that he might easily have indulged had he wished. On the contrary, Charles Evers declared that his policy for the community he served would be one aimed at economic betterment for all citizens—black and white—and that there would be no racial violence from any quarter tolerated. "We're not going to do to white people what they've done to us," he said. "We're going to have law and order and justice." And again: "We've got to prove to this country we can work together. I know we can."

You would think that the kind of spirit and sense Charles Evers has shown would gain him allies and admirers in high places. But something quite different has occurred. One of the Nixon administration's first acts in the civil rights field was an attempt to eviscerate the Voting Rights Act, the legislation to which Mayor Evers and others could point as evidence that the system might be made to work. Then it pulled out the rug in Mississippi from under those of both races who, like Mayor Evers, had persisted in championing the worth of desegregating state institutions as a means of achieving racial amity and common justice. It sent Vice President Agnew to Jackson to titillate the fancy of his audience ("The point is this—in a man's private life he has the right to make his own friends . . . men like John Stennis and Jim Eastland have fought with great determination in Washington to preserve the strength and stability of this country . . . we believe that civil rights must be balanced by civil responsibilities . . ." and so on). Now we learn that Mayor Evers, with the assistance of HEW staff, not long ago put in for an HEW grant to begin a comprehensive health program for his country—the nation's fourth poorest—and an adjoining county. And we learn too that the state's Republican chairman wrote a letter to Washington opposing it and that the grant has been refused.

What are men like Charles Evers to think of an administration that seems at pains to undercut everything that offers hope of achieving progress through the legitimate means and channels of government? Statements on school desegregation, anxious inquiries of selected visitors as to whether and why the administration has a "racist" image are at this point of secondary importance. If, as we believe, the first order of business for Congress is the rejection of Judge Carswell's appointment, so the first order of business for the White House is to cease undermining the legislative gains of the past and undercutting those men and women who are smart enough and brave enough to use them. The President must make plain that when he and his spokesmen talk so lovingly about the "people of the South" they mean all the people of the South, including such distinguished people as Charles Evers.

[From the Washington Post, Apr. 2, 1970]

JUDGE CARSWELL: THE PRESIDENT'S "RIGHT OF CHOICE"

"... as the President has a right to nominate without giving his reasons, so has the Senate a right to dissent without giving theirs."—George Washington, Aug. 8, 1789.

President Nixon's claim that the Senate must vote to confirm Judge Carswell or place in jeopardy the constitutional balance between the Executive and the Legislature is an arrogant assertion of power that attacks the constitutional responsibilities of the Senate and is based on a false reading of history. It is, indeed, a presidential endorsement of the argument made recently in the Senate that since Mr. Nixon won the election he is entitled to put anyone he wants on the Supreme Court.

The President, of course, qualifies this claim by saying that "if the charges against Judge Carswell were supportable, the issue would be wholly different." But what he really means is that since *he* finds those charges—of mediocrity, of racial bias, and of a lack of candor—unsupportable, the Senate must accept his judgment and confirm his choice. He leaves a senator, who is given the constitutional responsibility of consenting to nominations, no latitude in making his own independent judgment on the fitness of the man for the office.

The President makes no attempt to square this bold assertion of the right to fill offices with this nation's constitutional or political history except to claim that his predecessors have been freely given the "right of choice in naming Supreme Court justices." He seems to overlook the fact that one out of every five presidential nominations of men to sit on the Supreme Court has not been confirmed by the Senate. He does not mention that the Senate failed to consent to nominations to that court made by Washington, Madison, John Q. Adams, Tyler, Polk, Fillmore, Buchanan, Johnson, Grant, Hayes, Cleveland, Hoover and Johnson.

It might be well, since the President has brought it up, to recall why the Senate was given the power to approve or reject presidential nominations to high office. It came about as a compromise in the Constitutional Convention between those who wanted the President to have absolute power to fill those offices and those who wanted to give that power to Congress. Alexander Hamilton explained the compromise in The Federalist:

"To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would have a powerful, though in general, a silent operation. It would be an excellent check upon a spirit of favoritism in the president, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connections, from personal attachment, or from a view of popularity."

That this was intended to be a substantial check on the President's power was made clear in the first Congress. Arguing in favor of a secret ballot in the Senate on questions of confirmation, William Maclay said, "I would not say, in European language, that there would be court favor and court resentment, but there would be about the President a kind of sunshine that people in general would be well pleased to enjoy the warmth of. Openly voting against the nominations of the President would be the sure mode of losing this sunshine." And arguing in favor of an open vote, Robert Morris said it would be beneath the dignity of the Senate to vote in secret since a Senator, in passing on a nomination, ought to be "open, bold and unawed by any consideration whatever."

It is against that background—an attempt by the men who wrote the Constitution to keep the President from filling offices with anyone he might choose and a history in which the Senate has approved 108 nominations to the Supreme Court while failing to approve 26—that Mr. Nixon pleads the case for Judge Carswell. A vote against confirmation, he says, is to vote to strip the President of the power to appoint. No opponent of confirmation that we know of has suggested that the Senate, not the President, nominate prospective justices. No opponent has suggested that Mr. Nixon not make a third choice to fill the existing vacancy if his second choice fails. No opponent has suggested—as did some Republicans at the time Chief Justice Warren offered his resignation—that the President not choose at all. Some, for that matter, have even jested that the Senate ought to confirm this nomination since the next one might be worse.

What Mr. Nixon is attempting to do is to turn an attack on his judgment into an attack on the prerogatives of the office he holds. Those who oppose confirmation are, indeed, questioning the judgment of the President. But the impact of a rejection by the Senate would not be on the powers of the presidency but on the personal power of this President.

The irony of all this is clear. The current vacancy on the court exists solely because the Senate did *not* act on the principle stated by Mr. Nixon yesterday when it received the nominations of Justice Fortas and Judge Thornberry. It refused to be a rubber stamp then and it refused again when it rejected Mr. Nixon's nomination of Judge Haynsworth. Surely this should have put the President on notice that the Senate was not to be trifled with. Yet he came back after that defeat with a nomination that is an insult to both the Senate and the Supreme Court, a nomination of a man who is substantially inferior to Judge Haynsworth. Although this put many senators who wish to support the leader of their party in extremely embarrassing positions, the argument has now been turned on its head. Some of them are now saying that *they* cannot reject Judge Carswell without insulting *the President*. It is important to be clear in our minds about who is insulting whom in this matter. The answer is in yesterday's presidential letter to Senator Saxbe, for what the President is saying is nothing less than that he alone is entrusted "with the power of appointment." He is not so entrusted; he has only the power to *nominate*. The power to *appoint* is one he shares with the Senate. The Senate's best response to this attack—this insult, if you will—on its constitutionally given prerogatives in the appointments process would be an outright rejection of the nomination of Judge Carswell.

[From the Washington Post, Mar. 31, 1970]

JUDGE CARSWELL: KEEPING THE RECORD STRAIGHT

Things are beginning to happen so rapidly in the battle over confirmation of Judge Carswell that it is a little hard to keep them in perspective. The weekend began, for example, with Senator Cooper's announcement of support for the judge, and while we would not wish to pretend to anything but regret about this, the fact is, of course, that his decision was expected and largely discounted in advance, as will be a string of such announcements in the coming days, as both sides play for psychological advantage. Leaving this part of the struggle aside, there were these weekend developments which bear closer examination: 11 judges from the Fifth Circuit Court of Appeals signed a telegram endorsing Judge Carswell; 79 lawyers from Tallahassee, the judge's home, sent a similar endorsement; and Deputy Attorney General Kleindienst unloosed a broadside attack against assorted Carswell critics, expressing the belief that those who oppose him for political reason have run out of "misleading" and "deliberately untruthful" charges against him.

Well, on this last count we would certainly hope so, too. But we would also hope that those who support the judge would be a little more precise in what they say, and a little more to the point, which in the case of the Fifth Circuit judges and the Tallahassee lawyers and some of the complaints of Mr. Kleindienst have to do, at bottom, with what people in the legal profession think of Judge Carswell.

Turning to first things first, Judge Carswell's nomination did get a timely psychological lift from the telegram signed by those 11 judges—which only goes to show what trouble it is in. What would have been the outcry about any preceding nominee if it had become known publicly that any substantial number of his closest colleagues op-

posed confirmation? Remember that if Judge Carswell is not confirmed his colleagues, specifically including those who did not sign the telegram, must continue to sit on the bench with him. And there are four sitting judges as well as three retired judges who did not sign. Interestingly, only three of the eight judges who were active when the court underwent its most serious attacks between 1955 and 1965 are openly supporting this nomination. And none of the court's big four in those days (three of them, incidentally, appointed by President Eisenhower)—Tuttle, Rives, Wisdom and Brown—signed that telegram.

As to other matters, the Ripon Society did not, as Mr. Kleindienst said, first say Judge Carswell was reversed 54 per cent of the time and then on further study change that to 40 per cent. It reported originally that Judge Carswell was reversed in 58.8 per cent of those cases in which appeals were taken from his printed opinions. No one that we know of has challenged that figure. The Ripon Society subsequently examined all the appeals from all Judge Carswell's decisions and reported the reversal rate was 40.2 per cent, noting that the rate got worse the longer he was on the bench—25 per cent for the first quarter of his appeals, 33 per cent for the second, 48 per cent for the third, and 53 per cent for the fourth. Either Mr. Kleindienst misread the Ripon Society's statements or chose to ignore its careful distinction between written opinions (which judges usually file only in major cases) and all decisions.

It is true, as Mr. Kleindienst said, that the official voice of the American Bar Association is for confirmation. But we suspect that columnists Mankiewicz and Braden were more accurate than was Mr. Kleindienst when they suggested that a majority of that Association's members who have an opinion are against confirmation. At least, that's the feeling we get from reading the Congressional Record, which senators love to stuff with communications from home—and from reading our own mail. With less than a dozen exceptions, all the letters we have seen in the Record or received ourselves from lawyers supporting Judge Carswell come from his home state of Florida. As for the list of 79 Tallahassee lawyers, it is useful to note that there are 284 lawyers in that city listed in a national direotory.

Certainly one segment of opinion is heavily against Judge Carswell's confirmation; these are the people who teach law. We have collected the following tabulation of the universities which have law schools that have been heard from during this debate:

LAW SCHOOL DEANS

Against Confirmation (22)

Boston College, Catholic, Chicago, Columbia, Connecticut, Georgetown, Harvard, Hofstra, Illinois, Indiana, Iowa, Kansas, New York U., Notre Dame, Pennsylvania, Puerto Rico, Rutgers, Stanford, UCLA, Valparaiso, Western Reserve, Yale.

For Confirmation (2)

Florida, Florida State.

FIVE OR MORE FACULTY MEMBERS

Against Confirmation (31)

Arizona, Boston U., California (Berkeley), Catholic, Chicago, Columbia, Connecticut, Florida State, Georgetown, Harvard, Illinois, Indiana, Iowa, Kansas, Loyola (Los Angeles), Maine, New York U., New York U. (Buffalo), North Carolina, Notre Dame, Ohio State, Pennsylvania, Rutgers, Stanford, Syracuse, Toledo, Valparaiso, Virginia, Washington & Lee, Willamette, Yale.

For Confirmation (0)

None.

It is impossible to dismiss this overwhelming vote of no confidence in Judge Carswell from the legal teaching profession; certainly it reduces to irrelevancies the complaints of Mr. Kleindienst about the calculations of the Ripon Society or the argument over who speaks for the American Bar Association—the members who are plainly split on the matter, or the ABA's 12-man Committee on the Judiciary which rated him "qualified." Still less is it any longer possible to argue from this listing that the opposition to Judge Carswell is narrowly sectional and confined to the northeastern corner of the country, as some of the judge's supporters have argued in the Senate debate. It is in every sense a national list—South as well as North, Midwest and Far West as well as East. And it is a devastating list. For it is made up of men and women who teach lawyers and who therefore care deeply about the quality of the law they must teach.

[From the Washington Post, Mar. 27, 1970]

JUDGE CARSWELL: A QUESTION OF CANDOR

It is not normally our practice to publish letters to the editor which are released to the press before we have even received them but we make an exception in today's letters column out of courtesy to Senators Hruska, Allott, Dole and Gurney, and because a crucial issue is involved. The senators have chosen to see in a news story, on the front page of this newspaper on Thursday, "charges" made in "desperation" on the eve of a vote on the nomination of Judge Carswell to the Supreme Court. Leaving aside the question of who may or may not be desperate in this matter at this moment, no charges, let alone desperate charges, were made in that story; it consisted of a simple, chronological recital of a set of facts which, taken together, show that Judge Carswell's memory about his role in the affair of the segregated golf club had been thoroughly refreshed *the night before* he appeared at a Senate hearing in which he gave every indication from his testimony that he could barely remember anything about it and hadn't given it a thought for years.

The senators are right in saying he first denied he had been an incorporator—that is, had signed the papers giving birth to the club—but later modified that and eventually, under questioning from Senator Kennedy who had the papers in his hands, said he had signed them. At the time, the sequence led us and, we suspect, others to believe that the judge had forgotten about the details of the incident. Now, learning about the meeting the preceding evening when he was questioned about the club and shown the incorporation papers he had signed, you have to wonder how hazy his memory really was; certainly it improved markedly as the questioning became more persistent and it began to appear that the senators had evidence in hand.

Thus, the real issue is not whether Judge Carswell misled the committee about his role as an incorporator but whether he misled it into thinking he had forgotten all about that until the morning of his testimony when he suddenly saw news stories concerning it. This, as well as a basic question of whether he was candid in saying he knew nothing about a motivation in this transaction to convert public property to private use in order to avoid desegregation, is best resolved by reprinting excerpts of what he said. Bear in mind, in reading the following extracts, that Judge Carswell had discussed this very question at length *the preceding night* with two representatives of the American Bar Association, who brought along for his inspection a copy of the articles of incorporation of the club.

"Senator Hruska: . . . Now, this morning's paper had some mention that you were a member of a country club down in Tallahassee. I am confident that you read the account. I would be safe in saying all of us did. You are entitled to tell your side of the story and tell us just what the facts are.

"Judge Carswell: I read the story very hurriedly this morning, senator, certainly. I am aware of the genuine importance of the facts of that. Perhaps this is it now. I was just going to say I had someone make a phone call to get some dates about this thing. This is not it. (Noting a paper on his desk.) I can only speak upon my individual recollection of this matter. I was never an officer or director of any country club anywhere. Somewhere about 1956, someone, a friend of mine—I think he was Julian Smith—said, we need to get up some money to do something about repairing the little wooden country club, and they were out trying to get subscriptions for this. If you gave them $100, you would get a share in the stock in the rebuilding of the clubhouse. I did that. Later . . . I was refunded $75 of that $100 in February of the following year, 1957 . . . The import of this thing, as I understand it, was that I had something to do with taking the public lands to keep a segregated facility. I have never had any discussion with any human being about the subject of this at all. This is the totality of it, senators. I know no more about it than that.

"Senator Hruska: Judge Carswell, it was sought to make of you a director in that country club. Did you ever serve as a director?

"Judge Carswell: No, sir; nor in any other official capacity.

"Senator Hruska: Did you ever attend any of the director's meetings?

"Judge Carswell: Never.

"Senator Hruska: Were you an incorporator of that club as was alleged in one of the accounts I read?

"Judge Carswell: No, sir.

* * * * *

"Senator Hruska: Are you or were you at the time, familiar with the by-laws or the articles of incorporation?

"Judge Carswell: No, sir.

"Senator Hruska: . . . Could the stock you received on this occasion have borne the label, 'incorporator,' indicating that you were one of the contributors to the building fund for the clubhouse?

"Judge Carswell: Perhaps. I have no personal recollection.

* * * * *

"Senator Kennedy: Did you in fact sign the letter of incorporation?

"Judge Carswell: Yes, sir. I recall that.

"Senator Kennedy: What do you recall about that?

"Judge Carswell: That they told me when I gave them $100 that I had the privilege of being called an incorporator. They might have put down some other title, as if you were potentate or something. I don't know what it would have been. I got one share and that was it.

* * * * *

"Senator Kennedy: . . . The point . . . is whether, in fact, you were just contributing $100 to repair of a wooden clubhouse, or whether in fact, this was an incorporation of a private club, the purpose of which was to avoid the various court orders which had required integration of municipal facilites . . .

"Judge Carswell: . . . I state again, unequivocably and as flatly as I can, that I have never had any discussions with anyone. I never heard any discussions about this."

A day later, former Governor Collins of Florida supported Judge Carswell's testimony by saying that he, too, had put up $100 for the club and that he doubted he would have if he had known there were racial overtones in its creation. Subsequently, some residents of Tallahassee and a Miami lawyer who happened to be trying a case there at the time have stated that talk about the transfer of the golf club to keep it segregated was commonplace. Indeed, columnist James J. Kilpatrick, who thinks Carswell should be confirmed, wrote this week, "My own enthusiasm for Carswell is diminished by his evasive ac-

count of his participation in the golf club incident of 1956 . . . Forgive my incredulity, but if Carswell didn't know the racial purpose of this legal legerdemain, he was the only one in north Florida who didn't understand."

Did Judge Carswell give the committee the impression that the whole incident hit him as a bolt out of the blue in that morning's newspapers or did he give them the impression he had discussed the matter and been shown the signed incorporation papers the night before? Did Judge Carswell know what was up concerning segregation when that golf course was formed (he was then the United States Attorney for that area) or was he, in Mr. Kilpatrick's words, "the only one in north Florida" who didn't know? Was he candid about that and saying of his role in forming the club—in sequence, under probing—first that he wasn't an incorporator, second that maybe he was, third that he was. Was he candid or was he trying to slip something past the committee members? We think it was the latter and we think it argues powerfully against his fitness to serve on the Supreme Court.

[From the Washington Post, Mar. 24, 1970]

JUDGE CARSWELL: A LOOK AT THE REVERSAL RECORD

There has been a lot of talk in the Senate in recent days about Judge Carswel's 11 years of service as a federal trial judge and how well that fit him or does not fit him for service on the Supreme Court. Those opposed to his confirmation point to the rate at which his decisions have been reversed as a demonstration that he is, at best, a run-of-the-mill judge. Those who support confirmation claim that the reversal rate presents a "distorted and unreal" picture. "Like so many of the charges against him (this one) dissolves when exposed to the light of day," Senator Gurney said the other day, claiming that the judge has been reversed in only 33 out of the more than 2,000 civil cases he has handled and in only eight out of more than 2,500 criminal cases.

These figures are totally irrelevant, not to say blatant distortions.

The numbers of 2,000 and 2,500 represent *all* the cases filed in Judge Carswell's court and only about 15 per cent of these ever went to trial. What matters is what the Court of Appeals thought of the far smaller number of decisions it actually had an opportunity to review. There are fewer than 200 of these, according to the reports of the Fifth Circuit Court of Appeals, but no one has produced a list of all of them. Compiling such a list is difficult since the cases are spread over tens of volumes of law books. But we have looked at all those we could find in the reports of the Fifth Circuit since July 1, 1964 and report the following concerning the record of the last half of his trial judge experience:

In criminal cases, Judge Carswell was upheld in 21 of 25 decisions, an affirmance rate of 84 per cent. All the other judges in his circuit were upheld 81 per cent of the time during the last five fiscal years.

In civil cases, Judge Carswell was upheld in 18 of 53 cases, an affirmance rate of 34 per cent. All the other trial judges in his circuit were upheld 72 percent of the time.

In habeas corpus and similar cases, included in the civil category above because the courts list them that way, Judge Carswell was upheld in 5 out of 15 decisions, an affirmance rate of 33 per cent. All the other judges in Florida were upheld in 67 per cent of these cases during this period.

In the other civil cases—the disputes over contracts, accidents, and so on that are the bread and butter of the federal courts—Judge Carswell was upheld in 13 of 39 cases, a rate of 33 percent. The other judges in the South have a batting average in such cases of about 75 per cent.

The key that may explain this record seems to lie in the reputation Judge Carswell has among some lawyers of not wanting to try cases. Each habeas corpus reversal came because he denied a petition without a hearing. More than half of all the other reversals in civil cases came because he granted pre-trial motions to dismiss, or for summary judgment, in situations which the Court of Appeals said required trials. It seems remarkable, for instance, that he was reversed several times over several years in negligence cases involving such things as auto accidents, a swimming pool accident, and a boat collision. These are cases in which the facts almost always determine the outcome and the law is clear that disputed facts cannot be resolved in summary judgments.

Judge Carswell's inclination to dispose of cases summarily does help clear court dockets when he is right. But it also helps clog them when he is wrong. And it seems that those who believe a jury ought to decide the facts must pay the costs of an appeal to win a reversal and a trial. The desire of a judge to be bold and to dispose of cases without trial might be understandable if he presided over an extremely busy docket. However, the caseload in Judge Carswell's court was regularly below the average per judge in his circuit and after 1962 was the lowest per judge in that circuit.

This record is not what could be called a good one. It is not, we suspect, even mediocre, as Senator Hruska would say. Nor can it be explained away, as some of the judge's supporters would have us believe, by arguments about the cases that were not appealed, about laws or court interpretations that had been changed in midstream, or about partial reversals. Among the 35 reversals in civil cases, three were partial, and no more than half a dozen came because of intervening court decisions and new issues of law. The others were decisions by the Court of Appeals that Judge Carswell was simply wrong—wrong 12 times because he ruled without hearing the facts. What all this means, it seems to us, is that the claim that Judge Carswell has been "an outstanding federal judge," to use Senator Gurney's words, evaporates when it is exposed to careful scrutiny.

[From the Washington Post, Feb. 10, 1970]

THE QUALIFICATIONS OF JUDGE CARSWELL—I

Some troubling questions have arisen during the Senate hearings on the nomination of G. Harrold Carswell to be a Justice of the Supreme Court and, in the light of the close scrutiny given to other recent nominations, these need to be dealt with carefully and fully. The case against Judge Carswell, as put forward by his critics, involves a speech he made in 1948, a golf course in Tallahassee in 1956, the record he has compiled in civil rights and related cases in 12 years on the federal bench, and the general qualifications he holds for a seat on the highest court.

The first two of these are matters of history and need to be evaluated in the context of their times. Judge Carswell himself admits to some amazement now at what he said in that 1948 speech. He should, for his were the words of pure and simple racism. But this was the language of Southern politics at the time and many other public officials would blanch now if they were called to account for what they said then. A man ought to be allowed to live down mistakes of his past, particularly those of his first youthful campaign for public office, and Judge Carswell's white supremacy speech is one of those that can be lived down.

The golf course question, too, must be judged in the context of history but the history, in this instance, is not so helpful to the judge. As far as we now know, the relevant history began in late 1955 when the Supreme Court ruled that public golf courses could not discriminate against Negroes. Just at Christmas that year, the Atlanta city course was opened to Negroes and newspapers carried a picture of three Negroes teeing off. Within a few weeks, there was movement in other cities to desegregate golf courses. A federal court, in January, ordered Nashville to desegregate its links. A half dozen Negroes were convicted of trespassing for playing on a municipally owned but privately operated course in Greensboro. And a law suit was filed in the Federal Court for the Northern District of Florida, where Judge Carswell was United States Attorney, to compel desegregation of the municipal golf course at Pensacola.

In Tallahassee, meanwhile, one county commissioner complained that a proposal to lease the city-owned golf course to the Tallahassee Country Club was racially motivated. In mid-February, however, the City Commission approved the proposal (a 99-year lease at $1 a year) and agreed to make a similar deal with "any responsible person" for a Negro golf course then under construction. Two months later—April 1955—Judge Carswell signed the certificate of incorporation of the Capital City Country Club, Inc., four of whose 21 incorporators were directors of the old Tallahassee Country Club. This new organization promptly took over the lease on the golf course and the city government approved that transfer on May 10. On May 24, the Federal Court ordered desegregation of the publicly owned course at Pensacola.

Of all this, Judge Carswell told the Senate Judiciary Committee the other day, "I have never had any discussion or never heard anyone discuss anything, that this might be an effort to take public lands and turn them into private hands for a discriminatory purpose." The judge may have been completely candid in his statement. If he was, however, then what was going on in Tallahassee in the spring of 1955? Or, rather, where was he? An affidavit sent to the Senate committee by the wife of a Tallahassee banker says, "We refused the invitation (to join the Capital Country Club) because of the obvious racial subterfuge which was evident to the general public."

The history thus works against Judge Carswell on this question. If he didn't know what was going on in the courts, around the country and in his own community concerning golf courses, what kind of United States Attorney was he? If he did know, what was he doing contributing his name—and, in all fairness, his testimony makes it clear that is about all he contributed—to an attempt to save segregation in golf, which he didn't even play? These are only some of the troubling questions that have arisen over Judge Carswell's nomination. Standing alone, they might be resolved in his favor. Added to others, which we will have more to say about, they raise serious doubts about whether he should be confirmed.

THE QUALIFICATIONS OF JUDGE CARSWELL—II

In a day or so, in the concluding editorial of our series on Judge Carswell, we will have more to say about his record and his qualifications to be a member of the Supreme Court. Meanwhile, we interrupt this program to bring you a message from one of Judge Carswell's sponsors—the legal counsel to the Attorney General.

Mr. Rehnquist claims that The Washington Post was wrong in interpreting the Supreme Court's 1964 Atlanta decision as meaning that grade-a-year plans for desegregation were too slow. We rest our case on the two following interpretations of that decision by the Fifth Circuit Court of Appeals. The Fifth Circuit said, in July, 1964, that in remanding the Atlanta case the Supreme Court intended that it be reconsidered

"in light of the Supreme Court's recent pronouncements indicating that greater speed in implementing the Brown decision is now required." The Fifth Circuit added, "The necessary conclusion to be reached . . . is that for a school system which is beginning its plan of desegregation 10 years after the second Brown decision, more speed and less deliberation is required."

In the Jacksonville case, Mr. Rehnquist properly rebukes us for regarding the Supreme Court's decision not to review as a ruling on the merits of the matter. This error, however, is somewhat irrelevant since Judge Carswell was bound just as fully by decisions of the Fifth Circuit as he was by those of the Supreme Court. In this instance, the Fifth Circuit had been asked to rule that federal courts neither could nor should order desegregation of teachers in school cases. It refused to do so, saying that they could and that they always should consider doing just that. A few months later, nevertheless, Judge Carswell reserved decision on teacher desegregation in Bay County. Whether he was, as we said, "apparently ignoring" the Jacksonville case is a matter of opinion on which we and Mr. Rehnquist apparently disagree. As for the rest of Mr. Rehnquist's critique, it appears to deal largely with our motives, the colors we are flying, as he put it. About all there is to be said about that is that we are not now questioning the administration's *motives* in appointing Judge Carswell and so we see no purpose in answering questions about ours. We might add, in passing, that although we had some reservations in varying degree about the ideological or judicial coloration of both of President Nixon's previous nominees to the Supreme Court, Chief Justice Burger and Judge Haynsworth, this did not lead us to urge the Senate that they not be confirmed.

[From the Baltimore Sun, Mar. 18, 1970]

JUDGE CARSWELL

The most important question before the Senate as it considers President Nixon's nomination of Judge G. Harrold Carswell to the Supreme Court is this: is he well qualified? The answer, in the opinion of this newspaper, is No. The record of the committee hearings shows nothing of private financial dealings of the kind that caused the Senate to reject the nomination of Judge Haynsworth. But there is nothing in the record to support a finding that Judge Carswell is well qualified for this post, or that the Nixon administration made a serious search for a well qualified man. Judge Carswell may meet the minimum standards, but an appointment to the Supreme Court resting on his slender credentials can be taken only as a reflection on President Nixon, Attorney General Mitchell and, ultimately, on the Supreme Court.

Let us underscore the point here that we do not take exception to Mr. Nixon's effort to turn the Supreme Court toward a more conservative "constructionist" course. We do not in any way find fault with the appointment of a conservative Southerner. We object, however, to the appointment of mediocre men to the nation's highest court, and mediocrity is the word that most accurately characterizes Judge Carswell's record.

In the sensitive area of race, which seems likely to be before the Supreme Court for years, Judge Carswell's record shows no more than a typical Southern conformity. In 1948 he made a political speech in which he asserted a "vigorous belief in the principles of white supremacy." He says now that this view is obnoxious to him and that he no longer holds it. In 1953 as an attorney in Tallahassee he drew up a "white only" charter for a college football booster organization and in 1956 he joined a plan to lease the Tallahassee municipal golf course to a private, white club.

This is enough to create a considerable mistrust in this appointment, and to raise a question as to the nature of the Justice Department's research before Judge Carswell was recommended to the White House. Beyond this, moreover, is the fact that in more than a decade on the bench in federal district and appellate courts Judge Carswell made no mark of distinction. His reversal rate as a trial judge was high. He is about as nearly a nonentity as a federal judge can be.

* * * * *

[From the Trenton (N.J.) Sunday Times Advertiser, Mar. 15, 1970]

SENATOR CASE'S EXAMPLE

New Jersey's Clifford P. Case has become the fourth Republican in the U.S. Senate to announce he will vote against confirmation of G. Harrold Carswell for the Supreme Court. His decision is a welcome one.

Senator Case based his decision on Judge Carswell's lack of sympathy for civil rights, as evidenced by both private and courtroom performances, and his utterly undistinguished record as a legal scholar and jurist—including the achievement of having been reversed by higher courts nearly three times as often as the average district judge.

"On all the evidence, Judge Carswell does not measure up to the standard we have rightly come to expect of members of the Supreme Court," Senator Case said.

On the same day, 457 lawyers, law deans and law professors urged the Senate to reopen hearings on the Carswell nomination—but added that on the basis of what is known already, the nomination should be rejected.

Elevation of Judge Carswell to the nation's highest court would have two deplorable effects. It would dilute the quality of a body whose very essence demands men of the highest quality. And it would be a cruel blow to minority-group Americans who are constantly being urged to rely on the workings of the law to obtain justice.

We hope other Republican senators join Clifford Case in placing duty to country over duty to a President of their own political party. This includes Senators Scott and Schweiker of Pennsylvania, who have indicated they favor Judge Carswell's nomination—but who voted against the confirmation of Judge Haynsworth, whose qualifications, modest as they were, were excellent compared to Judge Carswell's.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE PENDING BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending business?

The PRESIDING OFFICER (Mr. COOK). The pending business is the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court.

Mr. BYRD of West Virginia. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is the motion to recommit the nomination.

Mr. GRIFFIN. I would like to inqulre, for the information of Members of the Senate, following the vote on the motion to recommit, which is the pending motion, and assuming that the motion to recommit should fail, what then should be the business before the Senate?

Mr. BYRD of West Virginia. Mr. President, the Senate would still be in executive session. The business then before the Senate would be the nomination of G. Harrold Carswell to be an Associate Justice of the Supreme Court.

Mr. GRIFFIN. I thank the Senator from West Virginia.

The PRESIDING OFFICER. The Chair might state to the Senator from Michigan that, under the order of the Senate, the nomination would be the pending business until such time as it would be set aside, and on that nomination, under the previous order, a vote would take place on Wednesday at 1 o'clock

Mr. GRIFFIN. I thank the Chair.

Mr. BYRD of West Virginia. Mr. President, of course the able majority leader could at any time move to return to legislative session, in which case the resolution (S. Res. 211) would again become the pending business.

Mr. GRIFFIN. He could do that.

Mr. BYRD of West Virginia. Or the majority leader could move, while in executive session, to take up legislative business, as in legislative session.

In specific answer to the Senator's specific question, once the vote on recommittal has been had, and if the motion to recommit is not sustained—or if a motion to table the recommital motion should carry—unless the majority leader moves to go into legislative session or to proceed to something else as in legislative session, the pending business then before the Senate would be the question of confirming or rejecting the nomination of Mr. Carswell.

Mr. GRIFFIN. I thank the distinguished acting majority leader.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the unanimous-consent agreement of March 25, 1970, be printed in the RECORD, so that Senators may be reminded of the order for Monday, April 6, 1970.

The PRESIDING OFFICER. Without objection, it is so ordered.

The unanimous-consent agreement is as follows:

UNANIMOUS-CONSENT AGREEMENT

(In executive session)

Ordered, That, effective on Monday, April 6, 1970 (with the Senate convening in executive session at 10 a.m.), further debate on the nomination of G. Harrold Carswell to be Associate Justice of the United States Supreme Court, with the pending question on the motion of the Senator from Indiana (Mr. Bayh), to recommit the nomination to the Committee on the Judiciary, be limited to 3 hours to be equally divided and controlled by the Senator from Indiana (Mr. Bayh) and the Senator from Nebraska (Mr. Hruska), or whomever they may designate, with the vote coming at 1 o'clock, or following a vote on a motion to table the motion to recommit if such a motion should first be offered. Following the above vote or votes the Senate will proceed to vote on the confirmation of the nomination at 1 o'clock on April 8, 1970, or following the vote on a motion to table the nomination should such motion be made, and if the nomination is still before the Senate. [WEDNESDAY, MARCH 25, 1970.]

RECESS TO 10 A.M. MONDAY, APRIL 6, 1970

Mr. BYRD of West Virginia. Mr. President, if there be no further business to

Name and country	Name of currency	Lodging		Meals		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Margie B. Morris:											
Finland	Finmark	786.23	187.78	366.44	87.52	205.20	49.01	205.29	49.03	1,563.16	373.34
France	Franc	829.79	166.86	402.61	80.96	869.73	174.89	57.44	11.55	2,159.57	434.26
Germany	Deutsche Mark	989.84	247.15	540.07	134.85	6,563.16	[3] 1,638.74	539.79	134.78	8,632.86	2,155.52
Greece	Drachma	3,385.20	112.84	2,296.80	76.56	1,849.50	61.65	262.20	8.74	7,793.70	259.79
Italy	Lira	100,803	160.77	39,407	62.85	57,834	92.24	24,234	38.65	222,278	354.51
Netherlands	Guilder	182.67	50.17	109.08	29.96	59.31	16.29	41.73	11.46	392.79	107.88
Sweden	Krona	297.54	57.64	79.86	15.47	56.52	10.95	62.25	12.06	496.17	96.12
Switzerland	Swiss franc	425.90	98.52	214.94	49.72	258.21	59.73	180.74	41.81	1,079.79	249.78
United Kingdom	English pound	100.19.7	242.35	90.8.1	216.97	91.8.3	219.39	59.3.8	142.04	341.19.7	820.75
Total			1,324.08		754.86		2,322.89		450.12		4,851.95
Henry S. Reuss:											
Germany	Deutsche mark					2,145.20	[3] 535.63			2,145.20	535.63
Italy	Lira	40,000	64.00	73,750	118.00			11,250	18.00	125,000	200.00
Total			64.00		118.00		535.63		18.00		735.63
John R. Stark:											
Germany	Deutsche mark					2,815.60	[2] 765.04			2,815.60	765.04
Mexico	Mexican dollar	1,236.51	99.00	899.28	72.00	237.31	19.00	99.92	8.00	2,473.02	198.00
Total			99.00		72.00		784.04		8.00		963.04
Roberto Campos,[4] Brazil	Cuzeiro		[5] 150.00			3,655.08	858.00			4,294.08	1,008.00
Alex Iveroth,[4] Sweden	Krona		[5] 150.00			4,871.36	942.60			5,646.56	1,092.60
Akio Morita,[4] Japan	Yen		[5] 150.00			547,740	1,521.50			601,740	1,671.50
Pierre Uri,[4] France	French franc	[6] 150.00				4,691.62	842.00			5,527.42	992.00
Eric Wyndham-White: Switzerland	Swiss franc	[6] 150.00				3,846.00	894.21			4,491.00	1,044.21
Total			3,652.24		1,688.40		15,551.90		1,054.02		21,945.75

RECAPITULATION

Foreign currency (U.S. Dollars equivalent) $21,945.75

WRIGHT PATMAN
Chairman, Joint Economic Committee.

[1] Transportation expenses incurred on behalf of the entire party which were charged to Representative Bolling as chairman of the subcommittee.
[2] Round-trip transportation purchased by State Department.
[3] Includes round-trip transportation purchased by State Department.
[4] Testified at hearings before the Subcommittee on Foreign Economic Policy.
[5] $150 advance by U.S. embassies before departure for the United States—no breakdown furnished the Joint Economic Committee. For accounting purposes entire amount included under "Lodging."
[6] 3 days per diem at $50 per day.

REPORT OF EXPENDITURE OF FOREIGN CURRENCIES AND APPROPRIATED FUNDS BY THE COMMITTEE ON ATOMIC ENERGY, U.S. SENATE, EXPENDED BETWEEN JAN. 1 AND DEC. 31, 1969

Senator Anderson:											
Switzerland	Franc	559	$130.00	432	$100.00	1,234.00	$286.88	86	$20.00	2,311	$536.88
United Kingdom	Pound	25.0.0	60.00	10.8.4	25.00	23.0.0	[1] 54.97	6.5.0	15.00	64.11.5	154.97
Germany	Deutsche mark					2,348.00	586.27				586.27
Senator Curtis:											
Belgium	Franc	1,250	25.00	1,000	20.00	250	5.00			2,500	50.00
Denmark	Krona	569.25	75.73			379	50.39	23.35	3.00	971.60	129.12
Norway	do	427.84	60.26							427.84	60.26
Sweden	do	1,085.55	208.76							1,085.55	208.76
United Kingdom	Pound	73.3.2	174.81			16.5.6	38.90			73.3.2	213.71
Congressman Price:											
Austria	Schilling	1,548	60.00	774	30.00	1,180.59	45.78	258	10.00	3,760.59	145.78
Belgium	Franc	4,000	80.00	2,500	50.00	4,921.00	98.22	1,000	20.00	12,421.00	248.22
France	do	495	90.00	412	75.00	511.00	93.05	99	18.33	1,517.00	276.38
Germany	Deutsche mark	200	50.00	160	40.00	1,881.60	514.10	40	10.00	2,281.60	614.10
Foreign currency (U.S. dollar equivalent):											$3,717.68
Italy	Lira	50,260	80.00	31,360	50.00	6,290	10.00	6,290	10.00	94,200	150.00
Switzerland	Franc	180.60	42.00	129	30.00	475.95	110.10	41	9.50	826.55	191.60
United Kingdom	Pound	20.16.8	50.00	16.13.4	40.00	21.12.0	51.63	4.3.4	10.00	63.3.7	151.63
Total			1,186.56		4,460.00		1,945.21		125.83		3,717.68

RECAPITULATION

Foreign currency (U.S. dollar equivalent) $3,717.68

CHET HOLIFIELD,
Chairman, Joint Committee on Atomic Energy.

[1] Commercial air transportation.

Mar. 14, 1970.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAVEL). Without objection, it is so ordered.

RECESS

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair, with the understanding that the recess not extend beyond 3 p.m. today.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Thereupon (at 1 o'clock and 55 minutes p.m.) the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 2 o'clock and 43 minutes p.m., when called to order by the Presiding Officer (Mr. GRAVEL).

THE CARSWELL NOMINATION

Mr. SPONG. Mr. President, our Supreme Court is not, and has not been in recent years, held in high esteem by a majority of our citizens. The reasons for this are varied, but the fact remains that there has been a general lack of confidence in our highest court at a time

when all the institutions of our democracy are under attack. The judiciary is the one branch of our Government removed from the electorate, and considering present public opinion of the Court, plus the rather sad recent history of the seat on the Court for which Judge George Harrold Carswell has been nominated, I believe the role of advise and consent rests heavier upon the Senate than at any time in this century.

When Judge Carswell's name was presented to the Senate, I viewed the nomination with the presumption in favor of approval that I have given all nominees to the Supreme Court during my service in the Senate. Moreover, this presumption was buttressed by my own view that an able Southern jurist would be a helpful addition to the Court.

Today the South has much to offer the Nation—experience, patience, and wisdom—qualities gleaned from military defeat, poverty, and deprivation. It is in this region where blacks and whites, in nearly equal numbers, for better or worse, have coexisted for generations. A qualified southerner could give more than geographic and philosophical balance to the Supreme Court—he could give perspective.

In discussing earlier nominations, I have stated—in defining my own views of the role of advise and consent—that judicial philosophy and partisan politics have no place in the consideration of a nominee for the Supreme Court. A Senator should review carefully the nominee's qualifications—his background, experience, integrity, and temperament, mindful that this is the Nation's highest judicial tribunal and that minimal standards are not the yardstick by which a nominee should be measured.

I have regretfully concluded that Judge Carswell does not measure up to the standards I believe are required at this time of a Supreme Court Justice. This conclusion has not been arrived at hastily. I have tried, in reviewing the hearings and debate thus far, to resolve my doubts in favor of the nominee. I have not been able to do so.

I had hoped the motion to recommit this nomination to the Senate Judiciary Committee would have passed. This could have provided an opportunity for clarification of matters made public subsequent to the committee hearings and subject to much discussion in the news media. It would have been beneficial to the nominee, whether or not he is confirmed, to have competent and clarifying testimony presented to the committee, rather than allow clouds to remain.

I believe the present views of Judge Elbert Tuttle, retired chief justice of the fifth circuit court, should be clarified since he apparently no longer endorses the confirmation of his colleague, Judge Carswell. Judge Tuttle's letter, which was printed in the hearing transcript, was a significant factor in the testimony of former Gov. Leroy Collins and in the favorable recommendation given by the Judiciary Committee. During the hearings, Judge Tuttle apparently told Judge Carswell he could not testify in his behalf. This information was not known until the nomination had reached the Senate floor.

Also, I am troubled by the testimony of Judge Carswell with regard to his participation in the organization of a private country club in Tallahassee. His testimony on this matter was evasive, ambiguous, and an altogether unsatisfactory account of the facts. Evasive testimony does no credit to a man who is being considered for the Nation's highest judicial post. If answers to the committee were based upon any misunderstanding of questions propounded to him, this should be clarified by Judge Carswell. As the matter now stands, it has been made worse by the subsequent statements of two reputable lawyers that they discussed Judge Carswell's participation as an organizer with him on the very night prior to his testimony under oath before the Senate Judiciary Committee.

Justice Fortas declined reappearance before the Judiciary Committee after the matter of his lecture fees at American University and the source of these fees was made public. On the other hand, Judge Haynsworth, after it was disclosed that he had purchased stock in a company involved in litigation before him, returned with additional witnesses and gave the committee all of the factual data surrounding that transaction.

It is argued that undistinguished jurists have previously been nominated and confirmed. Perhaps so, but I must weigh this nomination in the context of the times in which we live, and my own responsibility in terms of the standards of qualification I believe are required of a Supreme Court Justice. Also, I am mindful of the probability that President Nixon will have other opportunities in the next few years to nominate men for positions on the Court. It is important, I believe, to impress upon the President that there should be no lowering of standards where the nominating process begins.

In this regard I am compelled to comment upon President Nixon's letter of March 31 to Senator SAXBE. I quote in part therefrom:

> What is centrally at issue in this nomination is the constitutional responsibility of the President to appoint members of the Court—and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of the one person entrusted by the Constitutioon with the power of appointment. The question arises whether I, as President of the United States, shall be accorded the same right of choice in naming Supreme Court Justices which has been freely accorded by my predecessors of both parties.

In the 3 years I have served in the Senate I have opposed one nominee who was regarded as a liberal, Justice Fortas, and supported one nominee regarded as a liberal, Justice Marshall. They were nominated by a President of my own party. Subsequently, I have supported Chief Justice Burger and Judge Haynsworth, both regarded as conservatives and nominated by President Nixon.

I take exception to any inference that I am endeavoring to substitute by subjective judgment or my own philosophy for the President's. This is a question of competence and temperament rather than philosophy. Am I to believe that if President Nixon had all of the facts now before the Senate before him at the time this appointment was made that he would still nominate George Harrold Carswell? Am I asked to overlook the fact that should this nomination be defeated the President still has the constitutional authority to nominate a judge of whatever philosophy and background he chooses? I will not comment further upon the letter to Senator SAXBE, other than to observe that the President has introduced an entirely new concept of the Senate's role of advise and consent. Even the narrow interpretation of the Senator's role in which I believe, contemplates fully the Senate's right to question the qualifications, temperament, and character of a nominee, particularly for a lifetime appointment.

It is also argued that we should be mindful of a man's capacity to grow—that Judge Carswell is a relatively young man whose undistinguished record to date should not be conclusively weighed against the possibility that, as a Supreme Court Justice, he might develop a competence not heretofore apparent. I find little to sustain that hope, although I have taken the time to review many of his opinions.

It has been asserted that during his time on the district bench, 40.2 percent of Judge Carswell's appealed decisions were reversed by higher courts. The figure is 58.8 percent when only his printed or major decisions are considered. Also, figures have been presented which show that of the 67 judges who served in the fifth circuit during the 11 years of Judge Carswell's service as a district judge only six have a higher rate of reversal. I recognize the fallibility of statistical criteria.

Yet, if there are reasons for these abnormal percentages they have not been presented effectively. Moreover, it is disturbing that the reversal rate increased during his service.

Another matter of concern is Judge Carswell's apparent lack of industry as a Federal district judge. Alleged facts, presented after the hearings, indicate that while Judge Carswell had one of the lightest case loads in the entire fifth circuit, he also had one of the heaviest case backlogs, a situation that worsened as time went on and which did not improve even with the appointment of a second judge in the district. If this is true, I find it disquieting when considering the busy workload of our Highest Court.

In reviewing the nomination of Judge Carswell, I found myself inevitably comparing the nominee with other Southern jurists of recent times—Justice Reed of Kentucky, Justice Black of Alabama, and Justice Byrnes of South Carolina. I find in the Carswell record no evidence of the scholarly reasoning of Stanley Reed, no fine understanding of our Bill of Rights that has marked the service of Hugo

Black, and nothing comparable to the brilliant public service of Senator Byrnes that preceded his brief service on the Supreme Court.

Comparisons are also inevitable with two southerners who have been denied a place on the Court in this century—Judge John J. Parker of North Carolina and Judge Clement Haynsworth of South Carolina.

Dean Pollak, of the Yale Law School, when pressed for such a comparison of the nominee with Judge Parker said as follows:

Senator, Judge Parker has been very much in my mind because though I know there is a variety of view about him and in his later years he wrote a number of opinions with which I disagree, I have always thought of him as a judge of very considerable distinction, and it has been to my mind a very real question as to whether the Senate was not in error in declining to consent to his nomination. But the adjectives you use in referring to Judge Parker, the brilliance, the excellence, the ability that you properly ascribe to him, are not, I respectfully suggest, adjectives that can appropriately be attributed at this stage to this judge, the nominee who is now before you. (Transcript, Page 248)

I supported Judge Haynsworth for reasons now a matter of record. It is my view that the Senate erred in failing to consent to his nomination. While studying the Haysnworth record I was impressed that detailed briefs were presented by nationally respected legal scholars as evidence of Judge Haynsworth's abilities and, in general, praise of his judicial work in various areas of the law. Read cumulatively, they presented the portrait of a diligent, able and thoughtful judge with a quality in his work that assured he could serve with distinction on the Supreme Court of the United States. I find no comparable evidence in the Carswell transcript nor has any been presented subsequent to the hearings.

I hope I am mistaken in my assessment of Judge Carswell. The demands upon the Court during the remainder of this century will be great. It is quite possible that this nominee, if confirmed, might well serve for most of the balance of this century. This has been a difficult decision and I have come to have regrets about a system that has subjected three of the last four nominees to the type of national debate that has resulted. Nevertheless, for me there remain unanswered questions about the nominee. I believe we must seek excellence and require candor from those who are to administer justice on the highest court in our Nation.

I cannot consent to this nomination.

THE PENDING BUSINESS

Mr. BYRD of West Virginia. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is Senate Resolution 211, seeking agreement with the Union of Soviet Socialist Republics on limiting offensive and defensive strategic weapons and the suspension of test flights of reentry vehicles.

PROGRAM FOR TOMORROW

Mr. BYRD of West Virginia. Mr. President, as a reminder to Senators, may I say that immediately upon the disposition of the reading of the Journal on tomorrow, under the previous order the able senior Senator from South Carolina (Mr. THURMOND) is to be recognized for not to exceed 1 hour, following which it is to be assumed that the majority leader will set aside a period for the transaction of routine morning business, before the unfinished business is laid before the Senate.

ADJOURNMENT TO 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move in accordance with the previous order, that the Senate stand in adjournment until 10 o'clock tomorrow morning.

The motion was agreed to; and (at 2 o'clock and 55 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, April 7, 1970, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate April 6, 1970:

AMBASSADORS

Arthur K. Watson, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to France.

Walter C. Ploeser, of Missouri, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Costa Rica.

William D. Brewer, of Connecticut, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mauritius.

William C. Burdett, of Georgia, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Malawi.

DEPARTMENT OF STATE

David M. Abshire, of Virginia, to be an Assistant Secretary of State.

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Vice Adm. John Marshall Lee, U.S. Navy, of Virginia, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency.

EXTENSIONS OF REMARKS

BOOM IN ABILENE EVIDENCE AMERICANS STILL LIKE IKE

HON. CHESTER L. MIZE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Monday, April 6, 1970

Mr. MIZE. Mr. Speaker, a little more than a year has passed since the death of Dwight D. Eisenhower. Our former President and general of the Army rests peacefully, his labors done and his accomplishments remembered by Americans as a testament to their country's greatness.

Ike is buried in a simple chapel crypt at Abilene, the town that he grew up in and remembered through his life with fondness. Eisenhower Chapel is near the museum that contains the personal effects and papers of a life of selfless service and dedication to good works. Nearby, also, is the Eisenhower boyhood home, typical of the humble origins of many of our greatest leaders and most of America's heroes.

In the year since Ike was buried in Abilene, over three-quarters of a million citizens have paused to pay their respects and ponder the significance of his work, his life, and how he lived it. Abilene has welcomed visitors to its historic places with warmth and quiet dignity befitting the memory of the general.

Mr. Speaker, on Thursday, April 2, the New York Times carried an article about Abilene—1 year after Ike came home to rest. I know all Americans will be interested in reading this piece for it reflects some of the reasons why I am deeply honored and highly privileged to represent the citizens of Abilene in the Congress.

The Times article is reproduced as follows:

BOOM IN ABILENE EVIDENCE AMERICANS STILL LIKE IKE

(By Drummond Ayres, Jr.)

ABILENE, KANS., April 1.—The charisma is still there, even in death.

In the year since Dwight David Eisenhower was brought back to this old frontier town and lowered into the rich prairie soil of which he always seemed so much a part, more than 782,000 people have come here to pay their respects.

They stand silently at the foot of his simple chapel crypt, heads slightly bowed, remembering that 35-million-vote smile.

They visit the adjacent museum to relive the drama of the general's longest day, tiptoe through the library housing his presidential papers, troop through his boyhood home to soak up the atmosphere of an America that was less complicated and more cocksure.

Because Americans by the thousands, still like Ike, Abilene is prospering. Since April 2, 1969, the days of his burial, cash receipts at the several dozen local restaurants, motels, gas stations and stores have increased 10 to 30 per cent, the biggest spurt since 1867, when the Union Pacific laid its tracks into town and started hauling out the Texas longhorns coming up the Chisholm Trail.

Some of Abilene's 8,500 residents, such as Ernest Morse, president of the Citizens Bank, are beginning to use the word "boom" to describe the economic changes. In a recent lunchtime visit to the Chamber of Commerce office to get the latest facts and figures, Mr. Morse said, "there's a little boom underway. Net worth is up just about everywhere."

Other indicators tend to support Mr. Morse's view.

Two new chain restaurants recently opened on the outskirts of town, where the big Victorian houses with their wide, grassy

both offensive and defensive weapons will apply. The situation is different from past arms negotiations and the prospects are more hopeful, if we but realize the opportunity for mutual restraint. The fluidity of Soviet attitudes, though marked by caution as are our own, is a fact we should recognize. Helsinki has been followed, for example, by a number of quiet Soviet feelers which appear to be inviting a proposal such as that contemplated in Senate Resolution 211.

It is to help President Nixon seize this great opportunity for turning the arms competition into more secure channels that the supporters of this resolution believe the Senate's opinion should be expressed in this manner. If the Soviets do not prove receptive to the recommended suspension of deployments of both offensive and defensive weapons, there will be ample opportunity thereafter to explore more limited arrangements.

Once again I commend the distinguished Senator from New Jersey for his enlightened and constant efforts to advance this great cause.

ORDER OF BUSINESS

Mr. GOLDWATER. Mr. President, I ask unanimous consent that I may proceed for not to exceed 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Arizona is recognized for not to exceed 10 minutes.

NEW EVIDENCE SUPPORTS JUDGE CARSWELL

Mr. GOLDWATER. Mr. President, the debate on Judge Carswell has greatly interested me because of figures which have been used which just have not sounded reasonable to me—a nonlawyer. Questions asked of judges in other courts, who are friends of mine, have verified my misgivings and research by my staff has backed this up.

I am able to release today the results of a study which proves beyond any doubt that Judge Carswell is eminently well suited for a position on the Supreme Court bench.

This study is the first complete analysis that has been made of Judge Carswell's decisions while he was sitting as an appellate judge. It clearly reveals two previously overlooked facts which are highly pertinent to Judge Carswell's qualifications.

First, the study discloses that the nominee holds the special distinction of having been assigned, while he was a district judge, to sit with the Fifth Circuit Court of Appeals in no less than 54 different cases.

What is more, his record in these cases gives him an average of 93 percent as an appellate judge. In other words, his decisions and opinions as a visiting judge on the circuit court have prevailed 93 percent of the time.

When his record of 54 cases as a visiting appellate judge is added to the minimum of 100 decisions which he has joined in since coming to the higher court, it becomes clear that his judicial record on the Court of Appeals is over 50 percent more extensive than the number of his published decisions from the district court. This means that his critics have built their attack against Judge Carswell based on much less than half of his total record.

Mr. President, this new data provides convincing evidence of the high esteem with which Judge Carswell is held in the Fifth Circuit. It is an unusual tribute for any district judge to be chosen so many times to sit with circuit judges in the decision of appellate cases.

Of particular interest is the fact that none other than Chief Judge Tuttle, who headed the Fifth Circuit, picked out Judge Carswell time after time to be a member of the same review panel of which he, Judge Tuttle, was a member.

Judge Carswell sat together with Judge Tuttle on at least 25 different occasions. This certainly gives a true picture of the high regard and great confidence which Chief Judge Tuttle had for the credentials and skills of Judge Carswell. It clearly gives renewed meaning to the letter of endorsement which Judge Tuttle had written on behalf of Judge Carswell.

Mr. President, throughout this debate, I have noticed an unusual preoccupation by Judge Carswell's opponents with various sets of statistics compiled by law students. I hope they will give equal consideration to the striking new data that I have released today.

This evidence, going as it does to Judge Carswell's performance as an appellate judge, is much more pertinent than the incomplete and misleading statistics which the critics have been using.

His detractors have ignored the total of 4,500 cases which Judge Carswell has handled as a district judge and have focused only on those cases which were appealed. There is no question that this is a greatly distorted method of examining the nominee's credentials. It gives no weight at all to the vast majority of cases which Judge Carswell handled so well that there was no ground for appeal.

Also, it completely ignores the setting of each decision. It hides such important considerations as whether or not new law was handed down by the higher courts after the lower court decision.

For example, many of Judge Carswell's critics have pointed to two school desegregation cases of his which were reversed by the fifth circuit court of appeals. These are supposed to demontrate that Judge Carswell is hostile to civil rights.

What his detractors neglected to tell us, however, was that 11 other district judges in the fifth circuit were reversed by the same higher court ruling. And someone forgot to mention that Judge Carswell himself voted to reverse 11 of these cases—419 F.2d 1211. He was in complete agreement with his fellow judges that an intervening Supreme Court case required swifter school desegregation in the fifth circuit.

In fact, Mr. President, the statistics used by the opponents are not even accurate. They have accepted data prepared by law students without making an examination on their own. My office has discovered five cases of Judge Carswell's that were affirmed by the circuit court, but overlooked by his critics—293 F.2d 261, 337 F.2d 753, 341 F.2d 351—two cases, 21107 and 21111—399 F.2d 93, and 420 F.2d 60.

Who knows how many more they may have omitted before arriving at their misleading statistic?

Mr. President, the school integration decision I have cited is not the only one which demonstrated the nominee's concern with human rights.

The study which I have initiated has uncovered 11 additional decisions that are without any question procivil rights—353 F.2d 585; 415 F.2d 325 and 1377; 417 F.2d 838, 845, and 848; 418 F.2d 549 and 560; and 420 F.2d 379, 527, and 690.

Mr. President, the opponents could have discovered this for themselves. It should not be necessary for a Senator who is not a lawyer to have to seek out these hidden facts. In the face of this balanced record, the minority report on the nomination of Judge Carswell makes the unqualified charge that the nominee's supporters can find no activities to show "his commitment to equal rights."

Now each of my colleagues who signed this report is a lawyer. With all due respect, I must suggest to my colleagues that if I, who am not a lawyer, can turn up 10 or 11 decisions solidly backing minority rights then surely they can do even better.

This same failure to do their homework has marked the testimony and speeches of nearly every one of Judge Carswell's critics. As another example, I might refer to Dean Pollak, who is normally well prepared.

And yet he appeared before the Senate Judiciary Committee to express his concern about Judge Carswell when he had merely read some of his district court opinions covering a period of 5 years. This is 5 years out of an 11-year span on the lower court.

To top it all off, Dean Pollak admitted that he had only spent the Saturday evening and Sunday morning previous to his testimony running through these cases. He did not study any of Judge Carswell's Circuit Court cases at all.

Now, I really must ask—is this fair? Can Senators truly reach a reasoned decision on the basis of opinions volunteered by individuals who have failed to review the whole record? Or have we been fed a bunch of snap reactions founded solely on emotional judgments?

Mr. President, the study I have undertaken reveals 54 decisions in which Judge Carswell joined while he sat as a visiting judge on the Fifth Circuit bench and at least another 100 in which he participated after he became a circuit judge.

In fact, I have come across seven opinions which Judge Carswell himself wrote during the years he sat as a visiting Judge on the higher court and another 16 which he has written since becoming an appellate Judge.

In all, his decisions from the appellate bench total over 150. This is half again as large as his printed decisions as a district judge. In other words, his opponents have ignored more than half of Judge Carswell's judicial record in reaching their position.

To my mind, anyone who is actually seeking the truth of the matter will examine each of these cases before jumping to the conclusion that Judge Carswell is not fit for the Supreme Court.

In my opinion, his complete career leaves no doubt that Judge Carswell is a highly capable individual and a skilled jurist.

His record is a balanced one. His decisions prove that he has often voted on the side of human rights.

His testimony before the Senate committee rings out with expressions of deep concern and knowledge about human problems.

There is no sound reason for opposing his nomination.

Judge Carswell is extremely well qualified to serve as a member of the Supreme Court. I shall support his nomination 100 percent.

Mr. President, at this point, I ask unanimous consent to insert in the RECORD a table of citations which will verify the findings I have released.

There being no objection, the citations were ordered to be printed in the RECORD, as follows:

STUDY OF U.S. DISTRICT JUDGE CARSWELL'S RECORD OF DECISIONS AS AN APPELLATE JUDGE

An analysis of every Fifth Circuit appellate decision published in the Federal Reporter, Second Series, beginning with 1959 cases and continuing into 1969 cases, reveals that District Judge Harrold Carswell has been assigned to sit on the higher court bench as a visiting judge on at least fifty-four occasions.

Chief Judge Tuttle participated as a member of the same appellate court as Judge Carswell in twenty-five of these cases.

Only three of the fifty-four decisions were reversed by the Supreme Court. One was vacated.

In all, the decisions in which Judge Carswell joined have prevailed as sound law in 92.6 percent of the cases.

This data clearly establishes the credentials of Judge Carswell to sit as an highly competent member of any higher court. It definitely proves his capacity and experience to serve as an Associate Justice of the United States Supreme Court.

The list of decisions in which Judge Carswell participated on the appellate bench, while he was a District Judge, is as follows:

Federal Reporter—2d series

Volume:	Page
286	46
286	72
286	742
287	253
287	623
301	630
304	160
304	[1]876
304	881
305	158
305	934
307	790
307	802
307	894
308	724
309	1
309	[3]397
310	11
310	53
310	66
310	77
310	82
310	328
311	291
311	[4]429
311	[3]437
311	[3]438
312	134
312	207
313	187
313	303
314	852
317	295
340	707
340	[1]708
340	[2]708
351	278
351	304
351	384
351	455
351	456
351	468
351	470
351	[1]489
351	609
351	611
351	671
351	[2]952
352	69
352	76
353	485
353	585
355	[2]543
364	[1]829

[1] First case.
[2] Second case.
[3] Subsequently reversed.
[4] Subsequently vacated.

An analysis of Fifth Circuit appellate decisions published in the Federal Reporter, second series, from volumes 415 through 420, discloses, at least, 101 decisions which Judge Carswell has joined in since he became a judge on the court of appeals. The decisions include 16 cases in which Judge Carswell wrote the court's opinions. These cases are as follows:

Federal Reporter, 2d series

Volume:	Page
415	325
415	743
415	768
415	773
415	[1]1007
415	1012
415	1017
415	1115
415	1129
415	[3]1377
416	10
416	917
416	379
416	407
416	412
416	441
416	451
416	914
416	917
416	949
416	968
416	[3]972
416	1042
416	1077
416	1235
416	1246
416	[3]1257
416	1332
416	[3]1333
417	94
417	135
417	198
417	218
417	296
417	303
417	329
417	518
417	628
417	629
417	[2]633
417	838
417	845
417	848
417	1041
417	1134
418	134
418	[1]238
418	306
418	405
418	417
418	441
418	206
418	[1]238
418	275
418	439
418	482
418	1093
418	560
418	549
418	847
418	849
418	873
418	1093
418	[1]1250
418	1305
419	10
419	30
419	91
419	122
419	152
419	223
419	381
419	128
419	149
419	1809
419	384
419	572
419	(11 cases) 1211
419	1306
419	1310
419	1312
419	1325
420	322
420	371
420	[3]379
420	454
420	485
420	508
420	527
420	552
420	[3]690
420	696

[1] First case.
[2] Second case.
[3] Third case.
[4] Subsequently vacated.

Mr. MILLER. Mr. President, will the Senator yield?

Mr. GOLDWATER. I am happy to yield.

Mr. MILLER. Mr. President, I commend the Senator from Arizona for adding some light to the record with respect to the pending nomination. I should also like to add a further note to what he said about some of these reversals.

It has been my observation that most of the opponents of the nomination have got into the numbers game on reversals without doing their homework—this is especially true of many law professors and lawyers—with respect to what went into the reversals.

For example, a good many of the reversals of Judge Carswell's decisions occurred because there had been a change in the ground rules. A district judge is supposed to follow the rules of his circuit. Judge Carswell did, and then, after he had decided the case, and pending its appeal before the fifth circuit, the fifth circuit changed the ground rules, either on their own initiative or as a result of Supreme Court decisions.

I find it very difficult to understand why there is such a lack of scholarship on the part of some of the opponents in pointing this out; because if the ground

rules are changed, no one can blame Judge Carswell for that. In the printed hearings record, beginning on page 311, is an analysis of a good many of these reversals which points out what I have been stating.

I should also like to make a comment, with respect to Dean Pollak of the Yale Law School, that the dean undertook to come before the Committee on the Judiciary and express concern over the lack of scholarship of the nominee, when the dean himself displayed a terrible lack of scholarship in undertaking to say, with respect to Judge Carswell:

> With respect to Judge Carswell from what little I knew of him at hearsay and from the press, there was no such background of demonstrated achievement whatsoever.

It would seem to me that the dean himself was lacking in the very scholarship that he sought to criticize the nominee for not having.

Then further, the dean referred approvingly to some of his colleagues whom he knows well and for whom he has the highest regard, with respect to their detrimental testimony which he had read about in the press.

I find it very difficult to understand why Dean Pollak would overlook completely the testimony before the Committee on the Judiciary, based upon knowing the nominee well, by a 34-year professor at Yale Law School, the Sterling professor of law—the highest honor that any member of the faculty at Yale can attain—Professor Moore, a recognized authority on Federal practice, who gave very favorable testimony in support of Judge Carswell.

I think that the Senator from Arizona did a service to the Senate by pointing out some of these deficiencies, and I must say, as a lawyer, that I am very disappointed that some members of my profession have seen fit to indulge in what is known as "trial by press", instead of undertaking the scholarship and the research for which our profession is supposed to be noted.

The PRESIDING OFFICER. The time of the Senator from Arizona has expired.

Mr. GOLDWATER. Mr. President, I ask for 1 additional minute to respond to the Senator from Iowa.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GOLDWATER. Mr. President, as I pointed out, I am not a lawyer, but as I have listened to the debate, and have kept reading the testimony and the debate in the record, I have found it hard to believe that a judge could handle so few cases, when friends of mine on the appellate courts and other courts of this country are swamped. Backlogs of cases in the courts of my own State sometimes run from 1,800 to 2,000.

So I made inquiry, and found out that the total number of cases we are talking about is 4,500. But we have not heard that figure mentioned here.

I think the opponents of Judge Carswell have demonstrated very poor research capability, because it took my staff only one night of research in the Library of Congress to find out the materials I have put into the RECORD today.

I hope my fellow Senators will read it, so that they can begin to understand that the combined weight of dishonesty of the New York Times and the Washington Post has had a more pervasive effect here than has good judgment.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Leonard, one of his secretaries.

REPORT OF CIVIL SERVICE COMMISSION—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 91-238)

The ACTING PRESIDENT pro tempore (Mr. METCALF) laid before the Senate the following message from the President of the United States, which, with the accompanying report, was referred to the Committee on Post Office and Civil Service:

To the Congress of the United States:

I have the honor to transmit herewith the Civil Service Commission annual report for Fiscal Year 1969. This report, which is made pursuant to 5 U.S.C. 1308, discusses the achievements of the Commission which have been designed to improve and upgrade Federal personnel management. I believe that these efforts have made a significant contribution toward enhancing the effectiveness and efficiency of the Federal Government.

RICHARD NIXON.

THE WHITE HOUSE, *April 7, 1970.*

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that I may speak for an additional 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE REAL ISSUE OF THE CARSWELL NOMINATION

Mr. BYRD of West Virginia. Mr. President, much has been made in the recent debates over Judge Carswell's confirmation about the disposition of his decisions when they were appealed to the court of appeals for the fifth circuit. Emphasis has been focused on his reversals in the area of civil rights.

Let us examine the true facts of these issues. In my judgment, the facts show that Judge Carswell has a commendable record in these cases.

In the first place, the statistics which the opponents of this nomination rely upon are very misleading. On March 10, the Ripon Society and a group of Columbia University law students stated that Judge Carswell's reversal rate was 58.8 percent while the average reversal rate of district judges within the fifth circuit was 24 percent. Thus it was made to appear that Judge Carswell's reversal was 34 percentage points worse than average, and 2½ times as great as the average rate. Some of the supporters of the nomination criticized the study as being based on an entirely insufficient sampling of decisions.

On March 25 the Ripon Society came up with an entirely new set of figures which document in detail the previous criticism made of these statistics. Judge Carswell's reversal rate is now conceded to be not 58 percent but 40 percent, while the average reversal rate for district judges in the fifth circuit is now conceded to be not 24 percent, but 30 percent. Thus Judge Carswell's reversal rate is no longer 34 percentage points above average but only 10, and his rate of reversals is only 1⅓ times as great as the average rate.

The Ripon Society and other opponents of the nomination are noticeably silent as to just what use should be made of these reversal statistics, or what they concede would be a satisfactory rate of reversal to entitle one to ascend the Supreme bench. It is interesting to note that Judge Frank M. Johnson, of the district court in Alabama, who the National Leadership Conference on Civil Rights has described as one who would be "a heroic addition to the Supreme Court" has a reversal rate which, like Judge Carswell's, falls above the median. His reversal rate was 32.6 percent, while Judge Carswell's was 40.2 percent, according to the Ripon Society's statistics. Yet according to Joseph Rauh, the former is "a wonderful Southern judge who would be an heroic addition to the Supreme Court," while Judge Carswell is mediocre.

The question underlying all of these statistics, of course, is just what these reversal rates are useful for in evaluating a judge's performance. Certainly if a trial judge is simply unable to apply appellate court precedents in deciding cases which come before him, his judicial competence may fairly be questioned. But in order to make this determination, one would have to know the nature of each case coming before him, and the basis for reversal upon appeal.

For example, in the trial of Federal criminal cases, with respect to which the substantive law is seldom in dispute, the evidentiary rules are well settled, and the trials may fairly be described as routine from a legal point of view, it can be fairly said that the trial court rulings are generally governed by appellate precedent. In this area, however, it has been conceded by the Washington Post that Judge Carswell's reversal rate is less than the average for the other judges of the fifth circuit. As a matter of fact, of the 44 appeals taken from criminal trials conducted by him, the fifth circuit affirmed 36 cases and reversed eight cases. This is an affirmance record of 82 percent, which is good by any standard.

Many civil cases, on the other hand, involve novel points of law which are not squarely controlled by an appellate precedent. In our judicial system, the appellate court has the final say on such matters, but it cannot be said as a matter of abstract reasoning that a district court is invariably wrong when reversed by the court of appeals if the court of appeals is itself making new law in reversing the

district court. For example, a liberally inclined court of appeals may be inclined to frequently reverse a conservative trial judge, not because the latter refuses to apply the precedents decided by the former, but because on a novel point of law the approach of one court will differ from that of the other.

As to Judge Carswell's record of reversals in civil rights cases, one of the leading opponents of this nomination, Mr. Joseph L. Rauh, stated to the Judiciary Committee that Judge Carswell had been reversed by the fifth circuit court of appeals in eight such cases. He neglected to tell the committee that four of Judge Carswell's civil rights decisions were affirmed on appeal. These four affirmances are:

Knowles v. *Board of Public Instruction of Leon County*, affirmed, 405 F. 2d 1206 (1969);

Presley v. *City of Monticello*, affirmed, 395 F. 2d 675 (1968);

Ball v. *Yarborough*, affirmed 281 F. 2d 789 (1960);

Steele v. *Taft*, affirmed in effect by *Palmer* v. *Thompson* No. 23841 (October 1969).

In determining the true facts as to the reversals in civil rights cases, we should bear in mind that this area of the law has undergone rapid and drastic change in the last 15 years. The fifth circuit court of appeals has been in the vanguard of this change. It has been acknowledged by most observers that the court has been very "liberal" on civil rights matters, and on many occasions has gone much further than even the Supreme Court in the field of civil rights.

Judge Carswell's record shows that he is a strict constructionist, so it is not at all surprising to find that he has been reversed at times by an extremely activist circuit court of appeals.

As a matter of fact, we could not consider Judge Carswell to be a strict constructionist if he had not at times been reversed by the activist circuit court of appeals.

In at least one instance the circuit court of appeals got so far ahead of the Supreme Court that the Supreme Court was compelled to reverse the circuit court of appeals. This was true in the case of *Wechsler* v. *County of Gadsden*, 351 F. 2d 311, which case has formed the basis of much of the criticism against Judge Carswell. The Wechsler case involved an interpretation of the criminal removal statute.

One of the opponents of this nomination has stated on the floor that Judge Carswell's decision in Wechsler to remand the criminal case back to the Florida court from which it was removed was contrary to the then-existing case law. This is incorrect. Judge Carswell's decision was based on existing Supreme Court decisions which gave the removal statute a very restrictive interpretation. After his decision in Wechsler, but before its appeal was heard by the fifth circuit, the Fifth Circuit Court of Appeals decided the cases of *Rachel* v. *Georgia*, 342 F. 2d 336 and *Peacock* v. *Greenwood*, 47 F. 2d 679. These fifth circuit decisions represented a sharp departure from a long line of Supreme Court decisions culminating with *Kentucky* v. *Powers*, 201 U.S. 1.

It was the fifth circuit, not Judge Carswell, who departed from the law.

When the cases were appealed to the Supreme Court, the High Court reversed the circuit court of appeals and reaffirmed its prior holdings. Thus, Judge Carswell's position in Wechsler was completely vindicated.

Similarly, we find that three other reversals of Judge Carswell's decisions cited by Mr. Rauh and other opponents of the nomination were clearly the result of supervening changes in the law.

In *Steele* v. *Board of Public Instruction of Leon County*, 371 F.2d 395 (1967), the fifth circuit held that the desegregation plan adopted by Judge Carswell in 1963 failed in a number of respects to meet the standards laid down by the fifth circuit in December 1966 in the case of *United States* v. *Jefferson County Board of Education*, 372 F.2d 836. The Jefferson Opinion of the circuit court of appeals represented a significant expansion in the area of school desegregation law. Surely, it would not be fair to have expected Judge Carswell to anticipate such a far-reaching change in the law. I referred to the impact of the Jefferson decision in my speech on February 9, 1970, which dealt with the history of litigation pertaining to school desegregation.

Two of the other cases in the area of civil rights in which Judge Carswell was reversed by the fifth circuit are *Youngblood* v. *Board of Public Instruction of Bay County*, No. 27863; *Wright* v. *Board of Public Instruction of Alachua* County, No. 27983 (Dec. 1, 1969). Mr. Rauh attached a great deal of significance to these two reversals. He failed to tell the committee that the entire fifth circuit, including Judge Carswell, sat en banc to consider 13 different school cases, including the Youngblood and Wright cases. All of these cases were reversed and remanded for reconsideration in light of the intervening decision of the Supreme Court in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19.

Judge Carswell did not participate on the court of appeals in the two cases which he had decided as a district judge, but he joined with the rest of the fifth circuit in reversing the other 11 decisions. It may be technically correct to say that these two decisions of Judge Carswell were reversed on appeal, but that fact standing alone is misleading because it intimates that Judge Carswell was out of step with the fifth circuit.

I am convinced that a survey of Judge Carswell's overall record in the field of civil rights shows that he is a strict constructionist and a fair-minded judge.

In connection with the usefulness of reversal statistics, it is worth bearing in mind a statement by Justice Jackson in a concurring opinion in the case of *Brown* v. *Allen*, 344 U.S. 443 (1953):

> Whenever decisions of one court are reviewed by another, a percentage of them are reversed. That reflects a difference in outlook normally found between personnel comprising different courts. However, reversal by a higher court is not proof that justice is thereby better done. There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of State courts would also be reversed. *We are not final because we are infallible, but we are infallible only because we are final.* 344 U.S. at 540 (emphasis supplied).

I strongly believe that the number and rate of the reversals of Judge Carswell's decisions afford absolutely no basis for voting against the confirmation of his nomination. If his decisions were in conformity with those of a very liberal court of appeals, he would not meet the criterion of strict constructionist, and any attempt by the President to restore a balance to the Supreme Court by appointing him to that court would then be a futile gesture.

In other words, Mr. President, if Mr. Nixon hopes to restructure the Supreme Court and reverse its activist course, he will, of necessity, be forced to nominate persons to that Court whose judicial philosophy is more conservative than that which has been reflected in so many of the decisions handed down by the Warren Court and which have been so detrimental to the welfare of the Nation.

Mr. President, from the outset much of the opposition to the nomination of Judge Carswell as Associate Justice of the Supreme Court has refused to meet the real issues head on. Much of the opposition has sought to conceal the basic motives and objections involved in this nomination with diversions intended to confuse and becloud the issue.

Mr. President, let us face the real issue involved head on. In the words of L. Q. C. Lamar, let us "lay aside the concealments which serve only to perpetuate misunderstanding and distrust."

What is the gut issue involved in the consideration of this nomination?

Plainly stated, we have on one hand the President of the United States who pledged to the American people that he would seek to restore a balanced view to the Court through the appointment of strict constructionists who have demonstrated their capacity for judicial self-restraint. On the other hand there are those who are zealously determined that he will not fulfill that pledge. Since they no longer dictate the President's choice they now seek to use the Senate to frustrate the will of the President and the people.

Many of those who oppose the nomination of Judge Harrold Carswell to be Associate Justice of the U.S. Supreme Court are practical men who have studied the Supreme Court reports just as I have.

They oppose him not really upon the basis of the flimsy criticism stated in the hostile press but in fact because this particular seat has a special significance and because they feel that the man selected to replace Justice Fortas is of special importance. In this they are right but they are right for the wrong reasons.

It is not because this seat was held by Justice Holmes, Cardozo, and Frankfurter that it is of special significance.

Nor is it because, as we were told during the Haynsworth nomination, that the kind of man selected to fill this seat is of special importance because Justice Fortas was forced to resign under questionable circumstances.

The importance and significance of

this seat lies in the fact that the man who last held it consistently cast a crucial and often pivotal vote in a long series of controversial, closely divided 5 to 4 and 6 to 3 decisions including but not limited to those which expanded the rights of criminal suspects, criminal defendants and convicted felons; which secured the right of members of the Communist Party to teach in our public schools and to work in our defense plants; which tied the hands of our police and prosecutors in protecting our families and children from this plague of filthy pornography; and which undermined our rights of private property and the authority of our State and local governments to deal effectively with the problems confronting them today.

The question then arises, why is the opposition reluctant to openly and frankly state these reasons? The answer is that the political realities of our times preclude them from doing so because these decisions which they are determined to maintain and expand are highly unpopular with a majority of the American people, even though popular and vigorously supported by some of the organized and highly vocal pressure groups.

In an article appearing in the September 7, 1969 magazine section of the New York Times entitled, "The Warren Court Is Not Likely to be Overruled," the author, Joseph W. Bishop, Jr., hit the issue dead center. Mr. Bishop tells us in one revealing sentence why the opponents of the Carswell nomination will not come out in the open and take a stand on the real issues that concern them. As stated by Mr. Bishop:

Few people today would want to kill *Brown, Baker* or *Gideon,* and in any event these cases have largely done their work. The vulnerable decisions are *Miranda* and the related cases on police interrogation, which are also the most unpopular among rank-and-file voters.

Mr. Bishop is absolutely correct. The vulnerable decisions of the Warren Court which Judge Carswell's opponents are digging into to defend are "most unpopular among rank-and-file voters," and therein lies the heart of the matter.

Mr. Bishop proceeds to tell us what kind of Court Judge Carswell's opponents are desperately trying to head off. I read as follows:

I do not think that even a Court with a law-and-order majority would overrule *Miranda.* There are, however, several ways in which it could narrowly circumscribe whatever effect the case might have if left in full vigor. It could, for instance take a very strict view of what constitutes police "custody" and a very liberal view of what constitutes "waiver" by a suspect of his right to counsel. Congress has tried to dilute the *Miranda* rule by providing in the Crime Control and Safe Streets Act of 1968 that voluntary confessions shall be admissible in Federal trials and that a confession may be found voluntary despite the failure of the police to inform the suspect of his rights to remain silent and talk to a lawyer. By the same token, the provision of that act which requires the admission of eyewitness testimony seems to be intended to kill *United States* v. *Wade,* which extended the *Miranda* rule by holding that evidence of indentification in a police lineup could be barred unless the suspect was represented by counsel. A Court so minded could retreat from *Miranda,* without actually overruling it, by holding (wrongly, in my opinion, but not altogether implausibly) that legislative approval and authorization (though unaccompanied by any legislative effort to insure that a suspect's constitutional rights are observed) confer on police practice a sufficient aura of legitimacy to make constitutional the admission of evidence so obtained. These provisions of the Crime Control Act apply only to Federal trials, but many state legislatures would not be hesitate about copying Congress.

At any rate, it is safe to predict that such a Court would not be quick to invent new protections for criminals, rich or poor. The right to a free lawyer would not be extended to persons accused of misdemeanor (though conviction of some misdemeanors can have serious consequences). When confronted with the argument that the death penalty, having become unusual, has thus become cruel as well, and so forbidden by the Eighth Amendment, a majority of such a Court might be swayed by the old-fashioned, perhaps reprehensible, but undoubtedly popular notion that in some criminals hanging effects a salutary improvement and ought to be more usual than it is—an attitude summed up in the well-known observations of a Scotch judge that the defendant "would be none the worse for a hanging."

Such a cautious Court would not borrow trouble. It would not for example, go so far out of its way to kick Congress in the pants as did the Warren Court in the case of Adam Clayton Powell. (The Court was probably right in holding that the Constitution did not permit Congress to exclude—as distinct from expel—an elected representative who met its explicit requirements that he be 25 years of age, a citizen of the United States for seven years, and an inhabitant of the state in which he was elected; but the practical effect of that decision, like the Court's reason for making it, remains somewhat obscure). It may likewise be surmised that such a Court would not be eager to wade deeper into the slought of obscenity; the lower courts would be left to make what they can of the existing ground rules.

Having read Mr. Bishop's analysis of the kind of Court we might expect with the addition of another moderate Justice, it is easy to see that the American people would applaud such a Court. And this is the frustrating problem which confronts Judge Carswell's opponents. It is difficult to prevent a President from following a popular course in a political forum.

Mr. President, Alan L. Otten, writing in the Wall Street Journal of March 18, 1970, put his finger on the raw nerve center of the true issue of this nomination. Some of the most pertinent comments of Mr. Otten on this nomination are:

The liberal forces in the Senate, and their allies outside, desperately want to block the Nixon Administration's obvious intention to name as Justices, one after another, men almost sure to turn the High Court sharply away from the liberal expansionist policies laid down over the past 17 years by the Warren Court.

Mr. Otten then referred to a telegram I sent the President in which I complimented him for his efforts to restructure the Supreme Court along strict constructionist lines. Mr. Otten continues as follows:

Yet the Haynsworth-Carswell foes rarely come right out and argue the reverse side of this broader issue. Perhaps they sense a rightward drift in the country that makes voters not too receptive to a plea for continuation of the Warren Court. Indeed, they usually proclaim that Mr. Nixon, as the winner of the 1968 election, is entitled to broad leeway in picking Justices more in tune with his own philosophy. They do, however, take out a magnifying glass to examine the record for blemishes that might help them block his nominees.

Several circumstances give the liberals' court fight right now an almost desperate quality. They have lost the White House, perhaps for considerably longer than just four years. The House of Representatives has been trending conservative for several years, and if GOP gains don't come this fall, they are extremely likely in 1972, when most States will have new Congressional districts in line with 1970 census results. And with a critically high number of Northern Democratic Senators up this November, the Senate, a liberal bastion since 1958, could also swing to the right.

So the liberals know exactly why they are fighting so hard. The reason just doesn't happen to be the one they usually give in public.

These perceptive news articles state the issues that go to the central struggle of this nomination. I hope that the Senate will confirm the nomination of Judge Carswell and help guide the Supreme Court on the right course for the future good of the Nation.

I realize and recognize that there are some Senators whose opposition to this nomination sincerely motivated by the arguments publicly advanced. Others are frank to admit that their opposition is based on judicial philosophy. In any event, there is ample reason to believe that the real motivating force behind the unremitting propaganda campaign that has been waged against this nominee is the desperate fear that confirmation of Judge Carswell will signal a new direction of the Supreme Court toward moderation and judicial self-restraint.

On this great issue, I support the nomination.

Mr. President, Richard Wilson, writing in the Washington Star of April 3, 1970, states the real issue involved in this nomination.

Mr. Wilson's column was titled "Carswell Competence Not the Issue." I quote the following extracts from that column:

As the case against Judge Haynsworth was thin, so is it also against Judge Carswell. The issue has become President Nixon's judgment in his continuing effort to create a new majority on the Supreme Court which will concern itself more with strict constitutional interpretation than with creating new law and curing social ills.

This is somewhat obscured by the way senators are lining up along partisan lines on Judge Carswell's nomination as a Supreme Court justice. But fundamentally the question is there and it is a valid test of national policy, and the President's prerogatives and prestige.

If confirmed Judge Carswell will go on the Supreme bench to take part in crucial civil rights decisions, the nature of which has been defined in advance by Chief Justice Warren Burger. Judge Carswell is no less qualified to consider these questions than perhaps a dozen justices who have been appointed to the court in the past 37 years within one man's observation.

The President's purpose happened at the moment to have its chief focus on civil rights and especially school desegregation. Does the Constitution require any particular mix of the races in the schools by busing or the delineation of school districts? This question is vital and goes to the heart of

Nixon's racial doctrine on individual freedom to choose and ability to choose racial associations.

But the general question is much broader than that and ranges into the sanctity of law generally, protests, and riots, the rights of the accused, law and order, and a narrower and stricter construction of constitutional rights.

With Carswell confirmed or not, there is no indication that President Nixon will be diverted from his determination to remake the Supreme Court on lines of stricter constructionism and he will have ample opportunity to do so. * * * Nixon may have two or three more vacancies to fill before the end of his first term in addition to the vacancy to which Carswell was nominated.

Mr. President, Mr. Nixon has indicated his belief in strict interpretation of the Supreme Court's functions and that a court is needed which looks upon its chief function as being that of interpretation rather than that of blazing pioneer paths into new areas that are really the prerogative of Congress. Mr. Nixon has stated that, this being his strict interpretation of the Supreme Court role, he would appoint men to that court of similar philosophical persuasion. Hence, as Mr. Wilson's column points out:

If, in his future appointments, Nixon finds men who are of his philosophical persuasion he can expect that the opposition will slowly mount until some weakness, or imagined weakness, in his nominee is exposed. * * *

The struggle over Nixon's attempt to create a new Supreme Court majority is therefore likely to continue post-Carswell. The President's salvation may be that the country will sicken of continuing obstruction of his nominees as an invasion of his responsibility to appoint Supreme Court justices.

Mr. President, the majority of the American people will not be fooled by flimsy allegations concerning mediocrity. They know what the real gut issue is: A moving away from the activism of the Warren court and a return to judicial reasoning based on strict construction of the Constitution and the laws.

THE RULE OF GERMANENESS—UNANIMOUS-CONSENT REQUEST

Mr. BYRD of West Virginia. Mr. President, at the request of the majority leader, I ask unanimous consent that, for the remainder of the second session of the 91st Congress, the Pastore rule of germaneness of debate shall not begin to run until the conclusion of routine morning business, unless a bill or resolution is considered before the conclusion of routine morning business and is discussed for more than 15 minutes or until the unfinished business is laid before the Senate, whichever comes later.

Mr. MILLER. Mr. President, reserving the right to object, I would appreciate it if the Senator from West Virginia would withdraw this unanimous-consent request. I understand that there is a desire on the part of the minority leader to discuss this matter with other Members on this side of the aisle. I might say that I personally have no objection to it, but I do think that we can work this thing out, so that if the Senator would be good enough to withhold it until some time later this afternoon, I would certainly appreciate it.

Mr. BYRD of West Virginia. I think the Senator makes a reasonable request, and I withdraw the unanimous-consent request at this time.

The PRESIDING OFFICER. The request is withdrawn.

Is there further morning business?

AMERICAN PRISONERS OF WAR IN NORTH VIETNAM

Mr. BYRD of Virginia. Mr. President, this morning, my heart was torn by a visit to my office of the wives of two prisoners of war in North Vietnam. The husband of one was shot down and captured over North Vietnam in July of 1965. That was almost 5 years ago. The wife has seven children.

I was very much impressed with the courage of both of these wives. I was impressed with the fact that these and other prisoner of war wives know not where to turn to try to be helpful to their husbands.

Nevertheless, they are determined that they will do everything they possibly can to help them.

Many of these wives do not even know whether their husbands are alive or dead, so inhumane has been the Hanoi government.

One of the two courageous women who came to see me today has been more fortunate than others, in that she has heard at infrequent intervals from her husband, usually only a few lines at a time.

In thinking about this prisoner of war problem, and talking with their wives who have come to see me, it seems apparent that the only way help can be obtained for our captured men is continuously to focus attention on the problem.

I learned this morning from the two wives who came to see me that they and others with whom they have been associated feel that progress has been made in the past six months, because at least the Hanoi government has begun to release some of the names of the prisoners of war, and they have been able to receive a little more mail than before.

This is certainly a very tragic problem which faces our Nation today.

As to just what the State Department is doing in this regard, I am not certain. I feel that it is important the State Department put all pressure possible on friendly governments so that they, in turn, will bring pressure upon Hanoi.

This country has a deep obligation to these men, many of whom were drafted and sent all the way across the world, and then in fighting for their country, they were captured.

Whether the State Department is taking all the steps available to it, I am not sure. I feel some concern as to whether they are doing so, because I have seen how they handled the problem of trying to keep friendly ships out of Haiphong.

During 1969, 99 ships flying the flag of free world nations have been carrying cargo to the nation with which the United States is at war. These are free world ships.

One of these countries, Somali, has actually been receiving $35 million in aid from the United States at a time when 20 of its ships were carrying cargo to the enemy.

Let me point out this morning, as I did last Friday, that this is in direct contradiction to the mandate of Congress, and in direct contradiction to the amendment adopted to the foreign aid bill proposed by the Senator from Colorado (Mr. DOMINICK), and myself, going back 4 years.

I appeal to the State Department to take another look at this tragic prisoner of war problem, to consider the terrible plight of our prisoners of war, and to do whatever is necessary—and with vigor—to put pressure on those nations who are receiving or have received aid from us, to join in solving the problem.

I think it is time that these friendly countries come to our aid. A worldwide and concerted effort should be made to get the Hanoi government to come to its senses in regard to the American prisoners of war they are holding.

And where is the United Nations? Why has it not interceded in behalf of the prisoners?

Mr. President, my heart goes out to the 1,400 wives of prisoners of war who, along with their children and their families, are going through this terrible ordeal because the Hanoi government refuses to pay any attention to the normal rules of warfare affecting prisoners of war.

I concur in the views expressed by the wives, that if there is to be any alleviation of this tragic problem, we in Congress and in the Government must continue to focus attention on the problem and the plight of our prisoners of war.

Mr. President, I ask unanimous consent to have printed in the RECORD an article printed in the Virginian Pilot, of Friday, March 6, 1970, as written by Lawrence Maddry on this subject.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AMERICAN PRISONERS OF WAR IN NORTH VIETNAM

(By Lawrence Maddry)

The message is only two paragraphs long, but it could relieve a lot of suffering. The 26 families of Tidewater servicemen who are prisoners of war or missing in action in Vietnam want you to send it. It's aimed at the government of North Vietnam.

It goes like this:

Mr. ROSS PEROT,
WAVY-TV,
Portsmouth, Va.

DEAR MR. PEROT: I want to express concern for the American servicemen who are prisoners of war and missing in action in Southeast Asia. The people of this nation are shocked by the treatment they are receiving and support the actions you are taking in their behalf.

The government of North Vietnam must be made to realize that on the prisoner issue we Americans stand united. These men have suffered terribly, and their release is long overdue. I will do all I can to help you in your efforts to help them.

If you believe in the sentiment expressed in that letter, you sign it with your name.

If you don't, maybe we can help.

On Sept. 17, 1969, Navy Lt. Robert Frishman of Long Beach, Calif., one of the few U.S. servicemen released from captivity by the Vietcong, held a press conference at Bethesda Naval Hospital.

He was asked if American POWs are re-

Another is a photograph of a model of an MHD complex designed by Russia, where a 75-megawatt pilot plant is supposed to go into operation this year. "I estimate the cost of that is $50,000,000 to $100,000,000," he says wistfully.

Japan, too, has started a national MHD project. West Germany also has a government-sponsored MHD project with funding being increased at the rate of 25 per cent a year.

For now at least, these foreign developments seem much larger than U.S. efforts so far. President Nixon proposed that in the fiscal year beginning July 1, MHD research contracts be negotiated for $400,000 worth of work. The contracts would be let by the Office of Coal Research (OCR), whose function is to find new ways to increase coal consumption. Large-scale MHD generators probably would use coal for fuel.

Earlier a Presidential panel of academic and industry specialists studied the current status of MHD development and recommended last summer that Mr. Nixon ask Congress to authorize spending of $2,000,000 annually for more research about the technique. The panel's report said such research efforts by the power-generating industry had slackened in recent years perhaps because it was difficult to predict the benefits of large-scale MHD plants.

"Whatever the reasons," the report to the President said, "the panel does not expect MHD work to continue at an appreciable and useful level unless the Government provides the major support. . . ."

Actually about $16,000,000 has been expended to date on MHD research in this country, about half of it coming from utilities led by the American Electric Power Co., Inc., of New York City and Avco and half from the Department of Defense for Air Force work. With these funds, a number of small MHD units were constructed, some in the Boston area and others at the Arnold Engineering Development Center in Tullahoma, Tenn.

—HARRIS SMITH.

[From the New Republic, Jan. 24, 1970]

HOW MUCH, HOW SOON FOR ANTI-POLLUTION?

Anti-pollution is the fashion. What we need to know is how much money the Administration (and the corporations) will invest in it. A little known—and little-funded—Interior Department agency, the Office of Coal Research (OCR), has in its files data on a half dozen or more techniques that promise to eliminate major environmental pollution. But OCR has never got more than $12 million and until recently no one in Interior or the White House has been disposed to ask for more. OCR's technologies remain undeveloped.

Take magnetohydrodynamics. MHD is a way of converting coal and other fossil fuels to electricity almost directly, without intervening boilers, turbines or generators. It is about 50 percent more efficient than conventional coal-fired generating plants—which, in turn, are about 50 percent more efficient than nuclear plants. MHD would significantly reduce the "thermal pollution" created by most present power generation (with the exception of hydroelectric plants, which make up only a small percentage of the total and which sometimes create their own kind of environmental damage). Thermal pollution is the heating of water in streams, lakes or the ocean, often with severe detriment to the balance of life.

MHD also offers great promise for reducing air pollution. Because it is more efficient, it burns less fuel per kilowatt hour than other power-generating techniques; you get less pollution from producing the same amount of power. The fuel for MHD must be "seeded"; that is, an ionizable substance must be added to it to make hot gases electrically conductive. The seed must be removed from the leftover gases, a necessity which becomes a virtue because pollutants can be removed at the same time.

A major source of air pollution—second only to automobiles—is the fuel-burning industrial installations, primarily power plants. Almost without exception, they give off sulfur oxide, and a fine, abrasive ash. Although the sulfur oxides or the particles alone *may* not be harmful to health (there's no conclusive evidence), in combination they are highly destructive to lung tissue, according to HEW's National Center for Air Pollution Control. Sulfur oxides, alone, are harmful to plant life. (The acrid sulfur oxides produce the foul taste in your mouth in highly air polluted areas.) HEW under the Air Pollution Control Act, has set "criteria" for the amounts of these two pollutants that can be emitted from industrial plants. But the criteria, applied by state and local governments, are flexible enough to "meet local needs." HEW's enforcement powers are minimal; the amount of money available here is in inverse proportion to the enormity of the problem.

But the criteria *plus* the techniques now in OCR's files could get the job done, if the technologies can be turned into commercial hardware. Then, instead of depending for clean air on corporate willingness to obey the law (and the willingness of state and local government to enforce it) the corporations might find it in their interest to adopt the new technologies voluntarily, because of their greater efficiencies.

MHD is not the only technique OCR has in mind. A process for dissolving raw coal in anthracene solvent, which would carry off all the potentially polluting materials, is another. The leftover would be almost pure carbon—in a form that could be extruded, ground, melted or handled in numerous other ways. Diesel-electric locomotives and perhaps diesel trucks could burn this clean substance. But once again, the potential would be greatest for power production, especially in congested urban areas such as New York City.

There are several ways, some pioneered by OCR and others by Interior's Bureau of Mines, to convert coal into producer or pipeline gas. If coal can be converted to pure methane—or pure hydrogen or pure carbon monoxide—leaving the pollutants behind in the coal residue, then the gas can be burned with little harm to the environment, in almost any kind of fuel-burning installation and with minimal conversion costs.

The Russians plan to have a part-MHD, part-conventional, plant in commercial operation in 1970; the Japanese are also advancing rapidly in this technology. The President's Office of Science and Technology last June recommended a full-scale MHD research program, as did the Interior Department's own Energy Policy Staff a year earlier. Support for MHD in the scientific community is almost unanimous. Yet, not a penny for MHD was left by the Budget Bureau in OCR's fiscal 1970 budget request. Efforts by Montana Senators Lee Metcalf and Mike Mansfield to get money for MHD into the 1970 Interior appropriations bill failed. The 1971 budget OCR submitted to Interior officials included a miserly $400,000 for MHD, which was then entirely eliminated by a budget officer. The two Montana Senators asked that the money be reinstated. And last month, the Minerals, Materials and Fuels subcommittee of the Senate Interior Committee, chaired by Senator Moss of Utah, held hearings on MHD, at which scientists gave the new technology strong endorsement. So now the Interior Budget, as it goes to the Budget Bureau, will contain "somewhat more than" the $400,000 earlier asked, though less than the $2-million suggested by OST.

Meanwhile, with electrical needs doubling every 10 years, the electric utility industry has indicated through the Edison Electric Institute that it will make some contribution to MHD, at least for research into "peaking" or emergency plants. HEW and the Atomic Energy Commission may also ante up some funds. Meyer Steinberg, a scientist with AEC's Brookhaven National Laboratory, has suggested that giant MHD plants burning coal be built at mine-mouth in thinly populated Western coal states (including Utah and Montana), the power produced to be transmitted to population centers via "superconductors" or other ultramodern "electrical superhighways." It is possible that AEC is motivated by its awareness that nuclear plants are a serious contributor to environmental damage through thermal pollution and difficult-to-dispose-of radioactive wastes. Or the well-funded AEC ($2 billion since World War II to develop nuclear power) may see MHD as a technique applicable to nuclear fuels. AEC's entry could make MHD go, if the President gets solidly behind environmental quality.

Of course, technology alone won't keep our environment clean. Scientists are coming to regard the formerly innocuous carbon dioxide as a pollutant, at least in urban "microenvironments." In these areas, higher levels of CO_2 will soon begin to cause rotting of the mortar in urban buildings. Burning fossil fuel *always* creates carbon dioxide, and the final solution to the CO_2 problem will have to be reduced burning of fuels. Moving industrial plants into thinly populated areas would help. But what would help more is fewer people and a lower per capita rate of consumption, including fewer automobiles or prohibitively high tolls for their admission into urban areas.

—RICHARD H. GILLULY.

NOMINATION OF JUDGE CARSWELL

Mr. DOLE. Mr. President, the opposition to Judge Carswell has been very vocal—if misleading—in attempting to convince the Senate that the experts and the professors are on their side.

The truth is, the people on their side are largely those so-called experts and other who view the Constitution as a document to use to instigate social reform, not those who view it as the keystone of our Republic.

It may surprise many of Judge Carswell's opponents that the White House has received a number of letters and wires supporting the constitutional arguments in the President's letter to the Senator from Ohio (Mr. SAXBE) regarding the appointment of Judge G. Harrold Carswell to be an Associate Justice of the Supreme Court.

President Nixon contended that his constitutional duty could be frustrated if the Senate should withhold consent for other than strong or special reasons. The President said that such a case had not been made against Judge Carswell.

Messages of support for the President's position have come from James William Moore, Sterling professor of law, Yale University; Erwin A. Elias, professor of law, Texas Tech University; Michael J. Vaughn, assistant professor of law, Baylor University; Edward C. Banfield, professor of government, Harvard University; Howard Penniman, professor of government, Georgetown University; and James M. Brown and Edward A. Potts, professors of law, George Washington University.

I ask unanimous consent that the messages be printed in the RECORD.

There being no objection, the messages were ordered to be printed in the RECORD, as follows:

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I was pleased with your statement to Senator Saxbe that your choice of Judge Carswell should not be frustrated because of philosophical or ideological differences concerning your nominee, especially where his confirmation would aid in restoring a balance to the Supreme Court; which I believe the electorate approved. This position still leaves the Senate with large and proper powers to reject a nominee for lack of integrity and for other reasons stated by Hamilton in the Federalist, such as favoritism in the President, personal attachment and the like. None of these reasons stated by Hamilton is applicable to Judge Carswell. I am pleased that you continue in your steadfast support of Judge Carswell and I trust that your sound constitutional position will in the end be vindicated by the good sense and conscience of the Senate. I have the honor to remain your obedient supporter.

JAMES WILLIAM MOORE,
Professor of Law, Yale University, New Haven, Conn.

SILVER SPRING, MD.,
April 3, 1970.

The PRESIDENT,
The White House:

Your letter of Presidential-senatorial roles and appointments is correct. Washington Post misuses Federalist 76 by ignoring paragraph preceding the one quoted. Senate not intended to substitute its choice for those of President as seems to be goal of opponents of Carswell confirmation.

HOWARD PENNIMAN,
Professor of Government, Georgetown University.

The PRESIDENT,
The White House,
Washington D.C.:

We the undersigned respectfully take this means to indicate our support for the nomination of Judge Carswell and our concurrence with the deep concern expressed by you in your letter of March 31, 1970 to Senator Saxbe.

ERWIN A. ELIAS,
Professor of Law, Texas Tech University, Lubbock, Tex.
MICHAEL J. VAUGHN,
Assistant Professor of Law, Baylor University, Waco, Tex.

President NIXON,
The White House,
Washington D.C.:

Every Senate has endsavored to weaken the powers of the Presidency and every President to preserve and strengthen them. Your present struggle is in this great tradition and those who want strong effective national government must pray for your success.

EDWARD C. BANFIELD,
Professor of Government, Harvard University.

APRIL 3, 1970.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: In our judgment your letter to Senator Saxbe accurately reflects the intent of the Constitution with respect to the Presidential power of appointment to the Supreme Court with the advice and consent of the Senate. The Washington Post editorial of April 2, 1970, quoting the Federalist Paper No. 76 neglected to cite the sentence immediately preceding the one quoted, which in part reads "...it is not likely that their sanction (the Senate) would often be refused, where there were not *special and strong* reasons for the refusal." (Emphasis added.) This is precisely what we read you letter to say.

In the Federalist No. 76 Hamilton discusses three possible methods for appointment of ambassadors, public ministers and judges of the Supreme Court. He describes the rationale by which the compromise process was reached establishing the method prescribed by the Constitution under which the President nominates, and, with the advice and consent of the Senate, appoints. In discussing the selection by the President, Hamilton says, "Premising this, I proceed to lay it down as a rule, that one man of discernment is better fitted to analyze and estimate the peculiar qualities adapted to particular offices, than a body of men of equal or perhaps even of superior discernment."

He further states, "He will have FEWER personal attachments to gratify, than a body of men who may each be supposed to have an equal number; and will be so much the less liable to be misled by the sentiments of friendship and of affection. A single well-directed an, by a single understanding, cannot be districted and warped by that diversity of views, feelings, and interests, which frequently distract and warp the resolutions of a collective body." Having argued the superior wisdom of one man making the appointment, Hamilton goes on to justify the compromise by which the nomination must be approved by the Senate and states, "In the act of nomination, his judgment alone would be exercised; and as it would be his sole duty to point out the man who, with the approbation of the Senate, should fill an office, his responsibility would be as complete as if he were to make the final appointment. There can, in this view, be no difference between nominating and appointing." Hamilton further observed that, "It is also not very probable that his nomination would often be overruled." This expectation has been borne out by the fact that the Senate has withheld its consent, to nominees to the Supreme Court, in only three instances in this century.

The Senate has the positive duty to determine whether the nominee's character befits the office. The Senate should, of course, make this judgment with respect to Judge Carswell. We believe, however, that you have correctly stated the traditional constitutional relationships of the President and the Congress, and that the consent of the Senate should be refused only when, in the words of Hamilton, there are "special and strong reasons for the refusal." The Senate should not attempt to substitute its *subjective* judgment as to this or any other nomination.

Very respectfully yours,

JAMES M. BROWN,
Professor of Law.
EDWARD A. POTTS,
Professor of Law and Associate Dean, the National Law Center, the George Washington University.

MORRIS ABRAM WARNS OF DETRIMENTAL EFFECTS OF U.S. INACTION IN HUMAN RIGHTS

Mr. PROXMIRE. Mr. President, three crucial human rights treaties now lie before the Senate of the United States—the Convention on the Political Rights of Women, the Convention on Forced Labor, and the Convention on the Prevention and Punishment of the Crime of Genocide.

These treaties reaffirm the principles on which this country was founded and which are guaranteed in the Declaration of Independence and the Constitution. Their ratification is essential if this country is to actively participate in developing an international law of human rights.

It is important at this time that we ask ourselves how the U.S. failure to ratify these treaties has affected this vital effort. The answer is crystal clear: The inactivity of the United States in this area has been a severe handicap to progress in securing international protection of human rights.

Mr. Morris B. Abram, a distinguished New York lawyer and former president of Brandeis University, eloquently brought forth this crucial point in testimony before the Senate Foreign Relations Committee on September 13, 1967. Mr. Abram's extensive experience as the U.S. representative to the UN Commission on Human Rights gives his excellent testimony additional force.

It was clear 2½ years ago that Senate ratification of these treaties was a matter of the utmost importance. Mr. Abram's compelling remarks are therefore even more significant today, in April 1970, in view of the absence of Senate action in the vital field of human rights since September of 1967.

Mr. President, I ask unanimous consent that excerpts from the testimony of Mr. Morris B. Abram before the Committee on Foreign Relations be printed in the RECORD.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

EXCERPTS FROM THE TESTIMONY OF MORRIS B. ABRAM

Mr. Chairman, the question before this Committee goes beyond the three conventions under consideration. This question is whether our country is to operate with a conception of the treaty power that is suitable for the realities of the rapidly shrinking world we inhabit. It is whether our policies are to be responsive to the objective facts of the increasing interdependence of nations, and the relationship between the conditions of freedom, economic and social progress, and international peace and security. It is whether our policies will reflect the recurrently demonstrated truth that the effects of the suppression of liberty, of race and sex discrimination, of poverty and illiteracy, tend to overflow borders and affect adversely other countries and the world-at-large.

The question is also whether the ideals which inspired the authors of our Declaration of Independence and our Constitution, that human rights and freedoms are the rightful heritage not only of Americans but of all men, is valid for us today; whether the American tradition of espousing the cause of the oppressed, or promoting the fundamental values of human rights, not only at home but abroad, is still an essential element of our national policy. It is whether we still adhere to, or whether we intend to renege on, the commitment we made when we joined the United Nations, to cooperate with other nations "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion," and in solving international economic and social problems.

Mr. Chairman, if we did not expect to carry out this commitment seriously, why did we ratify the UN Charter? If we did not intend to join in measures for implementing this undertaking, of which the most crucial is the adoption and the ratification of conventions, why did we endorse the inclusion in the Charter of this human rights purpose? Do we want the contemporary world-wide effort to extend the rule of law in the field of human rights to succeed or, by standing aloof from it, are we prepared to be a witness to its demise—as our failure to join the League of Nations contributed to the demise of that noble effort. For it is a fact of today's reality that when the United States, the world's strongest power and leading democracy, stands aloof from an inter-

for a central computer building, administrative offices and a power plant. The computer building will have two levels providing total floor space of 70,000 square feet. Temperature and humidity will be controlled to assure optimum conditions for computer operations.

The power plant will house electrical generators driven by natural gas powered turbines. This will supply uninterruptable power with the added advantage of quiet operation and no air pollution. Pre-cast concrete aggregate will be used for all building exterior.

The buildings were co-designed by Lusk & Wallace and Carl A. Worthington & Associates, architects. Olson Construction Company is the general contractor. Electrical and mechanical installations will be made by Swanson & Rink in association with G. M. Wallace & Associates, Inc.

Keck said United is negotiating with International Business Machines Corporation for computers and other electronic equipment to be used for reservations control and the maintenance of passenger name records. Installation and testing of some equipment will begin in August concurrent with partial occupancy of the new buildings. "We expect to have the new system in operation within a year," Keck said. "It is designed for orderly development in relation to progress in computer technology and communications."

Control of reservations on United flights has been centralized at Denver since 1948. The company's central processor site for its present Instamatic reservations system is at 38th and Popular Streets. During an interim period Instamatic and the IBM replacement system will be inter-connected.

The airline executive expressed gratitude to the Mountain Bell Telephone Company, the Public Service Company of Colorado and the Denver Technological Center for assistance in United's preliminary studies and planning.

Commenting on United's program George Wallace, President of the Denver Technological Center said, "We are particularly pleased by United's decision to locate its national reservations center here. This represents an important step for Colorado and its development as a central communications point for the nation. United's plans require a round-the-clock effort on our part. We are confident of our ability to provide the right environment for what may become the largest computer and communications center in the United States."

"MA THICKET" URGES PRESERVATION OF BIG THICKET OF TEXAS AS A NATIONAL PARK

Mr. YARBOROUGH. Mr. President, Mrs. Ethel Osborn Hill of Port Arthur, Tex., is an amazingly young lady of nearly 92 years. She has been an active booster of the Big Thicket for most of those years, and is still going strong. Mrs. Hill has been honored with the title of "Ma Thicket" by her many friends and fellow Big Thicket conservationists. Just last year, her 91st, she spoke to over 2,000 people in various organizations and groups and told them of the glories of the Big Thicket and why it should be saved.

In a recent letter to me she said that she hopes to see something done to save the Big Thicket while she is still living to see it. She also pointed out that the Big Thicket project has been studied and discussed for over half a century and that we do not need more study; we need more action.

Mrs. Hill writes a regular newspaper column for the Tyler County Booster. A recent article, which she authored, gives her views on the direction we should take to preserve our precious natural heritage. I ask unanimous consent to have her article under the title "America Still Is" from a recent issue of the Tyler County Booster printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AMERICA STILL IS—ONE WOMAN'S OPINION

(By Mrs. Ethel O. Hill)

America is digging out from snow drifts in some sections and in others are planting spring gardens. What a wonderful country. And a thing to be thankful for is that any citizen can live or move from place to place without asking permission from an overlord or be watched by secret police, as in the many countries of ths world today. Freedom is not dead in America, though I am strongly in favor of its being denied from those who daily abuse that freedom, the flag, the rules of decency, the government and the Constitution. If they don't like it in America they should go to some other country, like Russia. There they might really learn the value of America's freedom.

And as to freedom of choice, nature has a grand way of demonstrating it. If certain trees, plants or flowers decide to wait till summer to bloom, that's what they do. If some decide to come out to cheer the landscape in mid-winter, they do just that. On this January, freezing cold day, my yard is polka-dotted and embroidered with beautiful little white golden-eyed narcissus and a few glory-of-the-snow blooms, pink or white rain lilies have popped up, and right down again, all winter. And the evergreen fern has flourished continually. Two weeks ago when at my beloved cabin I saw the dogwood buds already swelling. Spring is on the way. Let us hope that world peace and harmony is thinking of blooming.

But with all this, we can't get away from many other phases of the country. Such as the wanton destroying of matchless natural resources and beauty. I see the heading of an article on the Big Thicket (my pet project for fifty years). The caption, in box car letters reads, "Big Thicket Park Project Needs More Study." How much more time than half a century is needed? And many groups and individuals seem to think that it is a perfectly new idea. Even that the thought originated with them and figuratively they "bust into print" shouting "hey, folks, listen to what I've just thought up. Let's have a park in the Big Thicket." Well, the Big Thicket is fast disappearing and could become either a huge swamp or a mammoth desert. It could end up as an immense site for manufacturers or orbiting sites for more ways to reach the moon, Mars, Saturn or other far away places with queer stones and dust. And where no life exists. Billions of dollars (taxpayer's dollars) are thus spent, and to heck with the old earth and its trees.

That seems to be the sentiment with those who have the privilege of spending the people's money. But congress can't see appropriating a few thousand dollars to save this wonderful bit of the forest primeval. Will the time come when children will ask, "Trees? What is trees?" It is said that in the future there will be no need for kitchens to be included in home buildings because there will be no cooking. We will subsist on nutrition pills, scientifically compounded, delivered by mail daily. Each family member will gulp down its quota of vitamins each morning and go on their daily routine. Imagine, never an apple pie baked in a home, or a batch of cookies, or a pot of good home-made soup. I'm glad I won't be here if that time comes. But like many other far-fetched plans, I don't believe it. I don't believe in ghosts either, but maybe?

Back to the Big Thicket park business. The first real survey was made in the early 1930's by a group of dedicated scientists, naturalists, agronomists, representing many high authorities from many universities in and out of the state. The results, published in a booklet "The Flora and Fauna of the Big Thicket" is now a collector's item. And in that book is urged the preservation of this great forest for future generations to come. But monied big businesses and wealthy individuals seem to have thought only of profit in money, not natural beauty. Even 50 years ago the plan favored by the original Big Thicket Association was to preserve certain beauty spots, and not hundreds of thousands of acres. Asking for 100 thousand acres, I mean the appropriation from our present economy-minded Congress was almost certain to kill the project to begin. It costs too many billions to get a handful of moon dust and rocks. Congress just can't do everything, you know.

When I try to envision the immensity of space, I think of Halley's comet. It appears every seventy-five years, going at a velocity of millions of miles per time unit, making as complete a circle as a sun or moon. Yet it takes that 75 years to complete. It appeared in an early decade of this century, visible for several nights and was an awesome sight. When I told my children that they might live to see it again, but I would not, my little daughter wept, saying, "But if you are not here who will wake me up at the right time of night to see it?" But at the rate I'm living and with the aid of our marvelous medical science, I just might live to see Halley's comet the second time.

SUPPORT FOR NOMINATION OF JUDGE G. HARROLD CARSWELL TO THE SUPREME COURT

Mr. GURNEY. Mr. President, further proof of the vast outpouring of support for Judge Carswell from the Florida bar is contained in a number of telegrams and a letter of endorsement from various bar associations from all over the State. 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:

PENSACOLA, FLA.,
April 3, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

The society of the bar of the First Judicial Circuit of Florida whose membership includes attorneys from Escambia, Santa Rosa Okaloosa and Walton Counties, has on two occasions in regular meetings unanimously endorsed Judge G. Harrold Carswell as a Justice of the U.S. Supreme Court and by resolution urged his confirmation. Action endorsing Judge Carswell was taken at our Jan. 22 meeting and again on March 19th. As members of the bar in the district in which Judge Carswell presided as District Judge the members of our society have had unlimited opportunity to observe the manner in which he has presided, and the fairness of his decisions. Judge Carswell presided over his court with dispatch, dignity and with an inherent sense of Justice. His courtroom manner has been firm but fair and his decisions have been deliberate and unquestionable intended by him to uphold the Laws and Supreme Court decisions of our Great Nation. He has always treated members of the bar appearing before with with courtesy and respect and accusations to the contrary that have been made came as a surprise to us all and are definitely unfounded. Speaking per-

sonally I have known Judge Carswell since his appointment as United States attorney and it is my opinion that he was a competent attorney and is now a very able and astute jurist. He enjoys great respect from the members of the bar for his legal ability and his personal reputation is excellent. We wholeheartedly endorse our fellow citizen and distinguished Judge G. Harrold Carswell.

R. BROWNLEE EGGART,
President, Society of Bar, First Judicial Circuit of the State of Florida.

SANFORD, FLA.,
April 4, 1970.

Senator EDWARD GURNEY,
Senate Office Building,
Washington, D.C.:

I was distressed to hear a few moments ago on TV news that Harrold Carswell's opponents now have enough votes to return his nomination to the Judiciary committee. Harrold and I were admitted to practice before the Federal District Court in Tallahassee on the same day in 1949. I was well acquainted with him from 1949 through 1955. I know he is not a racist. For 13 years now, I have served as a Florida circuit judge. I, too, have been reversed by Appellate courts about 20 times. 20 reversals when a judge has considered more than 10,000 cases isn't bad. Why don't you get the number of cases Harrold has considered. Another good argument would be that most of a judges reversals occur because the lawyers prepare at the Appellate level but do not show the same courtesy to a trial judge.

VOLIE A. WILLIAMS, JR.,
Circuit Judge.

ST. AUGUSTINE, FLA.,
April 4, 1970.

Hon. EDWARD J. GURNEY,
Washington, D.C.:

St. Johns County Florida Bar Association overwhelmingly endorses Carswell confirmation.

JOHN J. UPCHURCH,
Secretary.

STUART, FLA.,
April 4, 1970.

Senator EDWARD GURNEY,
Senate Office Building, Washington, D.C.:

Martin County Bar Association considered G. Harrold Carswell eminently qualified to serve as an associate justice of U.S. Supreme Court and urges the U.S. Senate to confirm President Nixon's appointment of Judge Carswell.

MALLORY L. JOSON,
President, Martin County Bar Association.

OCALA, FLA.,
April 4, 1970.

Senator EDWARD GURNEY,
New Senate Office Building, Washington, D.C.:

I am in strong support of you and our other congressmen who are supporting the confirmation of Judge G. Harrold Carswell as Justice of the Supreme Court and unqualifiedly endorse his appointment.

WILLIAM T. SWIGERT,
President, Marion County Bar Association.

LIVE OAK, FLA.,
April 3, 1970.

Honorable ED GURNEY,
New Senate Office Building, Washington, D.C.:

Those closest to Judge Harrold Carswell have known him to be a man of the highest integrity, competency and ability. He has always been a man of even temperament and has rendered justice firmly and impartially.

The attorneys in the Third Judicial Circuit of the Florida Bar unanimously endorse his confirmation as a Justice of the U.S. Supreme Court.

C. DEAN LEWIS,
President, Third Circuit Bar Association of Florida.

PANAMA CITY, FLA.,
April 3, 1970.

Senator EDWARD GURNEY,
New Senate Office Building, Washington, D.C.:

The Bay County Bar Association supports the nomination of Judge Harrold Carswell to the Supreme Court of the United States and urges his hasty confirmation by the United States Senate.

LARRY BODIFORD,
Vice President.

FORT PIERCE, FLA.,
April 3, 1970.

Senator EDWARD GURNEY,
New Senate Office Building, Washington, D.C.:

I personally feel that the best interest of the bench and bar will be enhanced by the appointment of Judge Carswell as a Justice of the U.S. Supreme Court.

ELSIE M. O. LAUGHLIN,
President of St. Lucie County Bar Association.

BROOKSVILLE, FLA.,
April 3, 1970.

Senator GURNEY,
Washington, D.C.:

Florida County Judges Association supports confirmation of Judge Carswell to Supreme Court.

MONROE W. TREIMAN,
Executive Secretary.

JACKSONVILLE, FLA.,
April 3, 1970.

Senator ED GURNEY,
Washington, D.C.:

I am a Negro businessman in Jacksonville, Florida. I believe in justice for all people I think Judge G. Harrold Carswell of Tallahassee, Fla., is eminently qualified to sit in the highest court of our land and I speak for thousands of my black and white friends and I urgently implore the Senate to confirm this man.

WILLIE R. MOTLEY.

TAVARES, FLA.,
April 3, 1970.

Senator EDWARD GURNEY,
New Senate Office Building,
Washington, D.C.:

I endorse nomination of Judge Carswell as does vast majority of our bar association members.

CHRISTOPHER C. FORD,
President, Lake Sumpter Bar Association.

DADE CITY, FLA.,
April 3, 1970.

Senator EDWARD GURNEY,
New Senate Office Building,
Washington, D.C.:

The Pasco County Bar Assn. Dade City, Fla., today unanimously passed resolution supporting Judge G. Harrold Carswells nomination as a justice of the U.S. Supreme Court and urging you to take all action necessary to insure his confirmation.

A. P. GIBBS,
President.

BROOKSVILLE, FLA.,
April 3, 1970.

Senator EDWARD GURNEY,
New Senate Office Building,
Washington, D.C.:

Strongly urge your full support for confirmation of Judge Carswell.

JOSEPH E. JOHNSTON, JR.,
President, Brooksville Bar Association.

FORT WALTON BEACH, FLA.,
April 3, 1970.

Senator EDWARD GURNEY,
New Senate Office Building,
Washington, D.C.:

The reputation for honesty, legal ability and fairness processed by the Honorable G Harold Carswell demands his speedy confirmation as a justice for our highest court.

HUGH T. HANDLEY,
President of Okaloosa and Walton Bar Association.

FORT WALTON BEACH, FLA.,
April 3, 1970.

Senator EDWARD GURNEY,
New Senate Office Building,
Washington, D.C.:

The reputation for honesty, legal ability and fairness processed by the Honorable G. Harrold Carswell demands his speedy confirmation as a justice of our highest court.

CHARLES R. TIMMEL,
Municipal Judge, Town of Mary Esther.

THE BAR ASSOCIATION OF TAMPA AND HILLSBOROUGH COUNTY,
Tampa, Fla., April 2, 1970.

Hon. SPESSARD L. HOLLAND,
Hon. EDWARD J. GURNEY,
Washington, D.C.

DEAR SENATOR HOLLAND AND SENATOR GURNEY: The Executive Board of this Association has adopted the following resolution in support of the nomination of Judge G. Harrold Carswell as an Associate Justice of the Supreme Court:

The Executive Board of the Bar Association of Tampa and Hillsborough County endorses the nomination of Judge G. Harrold Carswell to the Office of Associate Justice of the Supreme Court of the United States and urges his early confirmation.

Copies of this letter are being furnished to the other members of the Senate.

Respectfully,

C. LAWRENCE STAGG,
President.

EXPLANATION OF ABSENCE OF SENATOR COOPER AND SENATOR COOK ON TWO YEA-AND-NAY VOTES

Mr. COOK. Mr. President, for myself and the senior Senator from Kentucky (Mr. COOPER), I desire the RECORD to show that on the rollcall votes on the amendments of the Senator from Delaware (Mr. WILLIAMS) and the Senator from Minnesota (Mr. MCCARTHY) we were absent on official business at the White House in the company of Mr. and Mrs. Ishmael Nash, of Whitesville, Ky., who were receiving, posthumously, the Medal of Honor for their son, Pfc. David P. Nash, who lost his life for his country in Vietnam on December 29, 1968.

THE YOUNG HAVE NO MONOPOLY ON YOUTH

Mr. PEARSON. Mr. President, our country is preoccupied with youth.

To be young or to appear young today is supposed to be the ultimate in achievement, and seldom do we hear a brave voice raised to state an unavoidable truth—we have all been young. Stated facetiously, there is not a man or a woman over 30 living today who has not also lived through those years under 30. Today's younger generation does not have a monopoly on youth—all of us have been there, some longer ago than others.

But today's younger generation feels that it does have a monopoly on knowing how the world should be run. We have forgotten many of the old axioms such as, "experience is the best teacher," and, most of the time, many of us over 30

meet the expenses of obtaining a private pilot's license where such veterans intend to pursue a flight training program under such chapter, and to improve the farm cooperative training program authorized under such chapter, introduced by Mr. YARBOROUGH (for himself and other Senators), 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. 3689

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1677 of title 38, United States Code, is amended by adding at the end thereof a new subsection as follows:

"(c) (1) In any case in which a veteran wishes to pursue a course in flight training under this section but does not possess a valid private pilot's license and has not satisfactorily completed the number of hours of flight instruction required for a private pilot's license, the Administrator is authorized to make a direct loan to such veteran to pursue the flight training required for a private pilot's license.

"(2) Loans made under this subsection may be made in any amount not exceeding $1,000 or 90 per centum of the established charges for tuition and fees which similarly circumstanced non-veterans enrolled in the same flight-training course are required to pay, whichever amount is less; and such loans shall bear interest at a rate determined by the administrator, but not to exceed 6 per centum per annum.

"(3) Loans made under this section shall be repayable in equal monthly installments over a period of time not to exceed 3 years commencing—

"(A) upon the failure of the eligible veteran to obtain a private pilot's license within one year after the loan is made.

"(B) upon the failure of the eligible veteran to enter upon a course of training under subsection (a) of this section within one year after obtaining a private pilot's license,

"(C) upon failure to complete satisfactorily such a course of training within eighteen months after enrollment in a course of training under subsection (a) of this section, or

"(D) one year after the veteran has completed his course of training under subsection (a) of this section.

"(4) Loans made under this section shall be made upon such other terms and conditions as may be prescribed by the Administrator."

SEC. 2. (a) Section 1682(d) of title 38, United States Code, is amended to read as follows:

"(d) (1) An eligible veteran who is enrolled in a 'farm cooperative' training program which provides for institutional and on-farm training and which has been approved by the appropriate State approving agency in accordance with the provisions of paragraph (2) of this subsection shall be eligible to receive an educational assistance allowance as follows: $141 per month, if he has no dependents; $167 per month, if he has one dependent; $192 per month, if he has two dependents; and $10 per month, for each dependent in excess of two.

"(2) The State approving agency may approve a farm cooperative training course when it satisfies the following requirements:

"(A) The course combines organized group instruction in agricultural and related subjects of at least two hundred hours per year (and of at least eight hours each month) at an educational institution, with supervised work experience on a farm or other agricultural establishment; and the course provides for not less than one hundred hours of individual instruction per year, at least fifty hours of which shall be on a farm or other agricultural establishment (with at least two visits by the instructor to such farm or establishment each month). Such individual instruction shall be given by the instructor responsible for the veteran's institutional instruction and shall include instruction and home-study assignments in the preparation of budgets, inventories, and statements showing the production, use on the farm, and sale of crops, livestock, and livestock products.

"(B) The course is developed with due consideration to the size and character of the farm or other agricultural establishment on which the eligible veteran will receive his supervised work experience and to the need of such eligible veteran, in the type of farming for which he is training, for proficiency in planning, producing, marketing, farm mechanics, conservation of resources, food conservation, farm financing, farming management, and the keeping of farm and home accounts.

"(C) The farm or other agricultural establishment on which the veteran is to receive his supervised work experience shall be of a size and character which will permit instruction in all aspects of the management of the farm or other agricultural establishment of the type for which the eligible veteran is being trained, and will provide the eligible veteran an opportunity to apply the major portion of the farm practices taught in the group instruction part of the course.

"(D) Provision shall be made for certification by the institution and the veteran that the training offered does not repeat or duplicate training previously received by the veteran.

"(E) The institutional on-farm training meets such other fair and reasonable standards as may be established by the State approving agency."

(b) The amendments made by subsection (a) of this section shall become effective on the first day of the second calendar month following the month in which this Act is enacted; but any veteran enrolled in a farm cooperative course under section 1682(d) of title 38, United States Code, prior to such effective date may continue in such course to the end of the current academic year under the same terms and conditions that were in effect prior to the effective date of the amendments made by subsection (a) of this section.

THE NOMINATION OF GEORGE HARROLD CARSWELL TO THE SUPREME COURT

Mr. YARBOROUGH. Mr. President, the debate over the nomination of Judge Carswell for the Supreme Court has developed an unfortunate and an unwarranted overtone over whether a white southern conservative should be appointed.

The real basis for Judge Carswell's opposition is not whether he is a white southerner, but what kind of a white southerner he is. On the nomination of Justice Thurgood Marshall, I received letters opposing him because he was a Negro; I rejected all such opposition as unworthy. When Justice Abe Fortas was under attack, I heard criticism of him because he was a Jew; I rejected it as unworthy. Opposition is heard to Judge Carswell because he is a white southerner. I likewise reject it as unworthy. I reject all attacks based on race, religion, regionalism, or national origin.

Should Judge Carswell be rejected, I hope that President Nixon nominates another white southerner to the Court, because of the attacks on the last two nominees on that score. I respect the right of the President to nominate a person of his own political ideology. But erudite and learned men can be found in the South who are conservative. Some sit with us here every day. Senators JOHN SHERMAN COOPER of Kentucky, JOHN STENNIS of Mississippi, and SAM ERVIN of North Carolina, to name only three, are men of unimpeachable honor and integrity and of fine ability. All have been judges; Senator ERVIN is often called the greatest constitutional lawyer in the Senate, and was a former supreme court justice in North Carolina.

I voted for confirmation of Chief Justice Burger, a conservative. I do not vote against men because of their political philosophy.

President Nixon can find able men of conservative bent and of his own political party from my home State of Texas. If Judge Carswell is rejected, I respectfully invite the President to examine proven judges of his own party in Texas. Chief Judge John R. Brown of the fifth circuit is a judge of great erudition and is recognized by lawyers of all political parties in my home State of Texas as being of top Supreme Court quality. Federal Judge Joe Estes of Dallas was a brilliant scholar in law school, and is an able judge who is of the President's party and is a stanch conservative. And we have brilliant law writers on the faculties of law schools in the South, and in Texas, who fit the President's search for a conservative on the Court. I invite the President to look to his own party in Texas; to its judges, lawyers, law teachers, and law writers.

It is unfortunate that the President, by the Carswell appointment, adds to the myth that all white southern conservatives are mediocre men, or are high-handed and intolerant toward lawyers of differing views when they are placed on the Court. As a white Texas lawyer who practiced in the courts of my State, State and Federal, for 20 years and was judge there for 5, I know it is not so.

I have received a number of letters from the faculty of the University of Texas School of Law concerning the nomination of Judge Carswell. Of these letters, one from Prof. Charles Alan Wright expressed support for the nomination of Judge Carswell. The following members of the faculty expressed their opposition to the nomination:

Prof. William O. Huie, Prof. Robert E. Mathews, Prof. Roy E. Mersky, Prof. Lino A. Graglia, Prof. David W. Robertson, Prof. James M. Treece, Prof. O. James Werner.

Prof. Joseph P. Witherspoon, Prof. Michael P. Rosenthal, Prof. Albert W. Alschuler, Prof. Robert W. Hamilton, Prof. Allen E. Smith, Prof. George Schatzki, Prof. Parker C. Fielder.

Mr. President, I ask unanimous consent

that these letters from the faculty members of the University of Texas School of Law be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE UNIVERSITY OF TEXAS AT AUSTIN, SCHOOL OF LAW,
Austin, Tex., March 24, 1970.

HON. RALPH W. YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: I am aware that some of my colleagues have written you urging you to vote against the confirmation of Judge Carswell to the Supreme Court. I write to express a contrary view. My colleagues who oppose Judge Carswell do so on the basis of newspaper reports and on reading a scattering of his opinions. I doubt very much if they have read the full text of the hearings and of the majority and minority views in the Judiciary Committee. I have. I am quite certain that they have not known Harrold Carswell for eight years. I have.

I know Judge Carswell to be a man of keen intelligence and of great fair-mindedness. I am wholly satisfied that he has outgrown the views of his youth and that he is not a racist. I hope very much that you will vote to confirm his nomination.

Sincerely,

CHARLES ALAN WRIGHT.

THE UNIVERSITY OF TEXAS AT AUSTIN, SCHOOL OF LAW,
Austin, Tex., March 18, 1970.

Re Judge Carswell.
HON. RALPH YARBOROUGH,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I realize that this letter may be quite superfluous. At the same time, you are doubtless getting pleas on behalf of Judge Carswell's confirmation and I would not want those who oppose it to appear indifferent or uninformed.

I have read most of the transcript of Hearings before the Judiciary Committee. They are both fascinating and distressing. Certainly the evidence of the judge's racial bias is disturbing enough, for the Supreme Court is bound to be reviewing issues of that type. I gravely doubt that Judge Carswell can rise above this. There is, in my opinion, no comparison either in fact or personality between him and Mr. Justice Black.

But even if he should be able to do so, it is inconceivable that he can ever attain the intellectual competence which is essential to participation in the work of the Court. I am utterly appalled at Senator Hruska's remark two days ago that there are many mediocre lawyers and they should be represented. That is so incredible a thought that one can hardly believe an educated person would utter it.

The testimony of Dean Pollak of the Yale Law School and of Professor Van Alstyne of Duke reveals unquestionably a judge of very small competence. Actually, Senator Hruska admits it by his very statement. But there is no place for inadequacy or even mediocrity on our highest court. Too much of America's future depends on high ability and deep wisdom. We just can't risk anything less.

There is a possibility, I fear, that less scrutiny will be given a second nomination than the first. I can understand the tendency of busy Senators, who sense a sincere anxiety to get along with other important tasks, to let this time-consuming issue pass by without the same attention as the first. Actually, however, it would be my conjecture that Judge Carswell's confirmation would be far more disastrous than Judge Haynsworth's would have been.

I expect that I need not have taken your time or mine to express these views, but as I have already said, I'd like them to add their bit to the scales on the side against confirmation.

Very truly yours,

ROBERT E. MATHEWS.

THE UNIVERSITY OF TEXAS AT AUSTIN, SCHOOL OF LAW,
Austin, Tex., March 18, 1970.

HON. RALPH W. YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: As one involved in the teaching of law, I am deeply concerned about the quality of the law and of those to whom its administration is entrusted.

I am troubled by the nomination of Judge Carswell to the Supreme Court of the United States. President Nixon had promised to select a pre-eminent jurist for this position. In my opinion, Judge Carswell does not meet this test. His opinions are not notable in scholarship or craftsmanship, nor has he contributed significantly in any other way to the law. His record is inferior to that of other judges in his own circuit. Measured by the standards of the great men in the history of the legal profession in this country, Judge Carswell's attainments are mediocre. His appointment would break the tradition of distinguished Republican appointees to the Court.

If the United States Supreme Court is to retain its integrity and dignity, and if we are to inspire the young to consider the law as a worthwhile pursuit, membership on the Court must be reserved to abler men.

Sincerely yours,

ROY M. MERSKY,
Professor of Law and Director of Research.

THE UNIVERSITY OF TEXAS AT AUSTIN, SCHOOL OF LAW,
Austin, Texas, March 18, 1970.

HON. RALPH W. YARBOROUGH,
U.S. Senator, Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: I am writing you in my individual capacity to urge you to vote *against* confirmation of Judge Carswell. I am a professor of law at The University of Texas.

I object to this nomination primarily because Judge Carswell is not qualified intellectually to serve on the United States Supreme Court. I have read a number of his opinions since he was elevated to the Fifth Circuit: they are totally indistinguished and, most charitably, they reflect only a limited capacity to comprehend the significance of the issues before the Court. Judge Carswell, in my view, is the weakest nominee for the Supreme Court during this century.

I also have grave doubts as to the sincerity of Judge Carswell's recent statements on racial issues in view of the disclosures about his prior views and acts. My primary objection to the nomination, however, is Judge Carswell's fundamental lack of qualifications for the important position to which he has been nominated.

Very truly yours,

ROBERT W. HAMILTON,
Professor of Law

PARKER C. FIELDER,
ATTORNEY AT LAW,
Austin, Tex., March 17, 1970.

HON. RALPH YARBOROUGH,
U.S. Senator from Texas,
Senate Office Building,
Washington, D.C.

DEAR RALPH: I am writing to express myself to you on the matter of the confirmation of G. Harrold Carswell only after long, deliberate and serious thought.

I have endeavored to give, and trust that I have given, due regard to the prerogatives of the President in appointments to the Supreme Court of the United States. His judgment in such a matter is entitled to the highest respect and presumption of propriety.

Nevertheless, the Senate does have a coordinate responsibility in the appointment process. While it may be that a Senator or the Senate should not refuse advice and consent lightly or for minor differences with the President, there may arise a situation in which the appointment is so ill-advised that the Senate must refuse to accept the Presidential judgment.

I am thoroughly and firmly of the opinion that the latter situation has arisen in the case of Mr. Carswell. I base my judgment entirely and with the greatest detachment I can muster upon his competence as a lawyer and a judge, measured by his professional and judicial record and by his testimony before the Senate Judiciary Committee.

It is my considered opinion that Mr. Carswell is not a fit person to sit upon the Supreme Court and that the President has erred in nominating him.

I therefore strongly urge you to vote to deny the confirmation of Mr. Carswell.

With continuing respect and warm regards, I am,

Sincerely yours,

PARKER C. FIELDER.

THE UNIVERSITY OF TEXAS AT AUSTIN, SCHOOL OF LAW,
Austin, Tex., March 3, 1970

HON. RALPH W. YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: The undersigned are members of the faculty of the University of Texas Law School, Austin.

Recent disclosures about the capacities and attitude of Judge G. Harrold Carswell have persuaded us that he should not be confirmed as a Justice of the United States Supreme Court. We therefore urge the Senate to reject this nomination.

The Supreme Court plays a uniquely powerful role in our nation. Whether a justice is a "strict constructionist" or an "activist," the issues coming before the Court require great strength of mind and sensitivity to injustice. Every nomination for the Court thus carries a heavy burden in this regard.

Measured by these standards, the nomination of Judge Carswell is clearly deficient. In the past he has demonstrated attitudes hostile to our black citizens. Admittedly, these occurred many years ago, but when such evidence appears in the record, there is an obligation to show that the attitude then reflected no longer exists. Justice Hugo Black had indeed been a member of the KKK some years before his nomination, but he had sufficiently demonstrated the insignificance of this by his conduct both before and after. Judge Carswell has not only made no such demonstration of a changed attitude, but the emerging evidence indicates that at least remnants of this attitude still linger.

Finally, as careful students of his judicial performance like Professor William Van Alstyne (who, incidentally, supported Judge Haynsworth's nomination) and Dean Louis Pollak of Yale, have concluded, the intellectual quality of Judge Carswell's opinions is far from distinguished.

This is not to deny the appropriateness of a justice from the South, but in these difficult days, strength of intellect and sensitivity to minority aspirations are indispensable for any appointment to one of the most

powerful and demanding offices our society possesses. Measured by either of these standards, Judge Carswell falls.

Very truly yours,

Lino A. Graglia, Robert W. Hamilton, Roy M. Mersky, David W. Robertson, Michael P. Rosenthal, George Schatzki, James M. Treece, O. James Werner, Joseph P. Witherspoon.

THE UNIVERSITY OF TEXAS AT AUSTIN SCHOOL OF LAW,
Austin, Tex., March 18, 1970.

Senator RALPH W. YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: I am taking this opportunity to urge you to vote *against* the confirmation of Judge G. Harrold Carswell when it comes before the full Senate. In my opinion Judge Carswell's qualifications for the Supreme Court are, viewed in the most charitable light, mediocre. Leaving aside questions of personal philosophy, the unique place the Supreme Court holds in our Government calls for men of especially outstanding ability and outstanding promise. Judge Carswell does not measure up in either of these respects.

Respectfully yours,

MICHAEL P. ROSENTHAL,
Professor of Law.

(Organizational affiliation for identification only.)

THE UNIVERSITY OF TEXAS AT AUSTIN, SCHOOL OF LAW,
Austin, Tex., March 19, 1970.

Hon. RALPH YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SENATOR YARBOROUGH: I am writing to encourage you to vote against the nomination of Judge G. Harrold Carswell as Justice of the United States Supreme Court. I have read many of Judge Carswell's opinions, and I regard Judge Carswell's work as totally undistinguished. His opinions lack the insight, thoughtfulness, style, and, most important, the concern for fairness that mark the work of a fine judge.

I firmly believe that the President of the United States should be able to select Supreme Court Justices who adhere generally to his own political philosophy. For that reason, I favored the confirmation of Chief Judge Haynsworth, although Judge Haynsworth's outlook on many problems was not at all in accord with my own. Judge Haynsworth was, I am convinced, a concerned and capable jurist. Judge Carswell, I am convinced, is not.

The Senate always has the right and the duty to insist that Supreme Court nominees be truly capable men, and I believe that it has a special right and a special duty to review the decisions of a President whose platform was based, in part, on the need to appoint better judges to the Supreme Court.

The Senate and the nation, in my view, are entitled to something better than the President has offered in this instance.

Sincerely yours,

ALBERT W. ALSCHULER.

THE UNIVERSITY OF TEXAS AT AUSTIN, SCHOOL OF LAW,
Austin, Tex., March 18, 1970.

Re nomination of Judge Carswell.
Senator RALPH YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: From what I have been able to learn from the newspapers, Judge Carswell is a man of only average intellectual ability, without personal distinction. While I don't think that either the court or the country will fall apart if his nomination is confirmed, I should think we could do better on our highest court.

Why don't you vote against him and give the president a chance to appoint a nominee of stature?

Yours very truly,

ALLEN E. SMITH.

AUSTIN, TEX.,
March 18, 1970.

Re nomination of Judge Carswell.
Senator RALPH YARBOROUGH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR YARBOROUGH: I am writing to urge you to vote against the confirmation of Judge Carswell's nomination to the Supreme Court.

I have read several of the judge's opinions, including all of the opinions in the labor relations field—the field of my specialty—and it is my judgement that Judge Carswell is, at best, a lawyer and judge of weak mediocrity. At worst, he is a man of little or no depth, of no vision, of no creativity, and with little grasp of the nature of the judicial process.

In these times when the Supreme Court has become one of the most important institutions dealing with difficult and sensitive issues, it would be—in my judgment—a great disservice to the country for Judge Carswell to be elevated to the Supreme Court.

In light of the many eminent and qualified jurists, attorneys, and scholars who could be selected for this important post (I should add that many of these men reside in the South), I strongly urge you to vote against Judge Carswell's confirmation.

Sincerely yours,

GEORGE SCHATZKI,
Professor of Law,
The University of Texas.

THE UNIVERSITY OF TEXAS AT AUSTIN,
SCHOOL OF LAW,
Austin, Tex., March 18, 1970.

Hon. RALPH W. YARBOROUGH,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR RALPH: From all I have read and heard about Judge Carswell, I have become convinced that he is a jurist of mediocre ability and I therefore hope that you will vote against confirmation of his appointment to the Supreme Court.

With warmest personal regards,

Sincerely yours,

WILLIAM O. HUIE.

Mr. YARBOROUGH. While many hundreds of messages from my home State, both favoring and opposing Judge Carswell are too numerous to reprint, I ask unanimous consent to print at this point in the RECORD an editorial from the San Antonio Express of today, Tuesday, April 7, 1970, titled "Nixon's Warped View of Court."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

NIXON'S WARPED VIEW OF COURT

Once again, a political battle will decide who fills the vacant seat on the Supreme Court. And, once again, only losers will be left, no matter what the outcome.

The Senate will decide Wednesday whether G. Harrold Carswell shall have the seat. If Carswell's nomination is confirmed, he will forever have the mediocre seat on the court. If he is rejected, he will be one of the losers of a messy fight.

President Nixon, as he did for Clement Haynsworth, has put all his prestige on the line for Carswell. Petulantly, he says he has a right to have "his man" on the court. This narrow view would have the court serve as an extension of the executive arm—which it is not!

Carswell's lack of candor before the Senate Judiciary Committee was damaging. Carswell told two American Bar Association representatives that he was an incorporator of a segregated country club. The next day he swore that he had no such role. Confronted by documents, he changed his testimony and blamed a hazy memory.

After the Haynsworth debacle, all assumed that the next Nixon nominee would be throughly checked. Not so. Atty. Gen. Mitchell made the recommendation, but his screening again was faulty.

Somewhere there must be a jurist who is Republican, conservative, "constructionist," financially clean, judicially competent and available. Should the Carswell nomination fail, the President should search this man out.

Judge Carswell may be confirmed by a few votes. But he will be a loser if almost half the Senate opposes him. The President will have spent more of his prestige. The nation's confidence in the Supreme Court will have been sapped further. These frequent, debilitating squabbles should be avoided.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan.

THE CARSWELL NOMINATION

Mr. HART. Mr. President, tomorrow we shall vote on the nomination to the Supreme Court of Judge Carswell. It has been said that everything has been said that could be said, that all the issues have been discussed and rediscussed.

I rise, not to introduce a new element, but to bring to the attention of my colleagues very recent expressions from two sources on one of the elements that I think is of critical importance to our decision on the nomination. These are observations from sources outside the Senate, and of very recent date. Both of them bear, Mr. President, on the question of the credentials of the nominee.

I know of no Senator who is happy to stand up and suggest that a fellow lawyer lacks credentials. It is particularly uncomfortable for one such as I, who never served as a Federal district judge, never sat on a circuit court of appeals, and served only briefly as a U.S. attorney, inasmuch as I put in the RECORD two comments which are critical of Judge Carswell's capacity, and thus, in effect, rise to question his credentials.

But we are talking about the credentials that ought to be required of a person who is to sit on the Highest Court of this land. And uncomfortable though it may be, even his best friends have found it somewhat straining to wax eloquent on the extraordinary distinctions and gifts that are reflected in the record of public service of the nominee.

We are told, and I think in a measure it is correct, that this is a subjective judgment, although the figures on reversal and the balancing of opinions of distinguished law professors, law school deans, and gifted figures at the American bar have a measure of objectivity to them.

If any of my colleagues wonders whether the question of credentials is important, or whether mediocrity is a factor, let me read from a book just published by James V. Bennett, the longtime Director of the Federal Bureau of Prisons, whose service under four or five Presidents marked him as a nonpolitical figure. In fact, his experience would

suggest that he is extraordinarily qualified to express this opinion, which is found in a book which has just come on the market, entitled "I Chose Prison." It is a Knopf publication.

One of the problems familiar to Jim Bennett in his experience with criminal jurisprudence was the role that judges play. On page 192, after a quotation from former Attorney General Herbert Brownell—and let me read first the statement of Mr. Brownell—

All too often, a judge gets his job as a reward for political loyalty, and looks on the courthouse as a cozy rest home.

Jim Bennett tells us this:

It is perhaps no exaggeration to say that, over the long haul, mediocrity in our courts is more corrosive than corruption.

That is the opinion of a man who fought crime for a long time in this country, and with great distinction. I bring it to the record tonight on the eve of this vote, not really with the thought to make life miserable for the nominee, but perhaps to be helpful if there is a colleague or two still wondering to what extent the lack of credentials should influence his vote tomorrow. Jim Bennett suggests the answer.

Mr. President, the second outside source which I should like to make available to my colleagues as we approach this vote is an editorial of Friday, February 3, 1970, from the Flint, Mich., Journal. It is captioned, appropriately, "Carswell Credentials Are Just Too Meager." It is a thoughtful analysis of the several elements that are central to the decision that confronts us tomorrow, but I think its caption suggests that it, too, shares the belief of Jim Bennett that the question of credentials overrides them all.

This, in conclusion, is not the point which on the several occasions I have risen to speak has been the central issue in my mind. I have suggested that to appoint one to the Supreme Court, in the year 1970, about whom fair question can be raised as to his devotion to the principles of civil rights, is wrong.

Senators will recall that I cited President Nixon's Miami acceptance speech, in which he would seem to agree. There he said that those who have the responsibility for enforcing our laws, and our judges, who have the responsibility to interpret them, should be dedicated to the great principles of civil rights.

Only a very thin brew has been produced here by those who support this nomination to explain how this nominee fits President Nixon's description. The dilemma which confronts this country, as we seek to make one people, not a Nation divided black from white, suggests, I believe, that this is the central weakness in the nomination.

To name, at this time, to any high level Federal post a man whose views on racial equality are open to question would be a grave error. To make such an appointment to the Nation's highest tribunal, the very institution in which most black Americans have plausibly deposited maximum confidence, could bring about incalculably tragic consequences. I think, in the personal sense, it creates an apparent conflict of interest much more damaging than anything that Judge Haynsworth and his portfolio might have put on that Bench.

As I say, to me, this is the overriding reason which should persuade us not to consent by our vote tomorrow. But the Flint Journal and James V. Bennett, I think, would suggest that the question of the lack of credentials should be regarded as overriding.

To those who still think about the importance of the absence of credentials, I refer them again both to the editorial and to Mr. Bennett's conclusion that over the long haul it is no exaggeration to say that mediocrity in our courts is more corrosive than corruption. Anyone who has forgotten the rules of evidence should be reminded that evidence produced before the controversy has a very high degree of credibility. Mr. Bennett wrote this before the controversy over Judge Carswell developed.

Mr. President, I ask unanimous consent to have the editorial from the Flint Journal printed at this point in the RECORD.

There being no objection the editorial was ordered to be printed in the RECORD, as follows:

[From the Flint Journal, Apr. 3, 1970]

CARSWELL CREDENTIALS ARE JUST TOO MEAGER

When the Senate votes on Judge G. Harrold Carswell's appointment to the U.S. Supreme Court, the issue will be more than just the filling of one seat on the bench, as important as that step may be.

The decision of the Senate will set a strong precedent for future Senates when members consider the qualifications which they will investigate in exercising their power of advice and consent in judicial appointments.

If that had not been clear before, the message of President Nixon made it so when he wrote:

"What is centrally at issue in this nomination is the constitutional responsibility of the president to appoint members to the court and whether this responsibility can be frustrated by those who wish to substitute their own philosophy or their own subjective judgment for that of one person entrusted by the Constitution with the power of appointment."

(The President weakened his case by going on to claim the right "freely accorded to my predecessors," since the Senate has on several occasions rejected presidential nominees).

AN OLD ISSUE

The issue is an old one in our government as the legislative, judicial and administrative branches have battled to establish their position and authority in various fields.

The appointive power of the president has been in issue on a number of occasions, but seldom as much as in recent years. Refusal to confirm Justice Abe Fortas as chief justice and the rejection of Judge Clement Haynsworth for the post to which Carswell has been named are recent instances.

Originally challenged on far less substantial grounds, the rejection of Fortas finally rested on the nominee's lack of ethics. This point was enlarged and reinforced when Haynsworth, too, was defeated primarily on the grounds he was insensitive to the standards of conflict of interest and, again, lacking in judgment in matters of ethical conduct.

With the nomination by Nixon of Carswell, it was apparent that Atty. Gen. John Mitchell had taken these cases into consideration in his recommendation and avoided a further challenge in this area.

What then has the opposition against Carswell been based upon and why was this nomination, originally considered a shoo-in, gone down to the wire and demanded every ounce of political persuasion by Nixon and the Republican leaders?

There are two principal charges against Carswell.

First is that, while not a blatant racist, he is, at the least, insensitive to the problems of racial prejudice and, at the worst, incapable of grasping the political and social philosophy that considers racial prejudice a threat to the democratic process.

The second is that he is not of sufficient stature and does not have an impressive enough record to warrant raising him to the highest court in the land.

RECORD OF REVERSALS

The racial bias question first centered on a quotation of a very racist nature made many years ago by Carswell as a candidate for political office in Florida. The Flint Journal suggested that this was not sufficient reason to reject his nomination, since Carswell unequivocally repudiated that statement and apologized for having made it. (Negro columnist Carl Rowan takes this same position).

More serious, however, have been Carswell's activities in connection with a move to turn a public golf courss into a private one to preserve its segregationist policy and his repeated reversal by higher courts on rulings he made in cases dealing with segregation, most of which were clearly in support of the Southern doctrine of segregation.

Sen. Robert P. Griffin of Michigan—who is in the center of the fight for the nomination—has taken a position that makes clear the dilemma of Carswell supporters. In defense of Carswell he has stated:

"Although I would have preferred a nominee with a more distinguished civil rights record, I do not believe Judge Carswell can fairly be considered an extremist or racist."

It is that same negative posture forced on supporters which has plagued the entire Nixon campaign for Carswell and has led to such damaging statements as Sen. Roman L. Hruska, R-Neb., implying that mediocrity deserves its place on the Supreme Court.

LACKLUSTER CAREER

More to the point, we believe, is whether or not the times and the needs of the nation did not demand from Nixon an appointment in which the racial question could not be raised legitimately.

With the question of Carswell's racial bias, at the very best a moot point, there remains the matter of the candidate's qualifications. Here, again, is that strange resort to negativism by his supporters.

Griffin justifies his position by saying it is not proven that Carswell will not be a great justice. In saying that, he cites opposition voiced against such previous appointees to the Supreme Court as Louis D. Brandeis, Chief Justice Charles Evans Hughes, Tom C. Clark, Hugo L. Black and Felix Frankfurter, all of whom served with distinction.

The point Griffin fails to raise is that those men had distinguished careers in government, on the bench or before the bar, in the academic world or in the Senate and were known widely as men of distinction, whether or not those opposing them agreed with their philosophies.

Carswell, a politically appointed minor judge, was unknown outside his particular circle, undistinguished in the judiciary, with a lackluster career and a very dismal record of having been reversed repeatedly by higher courts, not necessarily a touchstone of excellence but certainly one of the primary yardsticks in considering the qualifications of a member of the judiciary.

Nixon has put his party on the spot by his insistence upon the right to name any person he considers qualified to the court and not be questioned on the nominee's principles and philosophies.

If this were an appointment to an executive position he would have a far stronger argument. The right of the boss to pick his own lieutenants is well established.

NOT JUSTIFIED

Appointments to the Supreme Court must be viewed differently. In the words of Chief Justice Roger B. Taney, who served from 1836 to 1864, the court is "equal in origin and equal in title to the legislative and executive branches of the government," certainly putting an added burden on the President to choose wisely and an even greater demand upon the Senate to see that he does so.

It is our hope that a majority of the Senate will reject a man of whom Dean William Allen of the University of Michigan Law School has said there is "No reason whatever . . . to accept . . . such meager credentials."

Mr. GRAVEL. Mr. President, I should like to associate myself with the remarks of the distinguished Senator from Michigan (Mr. HART) and with the remarks of the distinguished Senator from Texas (Mr. YARBOROUGH), who preceded us both this afternoon.

I should like to address myself in one small measure to a statement made yesterday afternoon by the distinguished Senator from Virginia (Mr. SPONG) while I occupied the Presiding Officer's chair.

We are essentially in the same situation, having voted for the President's nominee Judge Haynsworth and now having announced our positions to vote against the President's present nominee, Judge Carswell. It is interesting that two individuals, one from so far North and one from a community which is very much a part of Southern history, should follow a similar voting pattern.

I can attest to the problem that comes of geographic constraint, because I can frankly say that when I voted for Judge Haynsworth, after a great deal of introspection on my part, I received a great deal of criticism in my own State. I received a great deal of pressure before the final vote was cast.

So I know firsthand the emotions that race through my colleague's mind, and I know firsthand what he will he subjected to in the ensuing months in the geographic context of his own constituency with regard to this issue. I compliment him on his courage.

I would hope the record is made clear—and I am glad that the Senator from Texas made the statement—that if Judge Carswell's nomination is rejected, I hope the President will go to the South and select another jurist, but a man of some caliber, who will grace the Bench with honor and distinction. I do not feel that it is worthy of this body to reject or approve anybody based upon geographic considerations.

I would just like to give my own wrapup of why I feel Judge Carswell's nomination should not be confirmed tomorrow, and add one slight item which gives me some distress.

There are three basic points why I hope tomorrow the Senate will reject Judge Carswell's confirmation, and one is based upon race matters. I think he should be forgiven the statements made some 20-odd years ago, but I think he has not made sufficient record, through act or deed, to give any indication—not even the slightest indication—that he has had a change of heart, a change of philosophy, or a change of viewpoint. In fact, in reading the record I feel that what actually has happened in this person is a greater sophistication, wherein the views are put forth in a more palatable fashion in somewhat polite society. Still, this sophistication does not disguise what I feel is a view and a philosophy that should not be allowed on the High Court—a racially based philosophy.

The second point at issue, of course, is the ethical question. I do not measure the ethics only in financial terms of personal reward. I think it is a point of ethics if a person who has power abuses power. I think that here, again, looking at the record of Judge Carswell and his conduct, the way he has handled people in his court, we have strong indication and adequate proof that he has usurped power in a fashion that, in my mind, reflects very poor judicial ethics.

The third question—one that has been adequately treated by my colleague most recently—is the issue of judicial stature. I cannot think of a better quotation that could be made than the fact that mediocrity can be a corrosive factor or instrument on anything that takes place—least of all do we want it in one of the most important instruments of our Government.

But the point that distresses me most is the point that has occurred since the Easter recess. When I declared myself prior to the Easter recess, it was based upon information that had been uncovered since the name was handed down to the Senate. I think information was brought forward of which the President had no knowledge. With the uncovering of this information, the President had a very simple choice and that was not to do anything; and if the Members of this body chose, they could return that nomination to committee for further investigation.

The President, after the Easter recess, chose an alternative position that was very simply to use the full force of his office to effect the confirmation of Judge Carswell's nomination. I think this will inure to the President's detriment. Certainly he has his choices, but the record was made and was revealed, and the choice was made by Judge Carswell and the administration to not have him come back to the Judiciary Committee for further investigation, for further statements. This was not the case with Judge Haynsworth; because, as he was under attack, he did come forward and give additional testimony.

I can liken this to a practice which is fairly familiar in judicial circles and which may speak a world of information when it is invoked. I think that Judge Carswell in this case, when confronted with accusations, has in a sense taken the fifth amendment. I think that a person wishing to hold that high office, in the interest of creating a sense of authority, creating a sense of sensitivity, creating a sense of responsiveness, should have come forward and treated these allegations and should not have retired in silence and relied upon the administration to push through the confirmation.

I hope that tomorrow the Senate will not confirm Judge Carswell's nomination, because I think it will not be in the best interests of the Court, and not in the best interests of the United States.

I yield the floor.

ORDER FOR RECESS UNTIL 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess, in executive session, until 10 o'clock tomorrow morning.

The PRESIDING OFFICER (Mr. HANSEN). Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I move that the Senate go into executive session.

The motion was agreed to, and the Senate proceeded to the consideration of executive business.

Mr. BYRD of West Virginia. Mr. President, what is the pending question?

The PRESIDING OFFICER (Mr. HANSEN). The question is, will the Senate advise and consent to the nomination of Judge G. Harrold Carswell of Florida to be an Associate Justice of the Supreme Court of the United States?

Mr. BYRD of West Virginia. Mr. President, I thank the Chair.

As a reminder to Senators, there will be no morning business tomorrow until the vote on the nomination of Judge G. Harrold Carswell to be Associate Justice of the Supreme Court of the United States has been completed.

RECESS UNTIL TOMORROW AT 10 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess, in executive session, until tomorrow morning at 10 o'clock.

The motion was agreed to; and (at 6 o'clock and 4 minutes p.m.) the Senate recessed, in executive session, until tomorrow, Wednesday, April 8, 1970, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate April 7, 1970:

DEPARTMENT OF THE INTERIOR

Fred J. Russell, of California, to be Under Secretary of the Interior.