793) will be made available to defendants in criminal cases in the District of Columbia court of general sessions.

NEED FOR LEGISLATION

The 89th Congress, in enacting the Narcotic Addict Rehabilitation Act of 1966, declared it to be the policy of the Congress that certain persons charged with or convicted of criminal activity who are determined to be narcotic drug addicts and likely to be rehabilitated should, in place of prosecution or sentencing, be committed for confinement and treatment designed to effect their return to society as useful members.

The 1966 enactment is not clear with respect to whether it may be applicable to persons accused of offenses against the United States triable in the District of Columbia court of general sessions. S. 1514 is needed to eliminate this ambiguity, and make it clear that the 1966 act applies to all offenders prosecuted by the U.S. attorney for the District of Columbia, whether in the U.S. district court or in the District of Columbia court of general sessions.

The U.S. district court for the District of Columbia and the District of Columbia court of general sessions have concurrent jurisdiction in misdemeanor cases. It is important that both courts be brought under the provisions of the Federal act to insure that all addicts unless specifically excepted under the Narcotic Addict Rehabilitation Act of 1966, be given equal opportunity to receive medical treatment. The availability of medical treatment should not depend upon whether a prosecution is pending in the district court or the court of general sessions. The benefits accruing to both society and the addict from proper treatment for addition may well be as great in the case of one charged with a misdemeanor as in the case of an addict charged with a felony. S. 1514 would make it clear that the act is to be applied in both courts.

HEARING

A public hearing on S. 1514 was held on March 26, 1968, before the Subcommittee on the Judiciary.

The District of Columbia government, the U.S. attorney for the District of Columbia, and the Women's Bar Association of the District of Columbia, all advocate passage of the bill. There was no opposition. The bill was recommended by the President's Commission on Crime in the District of Columbia.

APPOINTMENT OF A SUCCESSOR TO CHIEF JUSTICE EARL WARREN

Mr. BAKER. Mr. President, a great furor has been raised in Congress and in the press about the appointment of a successor to Chief Justice Earl Warren.

President Johnson has nominated Associate Justice Abe Fortas to this important position and has designated Court of Appeals Judge William Homer Thornberry, a former Representative from Texas, to the vacancy on the Supreme Court.

I believe that the opportunity for a new administration to designate the new Chief Justice and Associate Justice is so patently desirable that the positions should not be filled at this time.

Consequently, I stated prior to learning of the President's action that I would resist the confirmation of a nominee, regardless of his identity, until the convening of the 91st Congress and the inauguration of the administration. I shall pursue this course of action.

Clearly the Supreme Court has been a controversial branch of Government in the last several years. The so-called Warren court has moved into areas heretofore not considered the province of the judicial department of Government. Many have interpreted their decisions, with varying degree of accuracy, as judicial legislation.

Just recently, as part of the Crime Control Act of 1968, an effort was made to limit severely the jurisdiction of the Supreme Court. While this effort was not successful, Congress did modify several recent Supreme Court decisions by enacting provisions pertaining to the admissibility of confessions and the like.

In my view, it is absolutely essential that the American people respect and have confidence in the Supreme Court and in the American system of justice. Today, it is obvious that this confidence is not present.

I note that the two men whom the President would appoint have been longtime political associates of the President. I do not believe that the necessary confidence in and respect for the high court can be established when appointments are made on that basis.

My opposition is not directed personally at President Johnson, or at Justice Fortas—a Tennessee native, by the way—or at Judge Thornberry.

I believe that positions on the Supreme Court are of such significance that when coupled with the certainty that there will be a new administration in January, the new administration, whether Republican or Democrat, should have the opportunity to designate the new Chief Justice and the new Associate Justice of the Supreme Court of the United States.

Mr. HANSEN. Mr. President, it was announced today that President Johnson has nominated Associate Justice Fortas to the Chief Justiceship of the U.S. Supreme Court. I will oppose Senate confirmation of this appointment.

Earlier, published reports were circulated in Washington and the Nation to the effect that present Chief Justice Earl Warren would retire before the November elections so that President Johnson could appoint a successor before he leaves the White House. Warren was reported to have feared the election of Richard Nixon to the Presidency in November and his retirement now was presumed to be an effort by Warren to make it impossible for a Republican President to appoint a new Chief Justice to the Court.

I do not presume to be as omniscient as Earl Warren on these political matters, but I do have a greater faith in the American people and in the American system of Government than is apparently held by Mr. Warren. I believe that it is an affront to the American electorate to deny them a voice in selecting a new Chief Justice during this critical election year. The "lameduck" appointment announced today by President Johnson is just such a denial.

In addition, in my opinion, the Supreme Court has been practicing a dangerous amount of judicial activism under the Chief Justiceship of Earl Warren during the last 15 years. This activism has posed a serious threat to our political system, which was based on the principle that our American system is a "Government of laws and not of man."

I believe that our legal system and the American Constitution upon which that system is based have been unsettled and confused by Supreme Court decisions that have been handed down without sufficient precedent or legal reasoning. These majority decisions are increasingly accompanied by bitter and sarcastic dissents from objecting members of the court, and I believe that this divisiveness and confusion must be replaced by a more reasoned recognition of settled legal principles.

I am sure that many people in this country, lawyers and laymen alike, share these same beliefs regardless of their political predilections. The role that the Supreme Court has dictated for itself in recent years is a matter which goes far beyond politics.

Justice Fortas has participated in this activism since his earlier appointment to the Court by President Johnson. No one can predict with certainty what positions any given judge or justice will take on future decisions. Nor can we predict what sort of leadership a man such as Justice Fortas would exercise if his appointment as Chief Justice were confirmed.

But insofar as Mr. Fortas' decisions can be identified with the Court's activism of the past, I feel compelled to oppose his nomination.

Earl Warren's decision to make way for the "lameduck" appointment of his successor and President Johnson's announcement of his intention to do just that today are an affront to the American people. This is an unfortunate usurpation of power by individual men that should not be tolerated in this extremely critical election year. I refuse to condone this action which denies the people of this country an opportunity to make their will felt on a matter of great importance to our democratic society.

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.

ADJOURNMENT TO FRIDAY, JUNE 28, 1968

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 12 o'clock noon Friday next.

The motion was agreed to; and (at 5 o'clock and 34 minutes p.m.) the Senate adjourned until Friday, June 28, 1968, at 12 o'clock noon.

NOMINATIONS

Executive nominations received by the Senate June 26, 1968:

U.S. SUPREME COURT

Abe Fortas, of Tennessee, to be Chief Justice of the United States vice Earl Warren.

fensive nuclear weapons. The President of the United States has been trying, without success, to bring this about for some time.

I hope that the action the Senate took last Monday, when it voted 52 to 34 to support a U.S. ABM system, influenced this decision. As I said in my speech last Monday:

> I live and yearn and pray for that day when we have complete disarmament.

I believe that these negotiations, when they become fruitful, will be another step in the direction of peace and harmony.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had passed a joint resolution (H.J. Res. 1368) making continuing appropriations for the fiscal year 1969, and for other purposes, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H.R. 18038) making appropriations for the legislative branch for the fiscal year ending June 30, 1969, and for other purposes, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 18038) making appropriations for the legislative branch for the fiscal year ending June 30, 1969, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

PRESIDENT JOHNSON'S SUPREME COURT NOMINATIONS

Mr. PROXMIRE. Mr. President, President Johnson will leave office on January 20, 1969. There are some in the Senate who obviously need to be reminded of this fact. They need to be reminded that the office of the Presidency has not been vacated, and that as long as America has a President, he has an obligation to fulfill the functions of his office.

The President has been doing just that. He is perfectly within his rights to nominate jurists to the Supreme Court. Yet, a few Senate colleagues seem to believe otherwise and are threatening to filibuster any attempt at confirmation.

This is a totally unsupportable position. A filibuster would defy the constitutional rights of the President to nominate and appoint Federal officials, and would also impede the right of the Senate to confirm or deny those nominees.

I deeply regret this attitude. I hope some of my colleagues will reconsider their position in the light of reason and rationality. There is simply no excuse for what they propose to do other than crass political expediency—as Governor Rockefeller said so well today. I believe that the Supreme Court should be removed from such a taint of politics.

All of us would like to leave Washington, with Congress adjourning in early August. But I would be willing to stay until Christmas, if necessary, to break a filibuster designed to deprive the President of the United States of his constitutional right and duty.

Mr. President, an editorial in yesterday's Washington Post deals thoughtfully and penetratingly with President Johnson's actions concerning the Supreme Court. Of retiring Chief Justice Earl Warren, the editorial says:

> He has given vigorous and wise leadership to its deliberations while adding immensely to the stature of the office he has held.

With respect to the nomination of Associate Justice Abe Fortas to be Chief Justice of the United States, the Post says:

> Justice Fortas is unquestionably one of the ablest lawyers ever to sit on the Supreme Court.

Then the editorial refers to Federal Judge Homer Thornberry's performance in the Federal judiciary in these words:

> In three years on the Federal bench, he has established a reputation for careful and workmanlike opinions. He has generally been regarded as one of the better new judges on the Federal circuit courts . . .

A very important collateral issue is discussed in the final section of the editorial. The Post states:

> The Senate ought not to seriously consider seriously for a minute the argument of a handful of Republicans that any appointment ought to be rejected so that the next President could fill the vacancy in the office of Chief Justice. The Court and the Nation should not be deprived of a Chief Justice until next spring on such a political maneuver. Nor should a candidate for President be forced to suffer the temptations that would surely arise if he knew he had so prized an appointment to make immediately upon assuming office. Justice Fortas and Judge Thornberry deserve to be judged on their qualifications and no one has raised any substantial objections to the nominations on that ground.

I am in complete agreement with this assessment of the situation, and I am sure my thoughtful colleagues will agree with me. I therefore ask unanimous consent to have the editoral printed in the RECORD.

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

FORTAS AND THORNBERRY STEP UP

The nominations of Abe Fortas to be Chief Justice of the United States and Homer Thornberry to replace him as an Associate Justice can hardly be classified as surprising. Both are old friends of President Johnson and it has long been known that the President greatly esteemed their abilities. While the first reaction is to damn the appointments on the grounds that they are cronyism at its worst, the two men deserve to be judged on the qualifications they have for the posts to which they have been appointed. No man should be denied an office merely because he happens to be a friend of the President.

Justice Fortas is unquestionably one of the ablest lawyers ever to sit on the Supreme Court. His opinions in his three years on the Court have been well-reasoned and thoughtful. While his views on the constitutional issues the Court must face are yet to be fully delineated, he appears to walk boldly in the same general philosophy that marked the work of Chief Justice Warren. It remains to be seen how Justice Fortas will fill the tasks that are solely those of a Chief Justice—running the Court's operations, supervising the work of all Federal courts, representing the judicial system. But his earlier career as a Government official and as a private attorney indicate he can fill those roles well.

Justice Fortas was one of the most successful lawyers in the Nation before he went on the bench but he still found the time and had the daring to undertake difficult and controversial cases as a matter of public service. He defended Owen Lattimore and others whose security was suspect during the peak of the witch-hunting days. He argued the case that gave the District of Columbia its famed breakthrough in the area of criminal insanity. And he prepared the brilliant brief and argued the case of Clarence Gideon in which the Supreme Court reversed precedent to declare that all those charged with serious crimes are entitled to have a lawyer represent them.

Much less is known of Judge Thornberry but it must be said that he is not one of the towering figures in American law. In three years on the Federal bench, he has established a reputation for careful and workmanlike opinions. He has generally been regarded as one of the better new judges on the Federal circuit courts although insufficient time has passed for him to have left much behind in terms of major judicial opinions. In his years on Capitol Hill, he was known as a hard-working, friendly Congressman who made no enemies and many friends. Presumably, Senate confirmation of his appointment, as well as that of Justice Fortas, will come quickly and easily.

The Senate ought not to seriously consider seriously for a minute the argument of a handful of Republicans that any appointment ought to be rejected so that the next President could fill the vacancy in the office of Chief Justice. The Court and the Nation should not be deprived of a Chief Justice until next spring on such a political maneuver. Nor should a candidate for President be forced to suffer the temptations that would surely arise if he knew he had so prized an appointment to make immediately upon assuming office. Justice Fortas and Judge Thornberry deserve to be judged on their qualifications and no one has raised any substantial objections to the nominations on that ground.

THE PRESIDENT PROPOSES BROADENING OF THE ELECTORATE

Mr. PROXMIRE, Mr. President, I support the proposed constitutional amendment giving 18-year-olds the right to vote. Voting is a fundamental act of self-government. It is the hallmark of a free society by which the members can express their judgment, and their choice. This great right of our country should be extended to all those who have reached age 18.

Today's young people are achieving physical, emotional, and mental maturity at an earlier age than ever before. They are far better informed and educated. They are able and willing to evaluate the issues which are before this country today. Their maturity and judgment at age 18 have been tested on the battlefield and not been found wanting.

Educational psychologists have stated that the ability to grasp new ideas reaches its peak at the age of 18, and then it proceeds on a plateau. This, of course, does not mean that wisdom does not increase throughout life—it does. But the capacity to grasp new ideas and de-

set up a food distribution program in Wibaux.

Two officials from San Francisco came by plane to inform the "uninformed" Wibaux area officials that hunger exists in their midst. And, like it or not, they will be fed surplus foods.

It must all seem like some weird dream to the people of Wibaux. It is especially astonishing to the health officer, who likely knows everyone in the county by his first name.

He has offered a $100 reward to anyone who can produce an honest-to-goodness, unintentional hunger or neglect case in his jurisdiction.

But, then, statistics don't lie. Wibaux County, you've been listed as a hunger case. Now be a good county and sit right up and take your surplus foods dosage so the Citizens Board of Inquiry Into Hunger and Malnutrition can chalk up another victory and march on to new counties to dehunger.

[From the Butte-Anaconda (Mont.) Standard, June 23, 1968]

ARBITRARY ACTION

It appears Wibaux County in eastern Montana is going to get a federal food distribution program despite loud and insistent protests that the county has no underfed residents.

According to the Associated Press, Charles M. Ernst, western director of the Consumer and Food Marketing Service of the Department of Agriculture, indicated the program may be set up in Wibaux County even though the county's Board of Commissioners, and other local officials refused the federal assistance.

Wibaux officials want to know why their county was one of 256 counties listed in the report "Hunger: U.S.A." issued last April by the Citizens Board of Inquiry Into Hunger and Malnutrition in the United States. The only explanation they have received is that the survey was based on the 1960 census. Wibaux is entitled to more information than that.

Unilateral action by the federal agency is an imposition and Wibaux ehould resent it.

Federal officials feel they have a mandate to set up the food program. Such mandates have been carried out or are planned in the South. But in those instances hunger and malnutrition are very evident.

At a recent meeting of officials and leading citizens in Wibaux, the people were reported as "strongly interested in receiving assistance that would in turn aid the members of the community to help themselves. However, they do not want to make their citizens dependent upon a handout."

It should be noted that Wibaux was the only Montana county listed. We, too, would like to know why that county.

In their protest, Wibaux officials have the support of Rep. W. R. Poage of Texas, chairman of the House Agriculture Committee, who believes the hunger report is at best exaggerating.

Poage wrote to the health officers in the 256 "emergency hunger counties." He wrote "From my limited knowledge of nutrition I would assume that it was true that many Americans suffer from an improper diet, but the problem there is one of education and of personal decisions. It differs greatly from the inability of citizens to obtain the needed nutrients either through gainful employment or public relief."

Many county health officials evidently agreed with Poage. The House committee reported there is very little actual hunger in the nation but there is widespread malnutrition caused largely by poor people's ignorance.

We could fall into a serious error here if we, seeking comfort, were to accept this committee report as the definitive word on the subject—to conclude that "Hunger: U.S.A." and other similar findings are wrong.

Wibaux can well be an exception and the federal arbitrary imposition unjustified. Nevertheless, we can't shift the blame for hunger to the hungry, nor can we shift the blame for malnutrition to those ignorant of its meaning, in other sections of the country, particularly the South.

DEPARTMENT OF AGRICULTURE,
Washington, D.C., June 25, 1968.

Hon. MICHAEL J. MANSFIELD,
U.S. Senate.

DEAR SENATOR MANSFIELD: For the past year this Department has maintained a concerted effort to assist low-income families by encouraging counties to distribute USDA-donated foods to them. Recognizing that some counties could not store and distribute our foods because of limited or inelastic budgets, we offered to share the cost of starting distribution programs with counties in the lowest 1,000 when ranked by per capita income reported in the 1960 census.

This week our representatives were in Wibaux County to offer local authorities the financial aid necessary for them to start a food program. We learned that local authorities are very concerned that Wibaux County was considered for this aid. They firmly believe that there are no families in need of additional food assistance and protest, sincerely, the establishment of a food assistance program.

Local authorities have suggested that USDA make a survey to establish with certainty whether or not there is now need for food assistance in the county. We believe that the best way to make such a determination is to offer to accept applications in the county from persons who feel they are in need of more food than they can buy and to use the standards for evaluation of need for food assistance commonly used in other counties by the Montana Department of Administration. We propose to start this testing in the next two weeks. If by mid-July there is an established list of families that are eligible for food assistance, we will prepare to distribute foods with USDA personnel if county authorities do not then want to share in this effort.

I know that you share my concern that the food resources of this Department be shared wherever they are needed. I think that this proposal for Wibaux County can remove all doubt about need for food assistance among families in the county and will appreciate your understanding and support.

Sincerely yours,

ORVILLE L. FREEMAN.

SUPREME COURT APPOINTMENTS

Mr. MOSS. Mr. President, I rise to offer some views with respect to appointments to the Supreme Court of the United States. My observations will be restricted to recent suggestions that President Johnson should not fill the vacancy which now exists on the Court because he is a "lame duck" President.

An extension of this position, different only in span of time, would mean that any President would be a "lame duck" President on the first day of his second term in office because the law prohibits the person from serving more than two terms.

But what is described as the "lame duck" position of the President of the United States is not the point at all. The point is that the President is required by the Constitution of the United States to fill vacancies on the Supreme Court.

I quote from article II of the Constitution of the United States:

He the (President) shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . judges of the Supreme Court.

Note that the language in this section of the Constitution says the President "shall nominate" and "shall appoint." It does not say he may nominate or may appoint. In other words, the language is not permissive, it is mandatory.

The reason the language is mandatory is apparent and can be simply illustrated by this hypothesis:

Even though it is unlikely, suppose that all nine Justices were no longer available for service by virtue of death, incapacitation, or resignation. In that event, if a President were not required by the Constitution to fill the vacancies, and if he refused to fill the vacancies, then this Nation would be without a Supreme Court. In my judgment if any President consistently refused to fulfill his responsibility to fill vacancies on the Supreme Court, such refusal would be grounds for impeachment.

The point I am attempting to bring into focus is that it is a constitutional requirement, and the President's duty, to nominate individuals within a reasonable period of time to fill vacancies on the Supreme Court, and to appoint such nominees with the approval of the Senate of the United States. He has no choice, and failure to fill such vacancies within a reasonable period of time would be a dereliction of duty.

These constitutional responsibilities rest with the President as long as he is in office, and they are not affected by any so-called lameduck status. Therefore, it is my opinion that "lameduck" status is not germane to any discussion of Presidential nominations to the Supreme Court of the United States.

The "politics" of the objections stated by those opposed to the nominations are so blatant and transparent that they should be disregarded in toto.

OUR CROWDED NATIONAL PARKS

Mr. MOSS. Mr. President, for almost 10 years now, ever since the Outdoor Recreation Resources Review Commission warned us of the impending crisis in outdoor recreation facilities, we in the Congress have been trying to do something about it. We have established a handful of new national parks and monuments, and recreation areas and lakeshores and seashores, and have made money available to States for the development of State parks and other local recreational facilities. We have also spurred on private enterprise to do all it can. But we have not done nearly enough. And our national parks, the "crown jewels" of our outdoor recreational system, are particularly feeling the pinch.

I ask unanimous consent to have printed in the RECORD an article entitled "Crowding Looms as United States Heeds Call of Wild," written by William J. Stanfield, and published in the Salt Lake Tribune of Sunday, June 23, 1968, which gives us an idea of the dimensions of the problem we are facing—a problem about which I hope to have more to say to the Senate at a later date.

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

as it does, the questions of who can win, who is attacking whose character or ability, and who is making gains or losing ground continue to be asked, both in and out of the press.

Two items that I believe are significant caught my eye recently. They show that Richard Nixon continues to stand tall and statesmanlike despite the unsubstantiated attacks being made upon him.

Both were published in the Washington Evening Star. One is an editorial entitled "Politics of Desperation" and was published June 25. The other is a column written by James J. Kilpatrick, published June 27. I ask unanimous consent to place them in the RECORD.

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

[From the Washington (D.C.) Evening Star, June 25, 1968]

POLITICS OF DESPERATION

Nelson Rockefeller's bid for the Republican nomination has now evolved to its inevitable final stage: The Rough and Tumble Tactics of Desperation.

The governor's opening gambit was to announce his availability, to sit back and to wait for a draft to develop. No discernible ground swell was forthcoming, so he announced his active candidacy and toured the country delivering a series of high level position papers. Still the populace failed to rise. Next, a saturation television ad campaign. And now the all-out personal attack on the front runner, Richard Nixon.

Having timed his announcement of candidacy to coincide with the expiration of the filing date for the last of the primary elections, Rockefeller's only hope of influencing the convention delegates lies in the public opinion polls. He must show so well on the political handicappers' charts that the delegates simply cannot afford to overlook so obvious a winner. Up to the present time, however, the results have been less than startling.

Now Rockefeller has come out swinging, taunting, name calling and occasionally landing perilously close to the belt line with out-of-context quotations. He has the voters' attention, which is the basic requisite. But he still has, as we see it, a whale of a selling job to do.

Nixon, meanwhile, seems well advised to keep his cool and to decline a direct reply to Rockefeller's verbal clouts. His willingness to enter the primaries and his ability to bring out the vote has already helped the former vice president to shed his image of the loser. If Rockefeller gets too carried away with his present pier six tactics, Nixon's other political albatross—his reputation for ruthless opportunism—could end up around Rockefeller's neck.

NEW FIGURES FOR ROCKEFELLER'S NUMBERS GAME

Nelson A. Rockefeller, who has turned into a tiger on the campaign trail, apparently is picking up a few Brownie points in his belated chase after Richard Nixon. Early in the week, pollsters found gains for the New York Governor in Ohio and Pennsylvania. The Evans-Novak team, working a Cleveland beat, turned up a few sparks for Rocky, but nothing to call an inferno.

The governor's favorite pitch is the old reliable fast hall, hurled in tight: Nixon is a loser, Rockefeller is a winner. No Republican can hope for the White House, says Mr. R., unless he can carry the electoral votes of the big Eastern and Midwestern States, plus California. The big States cannot be carried unless the big cities within them are carried. Here the governor sighs a lugubrious high. Nixon just can't carry these cities.

Thus, we now have been reminded repeatedly that Nixon in 1960 was doing fine in New York State until the returns came in from New York City. He was carrying Pennsylvania until he got to Philadelphia. He was leading in Michigan until he hit Detroit. Rockefeller just happens to have the figures in his pocket. As a matter of fact, he has them in his head. Ask him.

But in recalling these unpleasant incidents, is the governor being divisive? Is he violating his party's eleventh commandment which forbids speaking ill of another Republican? The governor reacts with an injured who-me, boss? No, indeed. He is merely citing the record. He is only mentioning a few figures. He thinks it better for the convention to consider realities. And the realities in the Rockefeller view are that Nixon is a loser and Rocky a winner.

Well, two can play the numbers game. It is doubtful, to begin with that anything very useful can be drawn from the experience of Nixon-Kennedy eight years ago in terms of Nixon-Humphrey or Nixon-McCarthy come November. Even so, it is worth recalling that in the straight Democrat-Republican race in New York, Nixon actually ran ahead of John Kennedy; the loss came with the Liberal Party's vote for JFK. Nixon lost Pennsylvania in 1960 by 116,000 votes in five million cast; he lost Michigan by only 67,000 in 3.3 million cast. He lost Illinois by fewer than 8,000, and the probabilities are that 5,000 of these were crookedly counted. This is not an appalling record as background for a Nixon-Humphrey contest.

Meanwhile, what of the Rock? M. Stanton Evans, editor of the Indianapolis News, recently pulled together a few pertinent figures of his own. If Rockefeller is a "winner," he concluded, you can't prove it by Rockefeller's record.

In 1958, Rockefeller polled 3,127,000 votes, or 53 percent of the total, to win election in New York. Four years later, he dropped to 3,082,000 and 51 percent. In 1966, though he spent a fortune and campaigned frantically, the figures fell to 2,691,000 and 44 percent. This is the pattern of a winner?

There is more. A Republican convention, urged to consider realities, will want to consider the reality of Rockefeller's coattail effect. A real winner ought to be able to carry others of his party into office with him, as Romney did in Michigan.

Evans looked for coattails and saw nothing but the seat of Rocky's pants. In 1956, before Rockefeller gained control of the Republican party in New York, the State had 26 Republicans and 17 Democrats in the House. After three Rockefeller terms, the delegation is composed of 26 Democrats and 15 Republicans. In 1966, New York Republicans, under Rockefeller's leadership, lost control of the State Assembly and barely held the State Senate. A study of 57 legislative districts found that Rockefeller actually ran behind the legislative candidates in 41 of them.

Would Rockefeller pull Republican candidates for Congress into office with him? It seems highly unlikely. It is Nixon, on the contrary, who demonstrated in the 1966 congressional campaigns that he can rally GOP organizations to the GOP cause. The records of Nixon's devoted labors just two years ago also count among the "realities" the convention will want to consider before it embarks upon the long and Rocky road.

THE SUPREME COURT NOMINATIONS

Mr. HARTKE. Mr. President, the Senate has received the names of two distinguished Americans and jurists as nominees of the President for the Supreme Court of the United States. Judge Homer Thornberry, of the Fifth Circuit Court is proposed as a new Associate Justice. The nominee for Chief Justice is not one who is new to the Court, but rather one who in the past 3 years of service as the newest Associate Justice has shown the skills, the temperament, and the brilliance in the law which demonstrates conclusively his fitness to preside over our most august judicial body.

Nor has Abe Fortas been a stranger to the Court on which he serves in the years before taking his seat there. It deserves note that he was the choice of the Supreme Court itself to serve as the court-appointed attorney in the famous and precedent-setting Gideon case. It was the successful presentation of that case by Abe Fortas which established the principle that our judicial system owes to an indigent defendant in a serious criminal case the services of a legal defender, even though the Court had to overrule its own past precedents.

Besides his recent legal eminence as an Associate Justice, Mr. Fortas has a long reputation as a brilliant member of the bar. His service in the Government has included that of General Counsel to the Public Works Administration at the age of 29, to go on only 3 years later to the post of Under Secretary of the Interior. In private practice the firm of which he was a partner gained a deserved reputation as not only one of the best in the Nation's Capital but as one of the best in the Nation. No small part of that reputation derived from the abilities, so often sought by persons at the highest level, of Abe Fortas.

Consequently, Mr. President, I am personally among those who are pleased by the prospect that Associate Justice Fortas may soon become Chief Justice Fortas. I shall certainly vote for his confirmation, and that of Judge Thornberry as the nominee for the seat Justice Fortas will be leaving. As Chief Justice Warren said in a comment on the proposal of Mr. Fortas for the seat he is leaving:

I know he will be a great Chief Justice.

A MORE EQUITABLE SYSTEM FOR INDUCTION INTO ARMED FORCES

Mr. HART. Mr. President, on April 26, 1968, I introduced, for myself and Senators BROOKE, CASE, KENNEDY, MONDALE, and YARBOROUGH, S. 3394, a bill to provide a more equitable system of selecting persons for induction into the Armed Forces.

Specifically my bill (S. 3394) first, reverses the existing order of induction in order to draft 19 year olds first; second, creates a "prime selection" group from which draftees would be selected. This "prime selection" group would consist of three classes of draft registrants: (a) 19 years olds, (b) deferred registrants whose deferments cease, (c) registrants between 20 and 26 who are not now deferred and have not been called; third, states no draft registrant shall remain a member of the "prime selection" group for more than 1 year; and, fourth, removes from current law the provision prohibiting the

polls; the headlines bear daily evidence of our nation's declining international stature.

The restoration of American leadership in the world depends upon the restoration of our government's credibility. The Democrats can neither regain America's lost reputation nor win back alienated friends. They are unable to divorce themselves from their own past errors. The Party in power can neither admit nor rectify its mistakes. Only a Republican Administration, unencumbered with past error and illusion, can restore credibility to our nation.

Only a Republican Administration can overcome the current *crisis of confidence* and return the United States to its former position of world leadership.

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AMERICANS FOR CONSTITUTIONAL ACTION—10TH ANNIVERSARY

Mr. MURPHY. Mr. President, yesterday, June 27, marked the 10th anniversary of the founding of Americans for Constitutional Action, an organization which has played an important role, in a responsible manner, in promoting the principles of constitutional government across our country.

I am pleased to join in congratulating ACA for the excellent job which it has done and in wishing the organization ever-growing success in the future. All of us, regardless of our individual political beliefs, recognize the vital role played by education in our democratic process. An informed and aware public is essential to the development of sound debate and to the making of wise decisions in our political process. The organization which we salute today has done its job well in helping to keep the American people advised on current developments with respect to constitutional government.

I congratulate the organization, its officers and staff, and express my hopes for their continued success in the years ahead.

EXEMPTION OF CERTAIN VESSELS FROM THE REQUIREMENTS OF CERTAIN LAWS

Mr. MAGNUSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2047.

The PRESIDING OFFICER (Mr. BYRD of West Virginia in the chair) laid before the Senate the amendment of the House of Representatives to the bill (S. 2047) to exempt certain vessels engaged in the fishing industry from the requirements of certain laws, which was, strike out all after the enacting clause, and insert:

That section 4426 of the Revised Statutes of the United States (46 U.S.C. 404) is amended by adding at the end thereof the following sentences: "As used herein, the phrase 'engaged in fishing as a regular business' includes cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska which are engaged exclusively in (1) the carriage of cargo to or from vessels in the fishery or a facility used or to be used in the processing or assembling of fishery products, or (2) the transportation of cannery or fishing personnel to or from operating locations. The exemption of the foregoing sentence for cannery tender or fishing tender vessels shall continue in force for five years from the effective date of this amendment."

SEC. 2. Section 1 of the Act of August 27, 1935 (46 U.S.C. 88), is amended by designating the existing section as subsection (a) and by adding a new subsection (b) as follows:

"(b) All cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska except those constructed after the effective date of this subsection or converted to either of such services after five years from the effective date of this subsection are exempt from the requirements of this Act."

SEC. 3. The first proviso of section 1 of the Act of June 20, 1936 (46 U.S.C. 367), is amended by adding at the end thereof the following sentences: "As used herein, the phrase 'any vessel engaged in the fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industries' includes cannery tender or fishing tender vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska which are engaged exclusively in (1) the carriage of cargo to or from vessels in the fishery or a facility used or to be used in the processing or assembling of fishery products, or (2) the transportation of cannery or fishing personnel to or from operating locations. The exemption of the foregoing sentence for cannery tender or fishing tender vessels shall continue in force for five years from the effective date of this amendment.

SEC. 4. The first subparagraph of section 4417a of the Revised Statutes of the United States (46 U.S.C. 391a(1)) is amended by adding at the end thereof the following sentence: "Notwithstanding the first sentence hereof, cannery tenders, fishing tenders, or fishing vessels of not more than five hundred gross tons used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska when engaged exclusively in the fishing industry shall be allowed to have on board inflammable or combustible cargo in bulk to the extent and upon conditions as may be required by regulations promulgated by the Secretary of the department in which the Coast Guard is operating."

Mr. MAGNUSON. Mr. President, the House amended the bill in several particulars, namely first, by limiting the exemption to vessels used in the salmon or crab fisheries of the States of Oregon, Washington, and Alaska; and, second, by limiting the exemption for a period of 5 years from the effective date of the amendment.

Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

MANEUVERINGS AGAINST THE PRESIDENT'S SUPREME COURT NOMINEES

Mr. CANNON. Mr. President, I am somewhat surprised at the tactics being planned by some of our colleagues to

attempt to block the Supreme Court nominations of Justice Abe Fortas and Judge Homer Thornberry.

This attempt to embarrass the President is nothing more than irresponsible partisan politics. Even the spokesman for the opposition admitted he was not attacking the qualifications of either Justice Fortas or Judge Thornberry. What is being attacked is the right of the President of the United States to make nominations and appointments for as long as he holds office.

This is the President's constitutional right. And those who are threatening a filibuster are trying to quash these indisputable rights. Nowhere in my reading of the Constitution do I find this Presidential power limited to a part of an elective term.

I believe most Senators will join in defeating this idle and meritless argument and quickly and expeditiously move toward a fair examination of these two distinguished Americans based on their qualifications for a place on the Supreme Court.

THE MIDDLE EAST

Mr. DOMINICK. Mr. President, at a time when we are beset with grave problems around the world, it is alarming to observe that our foreign policy seems discordantly out of tune with the problems confronting us. Some scholars of world affairs warn that we are drifting rapidly toward calamity. It is time to check our course to see where we are headed. Storm flags seem to be flying everywhere.

While we now are occupied in South Vietnam, defending that nation against Soviet "aggression by proxy," events in other areas of the world appear to foreshadow other serious confrontations between the Soviet Union and the United States. The Middle East is fast emerging as the most dangerous area where one of these confrontations is shaping up.

The Middle East with its mysticism, its jigsaw geography, its varied cultures and currency, and its natural resources, has been a focal point for adventure, opportunity and emotional involvement since history began. Whether we study the Phoenicians, the Egyptian Empire, the Saracens, Genghis Khan, the Koran, or the Bible, this corner of our earth has been boiling with people, ideas, wars, vast resources and trouble which have defied permanent solutions. In this long-range historical perspective, the present situation appears in sharp focus. Deeply involved are old and new nations, charismatic leaders, vast natural resources, and the dangers of an explosion which could literally reap the wild wind. Perhaps nowhere in recent history have events and power patterns changed so abruptly in a short span of years. Since the end of World War II, the influence of Western European nations in the Middle East has tobogganed, Arab nationalism has increased, and the Soviet Union has multiplied its efforts to fish in these troubled waters.

The world is now faced with the urgent need to find a peaceful, permanent, solution to the problems in the Middle East and do it quickly.

What is behind the Russian move into the Middle East? Russian interest in that region is not new. Since the time of Peter the Great, Russia has maneuvered to get control of the Dardanelles and access to the Persian Gulf. Several times in the past, she has had almost within her grasp the ability to control strategic areas in Turkey and Iran, and good prospects for positions of influence further south and west. At the outset of World War I, the Russians ruled over the most important provinces of Iran and seemed close to Constantinople. During the years 1939 and 1940, when Nazi Germany seemed all-powerful, the Soviet Union obtained Nazi agreement to establish Soviet bases on the Bosporus and the Dardanelles. The Nazis also agreed to the establishment of Soviet spheres of influence in Turkey and Iran.

Later, at the close of World War II, the Russians tried to obtain a voice in control of Tangier at the Straits of Gibraltar. And many of us can recall the difficulties we had in securing the withdrawal of Soviet military forces from Iran in 1946.

In each of those instances and in the earlier ones, Russian designs were thwarted by circumstances. The Russo-Japanese War in 1907 exposed Russian weaknesses and slowed her advance in the area. The disasters of World War I, which toppled the czars, focused Russian attention on internal problems. The Nazi-Soviet war and the outcome of World War II, particularly the resultant power and position of the Western World, combined to prevent the Soviet Union from attaining the fruits which it had anticipated and which it had sought.

After World War II, the U.S. policy of containment and its concomitant large-scale assistance to Greece, Turkey, and Iran, closed the door to Soviet influence in that region. The presence of United States, British, and French military forces in the Mediterranean and their control of its ports made Soviet expansion in the Mediterranean extremely difficult. These factors, buttressed by the flaming enthusiasm of the Jewish Zionists to gain a home for themselves, form the backdrop for the independence of Israel. Furthermore, the Soviets' rigid adherence to the theory of world revolution and obvious ties with the worldwide Communist Party network were repulsive to much of the Moslem world, which was then, and largely continues to be, opposed to Communist ideology. Today, many of these factors have changed, thus changing the direction and the scope of the problems to be faced and solved.

European control and influence in the Middle East and North Africa have sharply declined under the thrust of Arab nationalism. In the process, new governments with a definite anti-Western bias have come to power in many of the Arab States—Algeria, Egypt, Syria, and Iraq are cases in point. They recognize that the social, economic, and military benefits which they want and need have been supplied mainly by the West—but, as we shall see, they have also turned to the Soviet Union for these benefits—hopefully playing both sides.

While this situation did not come about overnight, and in fact is still developing, the possibilities were not lost on Soviet policymakers.

After the death of Stalin, the Soviet Union revised its concepts to provide greater flexibility in dealing with the real world outside Soviet bloc borders. We usually think of "peaceful coexistence" as applying only to Soviet relations with the West, and the term "many roads to socialism" as a device for coping with the independent stance of Tito and Yugoslavia. They do apply in this limited sense. But more important, they are illustrative of the new doctrine which provides a rationale and a cover for Soviet relations with any government where Soviet national interests may be served. Aid, trade, and subversion are the instruments of this doctrine. Extension of Soviet political control is the objective. It matters not who suffers from its application.

Under this doctrine, in 1955, the Soviets provided some $80 million worth of Migs, tanks, artillery, and other arms to Egypt's Nasser. Ostensibly, this equipment was supplied by Czechoslovakia. This is a procedure which is still followed by the Kremlin in certain situations when the Soviet desires to retain a measure of public political freedom of action. Since that time the Soviet Union has furnished military equipment to the United Arab Republic, Algeria, Syria, and Iraq, valued at between $2 and $3 billion. Economic credits have been extended on a similar scale. The largest share by far has gone to Nasser. Twice, now, the Soviet Union has moved to replace Egyptian military equipment destroyed in battle by Israel. Many thousand Soviet technicians, military and civilian, are known to be present in the Arab countries, and large numbers of Arabs have received training in the Soviet Union.

Although this assistance is provided under barter agreements, such as loans or credits at large discounts and nominal interest charges, in fact they might as well be gifts since the recipients are usually either unwilling or unable to pay their debts.

My purpose in reviewing the dollar value of these selected Soviet programs is to make clear the size of the game the Soviet is playing in the Middle East. Let me cite an example to illustrate that they intend to remain in the game.

As we all know, in the short space of 6 days in June, Israel destroyed Soviet-supplied Arab equipment valued at about $1 billion. By all measures, the Soviets as well as Nasser suffered a military disaster. Furthermore, it seemed that the Soviets had lost control of the situation. What did they do? Without hesitation they defended the Arabs through every means at their disposal, short of armed intervention, and immediately started replacing the lost equipment.

The concept of the "Big Lie" was once again vocalized in the United Nations through the Soviet and Syrian representatives and through the Asian countries by every possible mechanism. The "Big Lie" consisted solely of the claim that the United States and Great Britain had won the war for Israel.

This replacement of equipment and other assistance to the Arabs had con-

Mr. RANDOLPH. Mr. President, this amendment has been discussed with members of the committee. We believe that it should be added to the proposed legislation. In fact, I believe that if the District of Columbia is to avail itself of the provisions of this bill, it is necessary to have the amendment which has been offered. Therefore, I support the amendment.

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

Mr. SPONG. I yield.

Mr. DOMINICK. I have read the distinguished Senator from Kentucky's views on this matter very hurriedly. Do I correctly understand that he would be in opposition to this amendment?

Mr. SPONG. I believe the Senator's understanding is incorrect. The Senator is thinking of the freeway system. This amendment would only allow the District of Columbia to participate under title II of the bill, which has to do with relocation.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Virginia.

The amendment was agreed to.

Mr. SPONG. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. SPONG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 27, after line 19, insert the following:

"(a) The Commissioner of the District of Columbia is authorized to acquire by purchase, donation, condemnation or otherwise, real property for transfer to the Secretary of the Interior in exchange or as replacement for park, parkway, and playground lands transferred to the District of Columbia for a public purpose pursuant to section 1 of the Act of May 20, 1932 (47 Stat. 161; D.C. Code, sec. 8-115) and the Commissioner is further authorized to transfer to the United States title to property so acquired.

"(b) Payments are authorized to be made by the Commissioner, and received by the Secretary of Interior, in lieu of or in addition to property transferred pursuant to subsection (a) of this section. The amount of such payment shall represent the cost to the Secretary of Interior of acquiring real property suitable for replacement of the property so transferred as agreed upon between the Commissioner and the head of said agency and shall be available for the acquiring of the replacement property."

Mr. SPONG. Mr. President, in order to place into the statute the provisions of a written agreement between the District of Columbia and the Department of the Interior, I offer an amendment under which the Commissioner of the District would be authorized to transfer land to the Interior Department as replacement for park, parkway, and playground lands transferred to the District for public purposes.

I understand that this amendment is acceptable to the committee.

Mr. RANDOLPH. Mr. President, there has been an agreement entered into between the National Park Service of the Interior Department and the District of Columbia government.

The Corporation Counsel has thought that the amendment offered by the Senator from Virginia is advisable—even perhaps necessary. Therefore, after consultation with my colleagues on the committee, I am glad to support the amendment.

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

Mr. SPONG. I yield.

Mr. LAUSCHE. What is the purpose of having it transferred from the District to the Secretary of the Interior?

Mr. SPONG. To aid in highway construction in the District of Columbia.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Virginia.

The amendment was agreed to.

Mr. SPONG. Mr. President, before I yield the floor, I should like to add my words to those already spoken by other members of the Committee on Public Works, to commend the chairman of the committee, the Senator from West Virginia [Mr. RANDOLPH], and the ranking Republican member of the committee, the Senator from Kentucky [Mr. COOPER], for the great care and patience they have exercised in the consideration of the proposed legislation, which I support.

THE CONFIRMATION OF JUSTICE FORTAS AND JUDGE THORNBERRY

Mr. SMATHERS. Mr. President, I rise today to address myself both to those who are gratified by the appointment of a great lawyer and Justice to be Chief Justice of the United States, and to those who have expressed concern about the timing of the appointment.

Before I share with Senators the results of my close analysis of the judicial opinions and other writings of Mr. Justice Fortas and of my knowledge of the man, it is necessary to set the record straight with respect to the claims, advanced by some, that no judicial vacancy exists and that a successor to Chief Justice Earl Warren should not be appointed until a new President has taken office.

I

First, to the claim that no vacancy exists. It has been suggested by some that because the Chief Justice's retirement is not to be effective until a successor is chosen, we have no vacancy to fill. That simply is not so.

For many years, retiring judges, the Presidents who have nominated their successors, and this body, which has confirmed the nominations, have acted on the entirely reasonable understanding that the nomination and confirmation machinery may be put into effect while the retiring judge continues to perform his duties. Only the signing of the successor's commission and his entry upon active duty must await the effective date of the retirement.

This was precisely the procedure which President Roosevelt and this body followed in June 1941 with respect to another great Chief Justice, Charles Evans Hughes. On June 12, 1941, while Charles Evans Hughes remained Chief Justice of the United States, the President nominated Associate Justice Harlan Fiske Stone to be Chief Justice, and Robert Jackson was designated to take Justice Stone's seat. The Senate of the United States did not wait for Hughes to leave his post, but on June 27 confirmed the nomination of a new Chief Justice, 4 days before—I repeat, before—Hughes retired.

An identical pattern was followed with the resignation in 1922 of Justice John Clarke, whose successor, George Sutherland, was nominated by President Harding and confirmed by this body 13 days before the retirement of Justice Clarke.

In 1962, the late President Kennedy requested that Circuit Judge E. Barrett Prettyman delay his announced retirement until a successor had been "qualified." This was done. Judge Prettyman did not retire from active service until his successor had been nominated and confirmed.

Indeed, it has become entirely commonplace for retiring judges to make their retirement effective upon the appointment and qualification of a successor. This procedure was followed, for example, when Judge Bastian of the Court of Appeals for the District of Columbia retired in 1964. Judge Bastian did not vacate his seat until his successor, Judge Edward Tamm, had been nominated and confirmed by the Senate.

In February of this year, the identical procedure was followed in the case of Judge Wilson Warlick of the western district of North Carolina. On February 24, Judge Warlick wrote to the President, expressing his desire to retire, effective upon the qualification of a successor. As indicated in documents released to the press by the Justice Department, Senators ERVIN and JORDAN of North Carolina wrote to the President 3 days later urging the appointment of James McMillan to "fill this vacancy." The Senators said that as a result of Judge Warlick's announcement, "a vacancy now exists in that office." While Judge Warlick continued to sit, the President, on April 25, nominated James McMillan to replace him, and this, of course, was after President Johnson had announced his decision not to stand for reelection. Both Senators from North Carolina endorsed the nomination, and on June 7 this body confirmed it. It is my understanding that Mr. McMillan has not yet entered upon judicial duty and that Judge Warlick, pursuant to his letter to the President, continues to sit.

Precisely the same procedures have been followed in connection with the recent retirements of Judge Frank Scarlett of the southern district of Georgia, of Judge William East of Oregon, of Judge William C. Mathes of the southern district of California, of Judge Dave Ling of Arizona, and of Judge Charles Fahy of the U.S. court of appeals in Washington, D.C.

Are we to conclude that all of these retirements and the process by which the successors were chosen were improper? Ineffective? A mistake?

The answer is clear. It has become a custom for judges to make their retirements effective either at some future date or upon the appointment and qualification of a successor. This procedure is not only commonplace, and follows well established and ancient precedent, but it also serves the highly salutary purpose of keeping the Federal bench fully manned while the President and the Senate of the United States discharge their important responsibilities to replace retiring judges with qualified successors.

Mr. MURPHY. Mr. President, will the Senator yield for a question?

Mr. SMATHERS. I will be happy to yield to the distinguished Senator from California.

Mr. MURPHY. For the information of the Senator from California, which act takes place first? As the Senator explained it, it seems to be concurrent; and the question was raised whether a vacancy can be filled when no vacancy exists. Either there is or there is not a vacancy, precedent notwithstanding.

Mr. SMATHERS. The point I was making and the point I made with the illustrations I gave here is that in each instance these prospective retirees wrote of their intention to retire. Thereafter, the President has sent to the Senate a name and the Senate has considered that name even before the other man retired. The Senate considered that name and confirmed him. In many instances, the man is not confirmed and has not yet served, even though the man who brought about the question wanted to retire. There are well-established precedents.

Mr. MURPHY. I agree that there are well-established precedents. In my short time in the Senate I think one could find precedent for almost any sort of procedure.

One of the things that is disturbing to me is the fact that sometimes the procedural matters are not clearcut or definitive. We do not know exactly how these things take place. I think in this great Nation of ours and in these complex and trying times, when the President has said there is restlessness throughout the country, some of these things should be clearly and definitely delineated so that newcomers to this body, like me, will understand what is happening.

There cannot be two men in the same job at the same time, obviously. I do not see how a man can be replaced until he has vacated the job. There is a bit of confusion on the part of the Senator from California, and I would like to have the precedents carefully explained so that I will understand the situation completely and be able to explain it to my constituents inasmuch as I know they will ask me about it.

Mr. SMATHERS. I appreciate the Senator's remarks. If the Senator will listen to what I have to say, I am sure he will understand. While I do not have all of the knowledge, I have looked up the precedents. I dispute the Senator's statement that he is a bit confused. I do not believe the Senator is ever confused about anything. I respect the Senator's great ability.

Apparently the Senator did not hear the first part of my remarks. I do not desire to go back over them in their entirety but I will be delighted to give the Senator the benefit of what I said before he arrived.

I had pointed out at least four instances where we had vacancies on the Supreme Court and before the men actually retired from the Court their successors were considered by the Senate and qualified.

On June 12, 1941, while Charles Evans Hughes remained Chief Justice of the United States, the President nominated Associate Justice Harlan Fiske Stone to be Chief Justice, and Robert Jackson was designated to take Justice Stone's seat. The Senate did not wait for Hughes to leave his post, but on June 27 confirmed the nomination of a new Chief Justice, which is about the same situation we have now. On June 27 the Senate confirmed the nomination of the new Chief Justice, 4 days before Chief Justice Hughes retired. The same thing occurred with respect to Justice John Clarke.

Mr. MURPHY. If I had been present at that time, I would have had the same misgivings. I think this changeover in such an important position——

Mr. SMATHERS. I can understand the desire of the Senator to change the situation. As of this time the precedents are eminently clear that the procedure President Johnson is endeavoring to follow in this particular instance is clear and insofar as the Senate is concerned, there is every right to go forward in considering the nominee the President has sent us and the confirmation of Justice Fortas to be Chief Justice. The precedents are clear that that can be done.

If the Senator from California wishes to attempt to change the procedure and ignore the precedents that is his right and privilege.

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

Mr. SMATHERS. I yield.

Mr. LAUSCHE. What is the name of the judge who indicated his intention to resign and thereafter the nomination was made of his successor, approved by the Senate, but the resigning judge continued to serve?

Mr. SMATHERS. The name of that judge is Judge Warlick, of North Carolina. The Committee on the Judiciary approved his successor, who was recommended by the distinguished Senators from North Carolina, both Senators ERVIN and JORDAN, and he was confirmed. His successor, McMillan, was confirmed by the Senate and he has not yet served.

Mr. LAUSCHE. My question is: What if the incumbent, who intended to resign, does not step down from the Bench and persists in continuing to serve? Who is the duly qualified judge?

Mr. SMATHERS. The Senator is asking a question that takes us into an area that would be baffling with the height of its complexities. I do not know.

Mr. LAUSCHE. Has the Senator thought about it?

Mr. SMATHERS. It is entirely possible in the situation that Judge Warlick would not retire after having indicated his intention to retire.

Mr. LAUSCHE. Who is the judge under the circumstances, then?

Mr. SMATHERS. The judge who sits; but the judge has not yet received his commission.

Mr. LAUSCHE. What is the effect of the President's nomination and the Senate's confirmation? Has that become a nullity or does it mean that the confirmed appointee is the judge?

Mr. SMATHERS. It means the confirmed appointee is the judge in my analysis, certainly, when the commission has been issued, after we have gone through the preliminaries which the Constitution requires, and when the man has the certificate that he is the judge.

Mr. LAUSCHE. If the confirmed appointee is the judge what would be the validity of the judgments now rendered by the man who is no longer judge?

Mr. SMATHERS. We will have to take that up before the Supreme Court one of these days.

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

Mr. SMATHERS. I am happy to yield to the Senator from Colorado.

Mr. ALLOTT. If a man who is a member of the Supreme Court writes a letter to the President indicating his intention to retire from the Supreme Court, does the Senator consider that a resignation?

Mr. SMATHERS. That has been considered a resignation. Yes, that has been the precedent.

Mr. ALLOTT. If the President issued a commission after the Senate confirmed an appointee in the regular way, does the Senator know any way the judge can be required to leave the office?

Mr. SMATHERS. That is the same question asked by the Senator from Ohio.

Mr. ALLOTT. No; it is not the same question because the point is that a letter to the President saying that a man intends to resign at a date uncertain is not a resignation. If there is a resignation to the President saying, "I will resign. I intend to resign and terminate my service on the qualification of my successor," this is a resignation. But if he writes a letter and says, "It is my intention to resign," that is not a resignation and so, under the circumstances, the President has no right to issue a certificate of appointment to the man appointed until the office is vacated.

Mr. SMATHERS. In the present situation we have Chief Justice Warren having written a letter, the letter having stated in substance that it is his desire and intention to resign just as soon as his successor is qualified.

That is the language, pretty much, of the precedents and the statutes. That is why they use that language. Thus, it is presumed to be that when the successor has received confirmation of the Senate and when he is otherwise qualified, at that point the resignation of the person serving on the Bench is in effect. That is the practical part of it.

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

Mr. SMATHERS. Mr. President, I have the floor. I wish to continue——

Mr. MURPHY. If the Senator will yield for just one question on the point he has just made——

Mr. SMATHERS. I yield.

Mr. MURPHY. This may be a ridiculous question, but in the event there was no confirmation, then the present Chief Justice would continue to be Chief Justice until such replacement occurred; is that not correct?

Mr. SMATHERS. Until such time as the Chief Justice amended his letter and stated that as of a certain date he retired.

Mr. MURPHY. I thank the Senator from Florida.

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

Mr. SMATHERS. I should like not to yield any further at this point. I will be happy to yield in a moment. I know that we want to go forward with the highway bill, and I want to speak for the benefit of Senators who may not have heard my preliminary remarks and may wish to ask me questions in all good conscience and judgment.

II

Mr. President, it has also been suggested by some that the successor to Chief Justice Warren should not be selected until a new President takes office early next year.

I am frank to tell the Senate that I am appalled at the suggestion. Who of those among us, who love the law and respect the courts and hope that the public at large will share this attitude, can conscientiously condone the prospect that the appointment of a Chief Justice of the United States could become a political pawn in this summer's political conventions, a bargaining tool among candidates for high office, a vote-getting device in the November election? To follow such a course could well involve the Supreme Court in bitter partisan controversy to the lasting detriment of this great institution and our system of constitutional Government.

The impact of such a postponement upon the work of the U.S. Supreme Court is also a matter or grave and deep concern. Should the Chief Justice bow to his 77 years and to the pressures of more than 50 years of public service and leave the Court this summer, as he so clearly desires, we shall have a Court without a Chief Justice, an institution without an administrator, a judicial conference without leadership. An eight-judge Court would, in many cases, find itself unable to produce a majority.

In August of 1960, the Senate of the United States, by Senate Resolution 334, expressed its will that even a recess appointment would be preferable to permitting the prospect of a breakdown in the administration of the courts. On the floor of this body, my distinguished colleague from Nebraska [Mr. HRUSKA] emphasized the vital necessity that nine Justices serve at all times. He said it was particularly important that the position of Chief Justice never be vacated.

Let me refresh the Senate's memory a bit concerning that occasion. The distinguished Senator from Michigan and certain Democrats on this side of the aisle on the Judiciary Committee had recommended to President Eisenhower and said that it would be a sense of the Senate resolution that the President not make a recess appointment to the Supreme Court. There was a vacancy on the Supreme Court at that time. On the Judiciary Committee was the distinguished senior Senator from New York, then Mr. Keating; the Senator from Nebraska [Mr. HRUSKA]; and the Senator from Wisconsin, Mr. Wiley, representing the Republican side of that committee. They wrote a minority report in which they said this:

> There must always be a Chief Justice, if we expect the duties assigned to the Chief Justice to be performed. It will not do to have an Acting Chief Justice. There should be a Chief Justice who, upon appointment, will commence the performance of his duties. . . . After all, we are dealing with the head of a coordinate, coequal and independent branch of the government, and there should be no inhibition upon him, nor should there be any desire to raise an obstruction to a prompt and immediate designation and qualification of the nominee pursuant to the language of the Constitution which has been followed all these years.

That is from the Republican minority report.

Nor would the prospect be any better were the Chief Justice to assume the burdens of a portion of another term. The most intensive burden for a Chief Justice is the very first week of October, when he must organize and analyze for his brethren the 600 or 700 cases which have accumulated over a long summer.

What would happen should a successor be qualified early next year? Chief Justice Warren will have heard argument in perhaps 100 cases, 70 or 80 of which would not have been decided at the time of his replacement. Accordingly, and even though he might have voted initially on those cases, have assigned opinions to be written in them, and have himself undertaken preparation of the opinions in his share of the cases, his role would be abruptly terminated. His successor, who would not have heard argument in those cases, would not be able to participate in their decision. Thus, at the last moment, an eight-man Court would be left to dispose of cases heard and voted upon by a Court of nine.

Judicial chaos would result. Such chaos, unfortunately, does occur when a sitting Justice is stricken in midterm by ill health or death. But the confusion would be greatly magnified were the change to involve the Chief Justice.

No friend of our judicial system, in my judgment, could wish this to happen, and no adherent to the cause of law and order should permit such a lamentable contingency to occur—still less, cause it to happen.

Of course, there is no necessity for turning the selection of a Chief Justice into a political issue or for interrupting the work of the Court in the middle of a term. Chief Justice Warren has advised the President that a successor should be appointed now, during the summer recess of the Court, and while Congress is in session. This is the orderly and responsible course.

Precedent, as well as reason, clearly suggests that the only sensible procedure available to the President is to act forthwith, as he has done.

The most striking illustration, of course, of an outgoing President filling a vacant seat on the Supreme Court concerns the great John Marshall, of Virginia. President John Adams and his party had been defeated at the polls in November of 1800. In December, Chief Justice Ellsworth retired. The outgoing President first nominated John Jay, who was confirmed by the Senate but who then declined the nomination. On January 20, 1801, less than 2 months before leaving office, President Adams named his Secretary of State, John Marshall, to the post. This great body—the U.S. Senate—confirmed the nomination on January 27. John Marshall immediately assumed the duties of Chief Justice, while remaining himself a "lameduck" Secretary of State. Needless to say, our country would have suffered greatly had Members of this body in 1801 denied the then President his right and constitutional duty to appoint a Chief Justice.

On March 3, 1837, President Andrew Jackson on the last day of his second and last term, nominated two men to vacancies on the Court, which nominations this body immediately approved.

One month before leaving office in 1845, President John Tyler, who the previous summer had withdrawn from the presidential race, nominated Samuel Nelson to a vacant seat, which this body approved just a few weeks before the inauguration of a new President.

In December of 1880, President Hayes, who had not been renominated, named William Woods, and this body confirmed the appointment.

Finally, President Benjamin Harrison, defeated by Grover Cleveland in 1882, in the last months of his term nominated a Supreme Court Justice whom this body confirmed.

More recently, in October of 1956, President Eisenhower named William Brennan to his present seat, although the President faced a reelection battle the next month.

Many of us have noted that the concept of a "lameduck" President disintegrates upon analysis. Every President, in a sense, is a "lameduck" because the 22d amendment to the Constitution prohibits an indefinite series of terms. Must the work of the Court grind to a halt and the process of filling vital jobs in other branches of Government come to a standstill because a President has entered his second term? Or because he is in ill health? Or even because he has been defeated at the polls? Or because, as in the present case, he has announced that he will not stand for reelection? Shall paralysis infect our courts and other agencies of the Government become impotent because a national election is impending? To state the question is to answer it, and in my view those who are for partisan or other motives would stay the orderly processes of Government betray lack of faith in our great system of democratic institutions.

Those Senators who would deny the President the right and duty to appoint a successor to Chief Justice Warren should explain why they have unanimously approved at least 11 judicial nominations by the President since he announced his withdrawal from the presi-

dential race. On March 31 of this year, the President announced that he would not run for reelection. Since that time, he has sent to the Senate, and we have confirmed, eight nominees for Federal district judgeships whose present occupants had indicated a desire to retire. He has sent to this body the names of nominees for one circuit judgeship, Myron Bright, of one Customs Court judge, and of one nominee for a seat on the District of Columbia Court of Appeals. The Senate of the United States early last month confirmed all 11 of these nominees, and many of them have entered into judicial service; and as I said earlier, many of them are still awaiting actual vacancies to occur so that they can take up their duties.

When we acted upon these appointments only last month, we did not ask whether the President who made them was a "lameduck." We recognized his duty to fill judicial vacancies as they occurred, and we participated in the process. Indeed, many of us are urging the President to fill what vacancies now remain. Are we not now bound by the action we took in June of this year? Is that so long ago that we may now take a different tack? What, I ask you, is the difference in principle? I believe the President and the Senate of the United States acted correctly in proceeding to fill those vacancies. I believe we are acting properly now if we confirm the nomination of Mr. Justice Fortas and of Judge Homer Thornberry.

Thus, it is not only good sense and respect for the court and for the law which suggests that the President and this body act now to select a new Chief Justice. It is also the force of precedent of more than a century and one half, as well as the will of this body as expressed as recently as 1960, that we do so now.

Indeed, in light of our actions only last month, it would be unseemly for us to follow any other course.

Let me make it abundantly clear to my colleagues that I do not embrace or endorse all of the decisions or policies of the so-called Warren court. I could catalog many of my disagreements and reservations. But my own views on the Court's work are irrelevant in this context.

A broader and more basic value is involved. The issue as I view it involves the basic integrity and independence of our judicial system. And this principle may be simply defined as the adherence to constitutional commands and the preservation of an independent judicial system free from the transient political winds which may blow and cause some to lose sight of our charter—the Constitution of the United States.

III

This brings me to the qualifications of Abe Fortas to be Chief Justice of the United States.

Since the nominee for Chief Justice is a sitting Justice, the obvious place to start in assessing his qualifications is with his written opinions.

Before discussing these opinions, I want to note in passing my considerable pleasure and satisfaction with the President's decision to select a new Chief Justice and a new Associate Justice, both of whom have had prior judicial experience. As some of my colleagues know, for years I have sponsored bills to require the President to choose Justices from those with prior Federal or State judicial experience. All too often, this has not been done. This time, however, happily, we have nominees one of whom has 3 years' experience on the Supreme Court of the United States, and the other 5 years of judicial experience, both at the trial and appellate level. I hope this becomes a powerful and persuasive precedent.

In 3 years of service as Associate Justice, Abe Fortas has written 73 opinions, 32 of them for the Court.

Considering only his opinions for the Court, Abe Fortas already has demonstrated his mastery of such diverse subjects as admiralty, the administrative process, antitrust, civil and criminal procedure, the intricacies of Federal jurisdiction, habeas corpus, patent law, State taxation of interstate commerce, labor law, as well as the broader questions of individual rights.

He has written for the Court in matters as momentous as the recent Penn Central Railroad merger, which, as we know, the Supreme Court approved. And he has written for the Court in matters seemingly so narrow as the law of salvage.

A careful reading of his work over the past 3 years clearly reveals certain unique characteristics.

Perhaps the most fundamental characteristic of Abe Fortas' judicial qualifications is his sense of restraint which I, for one, have found a wholesome and salutary addition to the court.

One aspect of this restraint is Abe Fortas' insistence that the Court not decide cases upon records which do not clearly present the issues. In case after case during the past 3 years, sometimes alone, as in Rosenblatt against Baer and Bank of Marin against England; and sometimes in conjunction with four of his brethren, as in Miller against California and Wainwright against New Orleans, Abe Fortas has voted for dismissal of cases with imperfect records. Not since Chief Justice Hughes, Justice Frankfurter, or Justice Brandeis has a Justice been so fastidious about matters so important to the integrity of the Court's work.

Another kind of restraint is reflected in his obvious deference to and respect for the Congress. Abe Fortas' first two opinions rejected pleas that the Court—in the interest of one policy or another—do what was more appropriate for the legislative process. In his brilliant dissent in the Dean Foods case, Abe Fortas marshalled overwhelming materials of legislative history to show Congress had denied to the FTC what the majority of the Court proposed to grant to that Agency. For Abe Fortas, who knows the difference between a court and a legislature, that was reason to withhold what the Agency then sought. And just a few weeks ago, in the Fortnightly case, Abe Fortas alone on the Court argued that it was for Congress, not the Court, to update the copyright laws. Here is one Justice, at any rate, who recognizes that in our system of government, no one branch has a monopoly on virtue and power, and that there are matters as to which Congress—and not the courts—should have the ultimate say.

This judicial restraint has likewise been shown with respect to States rights. In one of his early opinions, United States against Yazell, Abe Fortas wrote for a majority of five that State rules of law were to give way to conflicting Federal rules only—and I underline "only"—when that was absolutely essential to preserve legitimate Federal interests. Again, this past term, in the case extending the right to jury trial to the States, Abe Fortas sharply cautioned his brethren that this should not mean that all of the detailed Federal rules which had grown up around the right to trial by jury should be imposed upon the States. As he said in that case, in language all too rare these days, the Constitution requires: "maximum opportunity for diversity and minimum imposition of uniformity of method and detail upon the States. Our Constitution sets up a Federal union, not a monolith."

Perhaps even more characteristic of Abe Fortas' work is his deep-grained aversion to absolutes. Not for him has been the tendency, which some claim the Court has shown, to carry principles to sometimes unwise conclusions. For example, Abe Fortas has been the most vigorous defender in the Court of a healthy law of libel. Whereas some—in the name of a wooden reading of the first amendment—would strip public figures of virtually any defense from assaults made with words—and certainly Members of Congress should appreciate this—Abe Fortas in case after case has expressed a contrary view. As he wrote last April:

> The first amendment is not so fragile that it requires us to immunize this kind of reckless, destructive invasion of the life, even of public officials, heedless of their interests and sensitivities. The first amendment is not a shelter for the character assassinator, whether his action is heedless and reckless, or deliberate. The first amendment does not require that we license shotgun attacks on public officials in virtually unlimited open-season. The occupation of public office holder does not forfeit one's membership in the human race.

Nor has Abe Fortas, the practical man of affairs, fallen prey to the siren song of one man, one vote. In a characteristic opinion this term, dissenting from the automatic application of the one-man, one-vote principle to local governing bodies, Abe Fortas expressed his lawyer's awareness of the necessity to accommodate legal principle to the complexities of life. He noted:

> Constitutional commandments are not surgical instruments. They have a tendency to hack deeply—to amputate. And while I have no doubt that, with the growth of suburbia and exurbia, problems of allocating legal government functions and benefits urgently require attention, I am persuaded that it does not call for the hatchet of one man-one vote.

One need not agree with every position taken over 3 years by Mr. Justice Fortas, or with every vote. Certainly I do not. Indeed, every lawyer occassionally finds himself in disagreement even

with an opinion of Holmes, or Brandeis, or Learned Hand, or Charles Evans Hughes or John Marshall. What counts is the integrity, intelligence, craftsmanship, and insight which a judge brings to his work.

On this account, the President's nominee cannot be faulted. He has written path-breaking decisions, such as the Gault decision which has revolutionized treatment of juveniles charged with delinquency.

He has lent his vote both to opinions which have clarified the rights of individuals charged with crime, and to opinions—for example, the wiretapping, stop-and-frisk, and the draft-card-burning cases—which have vindicated the right of society to protect itself and its agents from danger.

And with his votes, the Court has for the first time in many years found it possible in acute cases, at least, to affirm the convictions of those charged with pushing pornography.

Abe Fortas has joined no bloc on the Court. Indeed, since his appointment and partly as a result of his aversion to absolutes, his insistence upon craftsmanship, and his lawyer's skill in devising legal compromises, the Court has in large measure ceased to function in blocs. In short, he has been a welcome addition to the Court, one who already is earning acclaim as a great justice.

Finally, there is that unique Fortas style, which already has produced a series of opinions destined for the anthologies of the future. Surely he is the finest writer to sit on the Court since Robert Jackson.

In a sense, Abe Fortas' intellectual qualifications ought not to be the prime focus of our discussion. For he is, after all, presently a Justice of the Court, and will remain so whatever we do. Those who object to the way he has voted can do nothing now to replace him with someone else. He is there, and he will remain there. As Chief Justice he will have the same vote he now has, one of nine. The only question is whether he should remain Justice No. 8 or become Chief Justice. Those who wish to moderate the Court's work, to give it a more conservative tone, must look not to Abe Fortas, but to the qualifications of the nominee who has been selected to replace him should Abe Fortas become Chief Justice. In short, for them, the question must be Homer Thornberry's qualifications and Homer Thornberry's philosophy, as opposed to that of Chief Justice Warren. This is not an issue of whether or not we are going to have Fortas on the Court. He is there. He will remain there, no matter what action the Senate takes. The question is, Do we change the philosophy of the Court by leaving Warren on, or letting Warren retire and putting Thornberry on the Court?

On that score, I have no doubt. I had the privilege of serving in the House of Representatives with Judge Thornberry. I can assert without reservation that he had the esteem and respect of his colleagues in the House. Homer Thornberry is an individual of integrity and purpose, and those who know him as I have had the privilege of knowing him would vote for his confirmation as Associate Justice without hesitation.

In 1963, President John F. Kennedy appointed Homer Thornberry to a Federal trial court in Texas. Judge Thornberry immediately began to duplicate on the bench the reputation he had made here in Washington—which was a good reputation, a reputation for work and industry, and for insight.

In 1965, Judge Thornberry was promoted to the Court of Appeals for the Fifth Circuit, the busiest Federal appellate court and one called upon to decide a broad range of questions. On that court, Judge Thornberry again distinguished himself, writing major opinions in the areas of criminal law, civil rights, obscenity, labor law, and many other subjects. When nominated by President Johnson to the Supreme Court, Judge Thornberry received the highest recommendation—I repeat, the highest recommendation anyone could receive—from the American Bar Association, and his nomination was greeted with applause by the lawyers who have practiced before him and the judges who have served with him. I, too, salute this promotion to the Supreme Court of a distinguished lawyer, legislator, and an experienced Federal trial and appellate judge.

To return to the Chief Justiceship, of course, no one seriously challenges the intellectual qualifications of Abe Fortas. But people ask, what kind of a man is he? Will he be able to get along with his brethren?

Those of us who have for years known Abe Fortas have no doubts on this score.

Twenty years ago, after a distinguished career in Government, Abe Fortas entered into the practice of law with Thurman Arnold and Paul Porter. Over the years, this firm became one of this Nation's great law firms. And Abe Fortas became one of this Nation's most distinguished and successful lawyers.

What a gifted man we have here, whose friends include Lyndon B. Johnson, Luiz Muñoz-Marín, and Pablo Casals.

We have a man whose deep concern for individual rights is matched by his insistence on law and order.

When others remained silent while advocates of disorder, civil disobedience, and revolution attempted to dominate public opinion, Abe Fortas came forward with a reasoned call for orderly change under the rule of law.

The qualities of this man are illuminated by his recent book "Concerning Dissent and Civil Disobedience." There, Abe Fortas has produced a detailed analysis of what society must permit in the way of dissent and what conduct society must proscribe. As the Justice, sympathetic as always to those in our society who feel driven to dissent and disobedience, and devoted as always to the right to dissent, he wrote:

> A democratic society should and must tolerate criticism, protest, demand for change, and organizations and demonstrations within the generally defined limits of the law to marshal support for dissent and change. It should and must make certain that facilities and protection where necessary are provided for these activities.
>
> Protesters and change-seekers must adopt methods within the limits of the law. Despite the inability of anyone always to be certain of the line between the permissible and the forbidden, as a practical matter the lines are reasonably clear.
>
> Violence must not be tolerated; damage to persons or property is intolerable. Any mass demonstration is dangerous, although it may be the most effective constitutional tool of dissent. But it must be kept within the limits of its permissible purpose. The functions of mass demonstrations, in the city or on the campus, are to communicate a point of view; to arouse enthusiasm and group cohesiveness among participants; to attract others to join; and to impress upon the public and the authorities the point advocated by the protesters, the urgency of their demand, and the power behind it. These functions do not include terror, riot, or pillage.

Only rarely, in my judgment, do nations have available to them men of quality equal to the challenge they face. Our Nation has been fortunate. Once again, as we enter a period in which our institutions will perhaps be put to the sternest challenges of history, we have an opportunity to place the Chief Justiceship of the United States in the custody of one who is extraordinarily qualified. We must not let this opportunity pass.

Mr. President, at this point I ask unanimous consent to insert in the body of the RECORD statements of highlights in the judicial careers of both Justice Fortas and Judge Thornberry, and an article from the June 30 edition of the Washington Post, entitled "Thornberry Record Shows He's Not Soft on Crime."

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

SOME HIGHLIGHTS IN THE JUDICIAL CAREER OF MR. JUSTICE FORTAS, 1965–68

I. CRIMINAL LAW

Wiretapping

Justice Fortas joined the recent opinions of the Court—*Berger* v. *New York*, 388 U.S. 41 (1967) and *Katz* v. *United States*, 389 U.S. 347 (1967)—which stated that law enforcement officers could be authorized to obtain court authority for wiretapping and eavesdropping for the investigation of criminal offenses. These decisions led directly to the recent enactment by Congress of Title III of the Omnibus Crime Control and Safe Streets Act, which authorizes electronic eurveiliance by Federal and State law enforcement officers acting under court orders.

Stop and frisk

In *Terry* v. *Ohio*, decided June 10, 1968, Justice Fortas joined the opinion of the Court holding that a law enforcement officer may stop and search a suspicious person on the street when the search is reasonably necessary to protect the safety of the officer. The *Terry* decision gives strong support to law enforcement in confrontations on the street between policemen and potential lawbreakers.

II. RESPECT FOR LAW

Justice Fortas joined the opinion of the Supreme Court in *United States* v. *O'Brien*, decided May 27, 1968, which upheld the constitutionality of the Federal statute prohibiting the destruction of draft cards. The decision recognizes the power of Congress to regulate conduct in all areas where a legitimate Federal interest exists, even if the legislation might be argued to have an incidental dampening effect on public expression

In the same vein, a recently published book by Justice Fortas, entitled "Concerning Dissent and Civil Disobedience", asserts that no person in the United States is entitled to immunity from the law if he willfully incites violence or insists upon deliberately disrupting the work or movement of others. Protesters and change-seekers, said Justice Fortas, must adopt methods within the law, no matter what cause they seek to advance.

The view that laws may not be flouted with impunity is also reflected in Justice Fortas' opinion in *Dennis* v. *United States*, 384 U.S. 855 (1966). There, the defendants challenged the constitutionality of a provision of the National Labor Relations Act that a union cannot obtain the assistance of the NLRB unless it files affidavits showing that none of its officers is a Communist. The defendants sought to challenge their conviction on the ground that the statutory provision was unconstitutional. Justice Fortas refused to decide the case on this basis. He pointed out that while the defendants had available to them ample other opportunities to challenge the law by legitimate means, they had chosen to engage upon a course of deliberate and cynical fraud, perjury, and deceit. Justice Fortas held that in these circumstances, the defendants could not escape the consequences of the law they had flouted by challenging the validity of the law itself.

III. REAPPORTIONMENT

Justice Fortas strongly protested the Supreme Court's decision in *Avery* v. *Midland County*, decided April 1, 1968, which held the "one man, one vote" rule of the reapportionment cases applicable to county government elections. He asserted that inflexible application of the "one man, one vote" formula to such elections is destructive of important political and social values inherent in the system of local government in the United States:

"I believe there are powerful reasons why, while insisting upon reasonable regard for the population-suffrage ratio, we should reject a rigid, theoretical, and authoritarian approach to the problems of local government. In this complex and involved area, we should be careful and conservative in our application of constitutional imperatives, for they are powerful."

IV. ECONOMIC ENTERPRISE

Several opinions of Justice Fortas during his first year on the Court demonstrate his balanced and careful approach to problems of economic and business regulation. In *U.S.* v. *General Motors, Corp.*, 384 U.S. 127 (1966), he refused to break new ground, as had been urged by the Government, on the issue of vertical arrangements between dealers and distributors. Instead, he decided the case under the classical doctrine of conspiracy in restraint of trade under Section 1 of the Sherman Act of 1890.

In *U.S.* v. *Grinnell, Corp.*, 384 U.S. 563 (1966), Justice Fortas, dissenting, strongly criticized the broad majority opinion of Justice Douglas for what he said was the Court's arbitrary approach to defining the relevant market. Justice Fortas insisted that the Court had gerrymandered the market to fit the facts of the particular defendant's business.

In *U.S.* v. *Pabst Brewing Co.*, 384 U.S. 546 (1966), Justice Fortas wrote a separate opinion concurring in the result reached by the Court. As in the *Grinnell* case, he expressed concern at what he characterized as the Court's arbitrary approach to the difficult problem of market definition in antitrust cases. He insisted that any determination whether the effect of a merger "may be substantially to lessen competition" can be reached only after a proper definition of the market—whether national, regional, or local—in which competition is alleged to have been reduced.

In *FTC* v. *Dean Foods Co.*, 384 U.S. 597 (1966), in what many experts regard as his most scholarly and craftsmanlike opinion, Justice Fortas wrote a strong dissent from the Court's novel 5–4 holding that the Federal Trade Commission is entitled to seek an injunction from a federal Court of Appeals restraining the consummation of a merger pending determination of its validity by the FTC. Justice Fortas said that the Courts of Appeals are obviously unsuited to exercise this power, which involves the hearing of evidence and the resolution of disputed issues of fact. Moreover, he pointed out that in the most recent 10-year period at least 37 bills had been introduced in Congress to give this power to the FTC, but none had been enacted. Justice Fortas sharply criticized the Court's willingness to grant the agency this far-reaching power after Congress itself had declined to do so.

V. RESPECT FOR CONGRESS

In his first published opinion for the Court, *United Steelworkers* v. *Bouligny*, 382 U.S. 145 (1965), Justice Fortas demonstrated his deference to the role of Congress in our system of Government. The Court in the *Bouligny* case refused to hold that a labor union could be deemed a "citizen" and thus subjected to suit in the diversity jurisdiction of the Federal Courts under Article III, § 2 of the Constitution. Justice Fortas held specifically that the question is one for Congress, not the courts, to resolve.

Similarly, in *United States* v. *Speers*, 382 U.S. 266 (1965), Justice Fortas rejected the Government's argument that the Court should promulgate a novel interpretation of the Federal bankruptcy laws to give the Government a lien priority in bankruptcy proceedings. He held that the question of priorities is one of policy for Congress to resolve, observing that if hardship should result to the Government under existing law redress is for Congress, not the courts, to provide.

On the basis of the *Bouligny* and *Speers* opinions, the *New York Times*, assessing Justice Fortas' role on the Court, concluded that he was not the "activist" judge that many critics had expected him to be.

Again, in *Dombrowski* v. *Eastland*, 387 U.S. 82 (1967), Justice Fortas joined the unanimous per curiam opinion of the Court which held the doctrine of legislative immunity a complete defense to Senator Eastland in a civil suit alleging an illegal seizure of the plaintiff's property and records. Noting that the records involved were within the scope of a legitimate investigation by Senator Eastland's Internal Security Subcommittee, the Court held that legislators engaged in such activity should be protected not only from adverse judgments but also from being harassed by litigation.

VI. RESPECT FOR THE STATES

Justice Fortas concurred separately in *Bloom* v. *Illinois*, decided May 20, 1968, which held that the Due Process Clause of the Fourteenth Amendment requires the States to grant jury trials in prosecutions for all crimes that are not petty offenses. In his concurring opinion, Justice Fortas argued that the provisions of the federal Bill of Rights should not be arbitrarily and literally applied to the States but that the sole Constitutional test of State procedure should be the test of fundamental fairness. Asserting that the States should be given latitude to develop their own systems and procedures within that standard, Justice Fortas said:

"The Constitution's command, in my view, is that in our insistence upon state observance of due process, we should so far as possible, allow the greatest latitude for state differences. It requires, within the limits of the lofty basic standards that it prescribes for the States as well as the Federal Government, maximum opportunity for diversity and minimal imposition of uniformity of method and detail upon the States. Our Constitution sets up a federal union, not a monolith."

In *United States* v. *Yazell*, 382 U.S. 341 (1966), decided early in his first year on the Supreme Court, Justice Fortas also demonstrated his strong respect for the significant role of the States in our Federal system. The case involved the liability of a wife on a contract for a loan between her husband and the Small Business Administration. The Government argued that the local Texas law exempting the wife should not be applied, in the interest of a uniform national policy for SBA loans. Justice Fortas disagreed, holding that Federal Court should override State law only in the most exceptional circumstances, when substantial national interests would otherwise be impaired.

VII. RESPECT FOR FEDERAL ADMINISTRATIVE AGENCIES

In what was probably his most significant opinion for the Supreme Court during the past year, the *Penn-Central Merger Cases*, 389 U.S. 486 (1968), Justice Fortas sustained the merger of the Pennsylvania and New York Central Railroads, holding that the Interstate Commerce Commission had lawfully discharged its duties in approving the merger under the "public interest" standard of the Interstate Commerce Act. He said that since Congress had entrusted to the ICC the primary determination of the factors relevant to the public interest with respect to such mergers, the sole task of the Court was to determine whether the criteria applied by the Commission were in accord with the broad standards of the statute and whether the Commission's decision was supported by substantial evidence.

VIII. SUPREME COURT JURISDICTION AND PRACTICE

In *Bank of Marin* v. *England*, 385 U.S. 99 (1966), decided during his second year on the Court, Justice Fortas took a traditional approach to Supreme Court jurisdiction and practice. The majority of the Court agreed to decide this bankruptcy case on the merits; Justice Fortas dissented on the ground that there was no "case or controversy" before the Court because one of the two parties in the case had no stake in the outcome of the litigation. He argued that under established jurisdictional rules long espoused by the Court, it should refrain from deciding the issue because it was not an adversary proceeding.

In *Wainwright* v. *New Orleans* and *Miller* v. *California*, both decided June 17, 1968, Justice Fortas reaffirmed his view that the Court should not decide cases which are not in an appropriate posture for judicial determination. He joined the majority of the Court which dismissed the cases without deciding them on the ground that the records of the cases were insufficient to enable a decision to be reached. In the *Wainwright* case, he and Justice Marshall wrote a special concurring opinion emphasizing that the inadequacy of the record made it impossible for the Court to resolve a very difficult issue raised by the defendant under the Fourth Amendment. In the 5–4 decision in *Miller* Justice Fortas joined the Court against the sharp dissenting opinion of Chief Justice Warren, who was joined by Justices Douglas, Brennan and Marshall.

IX. RIGHTS OF PUBLIC EMPLOYEES

In three cases decided June 17, 1968—*Gardner* v. *Broderick*, *George Campbell Painting Corp.* v. *Reid* and *Sanitation Association* v. *Commissioner*—Justice Fortas drew a careful line between the constitutional rights of public employees and the need of public agencies to investigate allegations of misconduct by their employees. On the one hand, Fortas held that public employees cannot be fired merely for refusing to waive their Fifth Amendment privilege against self-incrimination when called to testify. At the same time, he held that a public employee

may be fired if he refuses to answer questions that specifically, directly, and narrowly relate to the performance of his official duties.

X. PRIVACY AND LIBEL

In several major opinions in the area of privacy and libel, especially in cases dealing with the right of public officials to obtain redress for libels based on their public activities, Justice Fortas has made it clear that he would give broader scope to the rights of public officials than has been afforded by the majority of the Court. Basically, Justice Fortas does not accept the very broad language of the *New York Times* case, which held that public officials can sue for libel only in narrow circumstances, involving false and malicious libels. Justice Fortas' views are most clearly stated in his strong dissenting opinion in *Time, Inc.* v. *Hill,* 385 U.S. 374 (1967), where he said that it is the Court's responsibility:

". . . to preserve values and procedures which assure the ordinary citizen that the press is not above the reach of the law—that its special prerogatives, granted because of its special and vital functions, are reasonably equated with its needs in the performance of these functions. For this Court totally to immunize the press—whether forthrightly or by subtle indirection—in areas far beyond the needs of news, comment on public persons and events, discussion of public issues and the like, would be no service to freedom of the press, but an invitation to public hostility to that freedom . . ."

ILLUSTRATIVE DECISIONS OF JUDGE THORNBERRY IN THE FIELD OF LAW ENFORCEMENT

In *Morales* v. *United States,* 378 F. 2d 187 (1967), Judge Thornberry affirmed convictions for smuggling marijuana, rejecting defendants' contention that their automobile had been illegally searched by customs agents. Judge Thornberry said border searches may be made without probable cause and upon mere suspicion but found that there was in fact probable cause for the search which was made. In part, he said:

"The job of policing our international borders is indeed a difficult one, a fact the courts have recognized in giving the statutory powers of our customs agents the broadest interpretation compatible with constitutional principles. . . . It would be clearly contrary to the policies that justify our border search laws to hold that once a person or vehicle has been examined, any further search must be based upon probable cause even where, as here, facts giving rise to a reasonable suspicion come to light subsequent to the initial search. . . . We hold that in the factual situation before us, neither the initial examination of the automobile at the border, nor any other attendant circumstance removes the official conduct from classification as a valid border search. We also conclude that the facts upon which the agents acted gave rise to 'a reasonable cause to suspect' that appellants might be in possession of goods which [were] * * * introduced into the United States in [a] * * * manner contrary to law."

In *Pardo* v. *United States,* 369 F. 2d 922 (1966), Judge Thornberry affirmed appellant's conviction for having knowingly failed to report for induction into the armed forces. He held that the admission of testimony and documentary evidence of past failure to comply with selective service board orders was not erroneous. Judge Thornberry found that the evidence bore upon the intent of the appellant who had contended that illness prevented him from appearing on the occasion for which he was charged with failing to appear.

In *Blanchard* v. *United States,* 360 F. 2d 318 (1966), Judge Thornberry upheld a narcotics conviction. He held that evidence of telephone conversations between an informant and a narcotics seller which had been listened to by a Government Agent with the informant's consent was properly admitted, saying:

"While there may be justification for a feeling of increasing distaste for the obtaining of evidence through listening to telephone conversations, the courts have not as yet found this particular practice to be a violation of the Fourth Amendment or Section 605 of the Federal Communications Act."

In *Rodriguez* v. *Hanchey,* 359 F. 2d 724 (1966), Judge Thornberry upheld the district court's denial of a writ of habeas corpus to a state convict. He held that petitioner's action in slamming a door on police officers who had seen a fugitive in petitioner's house gave the officers reasonable cause to believe that he was knowingly harboring a fugitive and thus to arrest him without a warrant. A contemporaneous search of the apartment, leading to seizure of narcotics, was found to have been conducted as an incident to a lawful arrest. Finally, Judge Thornberry held unfounded petitioner's contention that his attorney was not given sufficient time to prepare the case.

[From the Washington Post, June 30, 1968]

THORNBERRY RECORD SHOWS HE'S NOT "SOFT" ON CRIME

(By John P. MacKenzie)

Senators combing the judicial record of Supreme Court nominee Homer Thornberry are in for a surprise if they expect to find him undeviatingly "soft" on criminal suspects.

They will discover, among other things, that while sitting on the Fifth U.S. Circuit Court of Appeals, Judge Thornberry has declined to enlarge upon the safeguards against coercive questioning laid down by the Supreme Court in its controversial Miranda v. Arizona ruling of 1966.

The 59-year-old nominee has been so cautious in this area that only last month he was reversed by the High Court itself.

There were signs last week that conservative Senators, who for the most part were holding their fire against the Texan and former Congressman, were searching for clues that he is just as ultra-liberal as any member of the Warren Court.

So far the Republican fire has concentrated on charges that the two Supreme Court nominations—Justice Abe Fortas to replace retiring Chief Justice Warren and Judge Thornberry to fill the Associate Justice seat to be vacated by Fortas—are acts of "cronyism" by a "lame duck" President Johnson.

Some conservative Democrats have appeared torn between relief at contemplating the departure of Warren and displeasure at seeing the liberal Fortas take the highest judicial seat in the land.

Thornberry's differences with the Supreme Court's majority emerged May 6 when the Justices split 5 to 3 in reversing the tax fraud conviction of Robert T. Mathis Sr.

Mathis was serving time in Florida State Penitentiary on a bad check charge in October, 1964, when Internal Revenue Service agents visited him to inquire about his 1960 tax return. Without warning him of his rights, the agents obtained Mathis's waiver of the five-year statute of limitations—giving the Government more time to prosecute—and his admission that the signature on the return was his.

The "civil" tax investigation, which the Justice Department claimed did not call for the warnings required in criminal interrogations, later became a criminal matter and Mathis was convicted of falsely claiming a tax refund.

Writing for a unanimous three-judge panel, Thornberry rejected the claim that Mathis was entitled to the "Miranda warnings" and ruled that the evidence was properly used against the prisoner.

Thornberry noted that the Miranda decision involved incriminating statements obtained during in-custody interrogation, but he said the decision's purpose was primarily to curb abuses in the "police-dominated atmosphere" of precinct stations.

The Supreme Court's reversal came in an opinion by Justice Hugo L. Black that called the prison interview fully as "coercive" as any station house grilling.

Black's oral delivery was an impassioned defense of the Miranda decision. It came as Congress was moving toward passage of the 1968 Crime Control Act, which included a section aimed at undoing the Miranda and other Supreme Court rulings.

The agents "failed to observe the constitutional rule set out so clearly" in Miranda, "to which we strongly adhere today," Black announced. His opinion did not help Administration forces in their efforts to eliminate the court-baiting confession section.

Thornberry also upheld two other convictions last month in "Miranda cases," including one in which a bank teller was convicted of embezzlement after discussing bookkeeping discrepancies with FBI agents at the bank.

In another recent case Thornberry joined a Fifth U.S. Circuit Court majority in refusing to set aside the prison sentence of a convicted narcotics peddler although the prosecution admitted that a key witness had concealed his role as a paid informant.

Thornberry has issued a few liberal opinions in the criminal law, but it appears that critical Senators will have to focus on his civil rights opinions if they want to object to the nominee on an ideological basis.

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

Mr. SMATHERS. I yield.

Mr. MURPHY. I congratulate my distinguished colleague from Florida for one of the finest presentations I have ever heard. I hope if it is ever my fortune to run against another candidate, he will come to my State of California and give me such a recommendation as he has just given the two gentlemen he has named.

Mr. SMATHERS. Mr. President, I like and respect the distinguished Senator from California so much that I will go to California and speak for or against him, whichever he thinks will do him the most good.

Mr. MURPHY. Mr. President, I thank the distinguished Senator from Florida.

I think the matter of personalities and names of the men has nothing whatsoever to do with the decision announced by me a week ago last Saturday. So, lest there be any confusion as to the position I have taken, my argument was made before the names were mentioned in the press and before we were certain there was to be a vacancy. And I am still not quite sure as to whether there is or is not a vacancy or whether there might be a vacancy.

I go back to the confusion I observed when the former Secretary of Defense left office. I have asked this question in the Chamber, and I have asked it on many occasions. We do not know yet the true disposition of the most important job in the Nation. The Secretary of Defense was Secretary of Defense one day, and suddenly he was in another very important job. I do not know whether he resigned, whether he was moved over, whether he was fired, or what happened.

This is why, in order to be able to

explain these matters to my constituents, I ask these questions.

I took my position based on the promises I made when I campaigned. And I think with regard to the selection of men to fill the posts in our courts, the greatest of care must be taken, because of the importance of the courts in our Federal system and the important and significant decisions they must make. If the courts make a wrong decision, the effects of that decision are felt throughout the Nation.

That is why we must not move too quickly on confirmations. I have been guilty of it. I have come in here and after a nominee had been confirmed, I say, "Wait a minute. This is too quick. I do not know this man's qualifications. I have not heard about them or had the time to look them up."

So, in taking my position as of a week ago last Saturday, I wish the RECORD to show that it was merely in the hope of carrying out completely, insofar as I was able, the promises I made to my constituents in the State of California back in 1964 when I had the privilege of talking to the people in all sections of that great State.

I am most thankful for learning the names and records of the gentlemen that I imagine the President will send up. I want the RECORD to show that this has nothing to do with the position I have taken.

Mr. SMATHERS. Mr. President, I am grateful to the Senator for that statement. I have nothing but the highest respect for the very able Senator, I am sure he knows that. At no time did I impute to him or to anyone else any lack of good faith with respect to this matter.

The only point I am trying to make is that at no time is it a valid argument to say that this President, who has announced that he will not run for reelection, does not have the constitutional right, and actually the duty, to fill any vacancy which does occur.

The only other point we wanted to discuss is that the manner in which the vacancy is being brought about is in keeping with traditions and precedents in this judicial field that have been set up for more than 100 years.

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

Mr. SMATHERS. I yield.

Mr. JAVITS. Mr. President, I speak as a working and practicing lawyer and a former attorney general of my State, and divorced completely from any partisan consideration. It seems to me that the President is under a duty to appoint Justices to the Court, so long as he is President, so long as there are vacancies, and so long as he thinks the men he is appointing deserve to be Chief Justice and Associate Justice of the Supreme Court of the United States.

I hope very much that that question will be decided very strongly in the affirmative, because many appointments need to be made, sometimes appointments of a critical character.

Suppose the Chief of Staff of the Army were to resign, or the Chairman of the Joint Chiefs of Staff, or any other critically important Government official. I think it would be the President's duty to appoint a successor. If he chose not to do so, it would be at his peril to leave the office unfilled. I have no doubt on that point.

As to the nature of the appointments, I think that the Senate has a duty to examine the qualifications of the nominees very carefully and to reject them if it considers them unwise and to approve them if it considers them appropriate.

The danger I see in this as a lawyer is that the matter will be tangential in decision rather than direct. I would hope that as much time at least will be spent upon the qualifications of the nominees as will be spent upon the argument as to whether the President should or should not have acted, being a lame duck. And I hope that in that later discussion, the qualifications of the nominees will not be overlooked, because I happen to believe that the proposed Chief Justice is one of the most able lawyers in the country, a man of great distinction.

I do not know as much about the legal career of Judge Thornberry. I served with him in the House of Representatives. And I shall with the greatest interest and concern look at the decisions and the material the Senator has cited in support of his qualifications to be a justice of the Supreme Court.

I do express the hope as a lawyer that we will not miss the forest for the trees.

I realize that there is a deep feeling—and I respect that feeling—on the part of a number of my colleagues, on this matter, and they are just as much entitled to feel deeply about it as I do, except that I do not take that point of view. I hope very much that the deep feelings on the part of some will not prevent either the committee or the Senate from concentrating upon the other half of the question, critically important in nature—the question of whether these lifetime terms, for that is what they are, based upon the qualifications of the nominees should be actually approved.

I agree with the Senator from California. The Senator from Florida has certainly put the case as well as it could be put, including citations and details, which is the way it ought to be.

I have no doubt that the Judiciary Committee will proceed in the same way.

I express the hope that there will be a deliberate discussion in the Senate without a filibuter, but with a decent discussion of the issue so as to be able to vote without any derogation to the nominees on a motion to recommit the nominations by those who feel strongly that the President should not have made them. I would vote against such a motion to recommit. Then we would vote on the question of confirming the nominations. In that way, we would have two votes, one of which would be solely on the qualifications of the nominees.

I ask the Senator from Florida whether he does not think that would be a very proper way in which to decide both questions. One could be decided on a motion to recommit, and the second could be decided on the confirmation of the nominations themselves by separate votes.

Mr. SMATHERS. The Senator is correct. I would agree with the Senator from New York. That would be a very excellent method by which a Senator could have an opportunity to cast a vote and express his belief on both issues involved. I agree with the Senator.

Mr. THURMOND. Mr. President, back in 1960, when I was classed as a Democrat, it seems to me that I recollect that President Eisenhower recommended the creation of certain Federal judgeships, stating that they were badly needed. At that time the bill was not favorably considered. But shortly after the election, when President Kennedy went into office, the judgeships were created and were filled by the Democratic President.

Does the Senator from Florida see any difference, or very much difference, between that and the situation now?

Mr. SMATHERS. As I recall, in 1960, it was a sense of the Senate resolution. The Democrats generally voted for it. The Republicans voted against it. Regrettable, it was a rather partisan vote. Any time judicial matters become involved in partisanship, it is to be regretted, and it is usually to the detriment of the Nation. In 1960, however, President Eisenhower went ahead and did what he was supposed to do. In October of 1960 he appointed Justice Brennan.

From the Committee on the Judiciary, Senator HRUSKA, Senator Wiley, and Senator Keating opposed the proposal made by the sense of the Senate proposal, made by Senator HART for the Democrats. Senator HRUSKA said:

> There must always be a Chief Justice, if we expect the duties assigned to the Chief Justice to be performed. It will not do to have an Acting Chief Justice. There should be a Chief Justice who, upon appointment, will commence the performance of his duties. . . . After all, we are dealing with the head of a coordinate, coequal and independent branch of the government, and there should be no inhibition upon him, nor should there be any desire to raise an obstruction to a prompt and immediate designation and qualification of the nominee pursuant to the language of the Constitution which has been followed all these years.

So what I am doing at this time is to cite the statements made by the distinguished Senator from Nebraska and the other Republicans.

Actually, what happened was what should have happened— the President went ahead and appointed.

Mr. THURMOND. As a matter of fact, President Eisenhower recommended more judges, and at that time the Democratic Party would not let him have them, would it?

Mr. SMATHERS. No; that is not correct.

Mr. THURMOND. Is not that what the record shows.

Mr. SMATHERS. That is not what the record shows.

Mr. THURMOND. In connection with the point about a lame duck President, I wish to say that I was one of 19 who signed the statement that President Johnson should not appoint the next Chief Justice now. The word "lameduck" was not even used in the statement I signed.

I signed the statement because it is my judgment that if President Johnson appoints a Chief Justice, he will not be the kind of judge who will stand for the Constitution and the principles of government on which this country was founded.

I am a little surprised that the Senator

from Florida takes the position he does, in view of the position he has taken on other matters throughout the years.

My position on the Fortas appointment is this:

Chief Justice Warren has not submitted a firm resignation, and the President has not yet made a firm acceptance. Under these circumstances, there is no legal vacancy on the Supreme Court.

If Justice Abe Fortas is named to succeed Warren, I shall oppose him for three reasons: First, his long reputation as a fixer and his involvement with many questionable figures prompted me to vote against his confirmation for Associate Justice and nothing since then has caused me to change my mind.

Second, since becoming a Justice of the Supreme Court, Fortas has alined himself firmly with the radical wing of the Court. His decisions have extended the power of the Federal Government and invaded the rights of the States; turned criminals loose on technicalities; approved Communists working in defense plants, teaching in the schools and colleges and aided the Communists.

Third, I feel that there was collusion between President Johnson and Chief Justice Warren to prevent the next President from appointing the next Chief Justice. The new President elected in November, fresh from the people should be allowed to name the next Chief Justice who may serve 20 years or longer and whose decisions will affect the lives of millions of people. The Senate should defeat this confirmation.

Does the Senator from Florida agree with Justice Fortas' decisions that have turned loose criminals on technicalities?

Mr. SMATHERS. I would appreciate it very much if the Senator from South Carolina would read my statement. It would save a great deal of time, and I believe he would get some learning from it.

Mr. THURMOND. I heard the Senator deliver his statement.

Mr. SMATHERS. The Senator was not in the Chamber. I saw the Senator when he came in. He heard part of it.

I will then be delighted to engage in colloquy with the Senator, but no purpose is to be served at this time by my answering those "When did you stop beating your wife?" questions.

Mr. THURMOND. Does the Senator approve of Justice Fortas' decision with respect to Communists working in defense plants?

Mr. SMATHERS. Mr. President, I believe I have made my position clear.

Mr. THURMOND. If the Senator does not wish to answer, he need not. I am merely asking these questions of the Senator—does he approve of the decision of Justice Fortas with respect to Communists working in defense plants?

Mr. SMATHERS. Mr. President, I believe in the right of every individual to be protected. I am not for communism. I will put my record against that of the distinguished Senator from South Carolina any day on that matter.

Mr. THURMOND. Mr. President, that is not the question.

The PRESIDING OFFICER. Does the Senator yield?

Mr. SMATHERS. I will answer that question. I do not yield until I have finished answering the question.

I believe every citizen has a right to be protected. Every citizen has a right to go all the way to the Supreme Court, if need be, to find out what his rights are. I do not believe that some Senator, no matter where he is from or what kind of record he has, has the right to, himself, pass judgment on some citizen. I believe it is a matter for the courts. And if the Supreme Court of the United States makes a ruling such as it has done to protect certain people whom some but not all have called Communists, then that is the law, and I am prepared to abide by it. I may not approve. I said earlier in my remarks that I did not approve of every decision written by Justice Fortas.

But the distinguished Senator from South Carolina has not yet seemed to understand that the issue here is not whether Justice Fortas goes off the Court or stays. He is on the Court; he will stay on the Court.

If the philosophy of the Court is to be changed, what must be done is to look at the philosophy of Homer Thornberry vis-a-vis that of Chief Justice Warren. Chief Justice Warren is leaving the Court, and Judge Thornberry is coming on. Justice Fortas stays there, anyway one looks at it.

Mr. THURMOND. Mr. President, in answer to the point made by the distinguished Senator from Florida, I realize that if Justice Fortas is promoted to Chief Justice, he will still be on the Court. But, as Chief Justice, he will wield far more influence than he would as an Associate Justice.

I am sorry that the distinguished Senator from Florida would not answer these questions—that Justice Fortas' decisions have turned loose criminals on technicalities, have allowed Communists to work in defense plants, and have allowed Communists to teach in schools and colleges. Those are some of the reasons I am opposed to promoting Justice Fortas to be Chief Justice. I voted against his nomination as Associate Justice, and I shall vote against his nomination to be Chief Justice. I shall not vote against him merely because a "lameduck" President nominated him.

I believe that Chief Justice Warren colluded with the President of the United States to make that appointment now rather than waiting until a Republican was elected President, because they both want to continue the policies of Chief Justice Warren. Chief Justice Warren has participated in the same type of decisions as Justice Fortas.

Mr. President, I regret that the Senator from Florida would not answer these specific questions. He can talk all he wants, but the point is, why did Justice Fortas vote to extend the power of the Federal Government and invade the rights of the States? Why did he vote to turn loose criminals on technicalities? Why did he vote to allow Communists to work in defense plants? Why did he vote to allow Communists to teach in schools and colleges?

Those are vital questions that affect the American people. The Senator from Florida has failed to answer these questions. How can the Senator from Florida support a man with this record for Chief Justice?

A REVIEW OF THE WARREN COURT

Mr. HANSEN. Mr. President, on June 22 the Wyoming State Tribune carried an editorial which is both timely and in point for the debate concerning new appointments to the Supreme Court.

I ask unanimous consent that this editorial be printed in the RECORD at this time.

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

SOMEBODY WORSE THAN WARREN?

In his 15 years as Chief Justice of the United States, Earl Warren has managed to make himself the most controversial figure in the history of American jurisprudence, Chief Justices Marshall, Taney, Story and White notwithstanding.

That he has been more often condemned than agreed with has not seemed to affect Warren one bit; he is a man dedicated to a course of action and nothing has deterred him from it. This is precisely, of course, why he and the so-called "Warren majority," a five-member aggregation of judicial activists, have stirred up all of the furor for the past decade and a half in American life; for these legal scholars, in the eyes of their supporters, and dangerous tamperers with the law, in the view of their critics, plainly have not just interpreted the law but they have made it, blatantly, consistently, and determinedly.

Their attitude has been that the basic law of the land is a living thing to be construed not in the view with which it was written nearly 200 years ago, but as current conditions dictate. Strict vs. liberal interpretation of the Constitution has ever been a thorny question in America from the earliest times, mirrored by changing conditions as well as changing attitudes.

The change in attitude and theories has been a hallmark of the Warren tenure on the Supreme Court and perhaps it is as well reflected by the transition of the legal philosophy of possibly the greatest jurist who sat on the Supreme Court in modern times, one who commenced as a liberal somewhat in the mold of Earl Warren and later sharpyly modified his views so drastically that he became the severest critic and gadfly on the bench of the Warren majority.

This was Felix Frankfurter, appointed to the Supreme Court by Franklin D. Roosevelt who said in 1930 as a law professor at Harvard that "the great judges are those to whom the Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people."

Frankfurter also said that the Constitution "has ample resources for imaginative statesmanship if judges have imagination for statesmanship." But this was several years ago before he himself was named to the Supreme Court, and later and ultimately as a justice himself he commenced taking a severely critical attitude toward the "lawmaking" of the Court, particularly its tendencies toward disregarding judicial precedent and launching out on its own into what Frankfurter called a "political thicket." In Baker v. Carr it was Frankfurter who called the decision by the Warren majority "a massive repudiation of the experience of our whole past in asserting destructively novel judicial power."

He said: "The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment, in fact and in appearance, from political entanglements . . ."

It is perhaps a fitting commentary upon the 15 years that Earl Warren has been chief justice that as a Republican appointed by a Republican president, he has more than anything provided a judicial corollary to the past eight years of liberal administration by two

Democratic presidents; and in keeping with this, the cries of the critics of the Warren majority have drawn more attention than have the words of edicts of the Warren court, if not the effect of their rulings.

Further in keeping with the Warren tenure, there now are prospects for great political turmoil in the wake of his resignation which has not yet been officially announced possibly for a definite reason—a trial balloon perhaps of the country's reaction—which suggests that President Johnson, a philosophical soulmate of the Supreme Court majority, may be preparing to name an even more pronounced judicial activist than Earl Warren as chief justice. Many persons feel that even if this is done, things could never be worse than what the Warren majority has produced from its judicial grist mill. Or could they?

ENROLLED BILL SIGNED

The PRESIDING OFFICER announced that on today, July 1, 1968, the President pro tempore signed the enrolled bill (H.R. 17268) to amend the Defense Production Act of 1950, and for other purposes, which had previously been signed by the Speaker of the House of Representatives.

THE OUTLOOK FOR ADJOURNMENT BY AUGUST 2

Mr. ALLOTT. Mr. President, much has been said in Congress and in the newspapers about adjournment by August 2 of this year. Frankly, as I look at the record today, I do not believe the prospects are very bright for such an adjournment.

Mr. President, as I look at the appropriation bills, and this is merely an analysis of the appropriation bills, the Senate has passed the following bills: Agriculture, Interior, Treasury-Post Office, urgent supplemental for 1968, second supplemental for 1968, and the highway and claims supplemental. Of those six bills three are supplementals.

The Senate still must consider: Defense, District of Columbia, foreign aid, independent offices, Labor-HEW, legislative—in connection with which there is a full meeting going on at this time—military construction, public works, State-Justice-Commerce, and Transportation. Of these 10 bills the Senate must consider at this time, there are five bills which the House has not yet passed, and they are: Defense, District of Columbia, foreign aid, military construction, and Transportation.

I have had prepared in my office a table which shows the progress of these bills and also their relation to the adjusted budget estimates, the amount the House passed, the amount the Senate reported, and so forth.

I ask unanimous consent to have printed at this point in the RECORD the table entitled "Status of Appropriations."

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

STATUS OF APPROPRIATIONS, FISCAL YEAR 1969

[In millions of dollars]

Bill	Adjusted budget estimates	House passed	Senate report	Senate passed	Plus or minus budget	Conference report	Plus or minus budget	Last year	Plus or minus last year
Agriculture	6,923.98	5,523.64	5,536.05	5,540.55	−1,383.43			4,952.95	
Defense								69,939.62	
District of Columbia								500.95	
(Foreign aid authorization)	(2,961.46)							(2,674.61)	
Foreign aid								2,876.59	
Independent offices	16,570.58	13,670.64						10,139.47	
Interior	1,577.11	1,411.68	1,402.98	1,402.98	−174.13			1,382.85	
Labor-HEW	18,205.32	17,224.77						13,255.37	
Legislative	257.16	257.16						275.70	
(Military construction authorization)	(1,895.99)	(1,818.50)	(1,807.25)	(1,807.25)				(2,303.29)	
Military construction								2,093.36	
(NASA authorization)	(4,370.40)	(4,031.42)	(4,250.56)	(4,013.07)	(−357.33)	(1)		(4,865.80)	(−852.63)
NASA								4,588.90	
Public works	4,908.66	4,499.22						4,689.94	
State-Justice-Commerce	2,203.82	1,794.98						2,169.01	
Transportation	1,620.83							1,581.91	
Treasury-Post Office	1,959.54	1,777.80	1,781.05	1,781.05	−178.83	(1)	(1)	1,903.55	−122.50
Urgent supplemental, 1968	1,216.02	1,214.78	1,380.45	1,405.45	+189.43				
2d supplemental, 1968	6,738.31	6,346.28	6,373.74	6,373.74	−364.57				
Highway and claims supplemental	450.98	450.98	450.98	450.98	−364.57				

[1] House accepts.

Note: Temporary debt ceiling, $358,000,000,000; National debt, $354,920,000,000 (as of June 19, 1968); estimated interest on debt, $14,400,000,000; social security trust fund expenditure, $25,100,000,000.

Mr. ALLOTT. Mr. President, finally, I say that it would behoove all Senators who believe they are genuinely interested in sine die adjournment on August 2 to look very hard at these bills, because unless we get them moving we will not be out of here by that date.

FEDERAL-AID HIGHWAY ACT OF 1968

The Senate resumed the consideration of the bill (S. 3418) to authorize appropriations for the fiscal year 1970 and 1971 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes.

Mr. RANDOLPH. Mr. President, I wish to accommodate those Senators who desire to address themselves to a subject which is important, but I hope we can move forward with the bill.

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

Mr. RANDOLPH. I yield.

Mr. DOMINICK. Mr. President, I wish to ask about title III of the bill, the District of Columbia parking facility proposal, which as I recall, was passed by the Senate in this form some months ago. Is that correct?

Mr. RANDOLPH. The Senate on two occasions has passed essentially the legislation contained in this measure.

Mr. DOMINICK. What is the difference between what is here contained in title III and what we have already turned over to the House of Representative with the approval of the Senate in other bills?

Mr. RANDOLPH. There is no difference.

Mr. DOMINICK. Why are we taking this action again if the Senate has already passed a similar provision and has sent it to the House of Representatives? What is the purpose of including this provision in the bill?

Mr. RANDOLPH. The Senator's question is a proper one. We believe this is the vehicle by which the House would be afforded the opportunity to approve the matter.

Mr. DOMINICK. In a few moments I may ask one or two further questions, because I serve on the Committee on the District of Columbia. I worked very hard on this particular bill.

We will have in conference between the House and the Senate a number of important proposals. Obviously, the purpose of including this proposal in the bill is to bypass the Committee on the District of Columbia of the other body. It would occur to me that if we go forward in this manner we are going to create all kinds of problems for ourselves in other conferences on other bills, with the Committee on the Interior of the other body being frustrated by not being given jurisdiction of a problem that is fundamentally within their area. Has this problem been brought up with the chairman of the Senate committee, the Senator from Nevada [Mr. BIBLE]?

Mr. RANDOLPH. I wish the Senator from Maryland [Mr. TYDINGS], who is a member of the Committee on Public Works and the Committee on the District of Columbia, were in the Chamber. I understood that he had discussed this matter with the Senator from Nevada [Mr. BIBLE]. I believe that is correct. I thought the Senator from Maryland would be able to be here this afternoon. During committee action on the bill, he assured us that the matter had been cleared with the Senator from Nevada [Mr. BIBLE] and that the ranking minority member of the House District

in the CONGRESSIONAL RECORD on May 9 and May 21, seemed to suggest that Gary was a "city without hope" because its people had elected a Negro to the office of mayor.

Recently there came to my attention a moving and thoughtful reply to those who charge that Gary is beyond redemption. It was written by Prof. Mark C. Roser, of the social work department, Valparaiso University, Valparaiso, Ind. Professor Roser is well acquainted with Gary—its problems, its strengths, its needs, its diverse ethnic groups, and its many accomplishments. As he so eloquently states, Gary is a young city, only 61 years of age, and for the multitude of workers who flocked there in past decades it was truly a city of hope, of opportunity, and of freedom.

I ask unanimous consent that this tribute by Professor Roser to the city of Gary be printed in the RECORD.

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

REBUTTAL TO "GARY, A CITY WITHOUT HOPE"

(By Prof. Mark Roser, Valparaiso University)

True there is no hope in Gary for those who are racists, prejudiced, and who live with ideas unchanged since the medieval times. No hope for those who react with hostility to people who differ from their own rigid, narrow and unchanging social attitudes. There is no hope for those who cannot see the 'good' in other people regardless of religious or ethnic background. No hope for those who automatically reject with hostility people who 'look' different, who go to different churches, who speak with an accent or who have a rich but different social background than their own narrow world.

Gary is a new world. Because of its geographical location, its newness, being founded in 1907, its lack of traditions, the city has beckoned to those who want to grow, to be creative and to form a new culture in our democratic land. It beckoned to those in the early years who wanted to live with more freedom, more economic opportunity and a more democratic government than in the foreign lands from which they came.

In the middle years of its development, the spirit of the city offered new hope, new opportunities to be a decent and productive citizen to minority groups in our Country and who felt the oppressive stricture of racial prejudice; who dreamed of a new life for themselves and their children. It was all of these who came to Gary to work, to educate their children, build their churches—and help in their way to create the largest giant of industrial complex in the world.

In their hearts and minds they had a dream. This was a dream to create a new town, to achieve the benefits of the country's heritage of democratic living.

Many achieved their dream. It is represented in their schools, the achievements of its graduates in the arts, medicine, education and science. They built their churches and felt a freedom to seek truth in their own way. Due to the conditions of the town, such as living and working together they also discovered that social and ethnic background differences did not need to arouse hate.

Gary citizens are proud of their achievements, both in the world of work, their schools, their churches and social systems.

As in every community of the land there is a degree of social disorganization and need. Gary leaders are aware of these and they are losing no opportunity to bring resources, both in the community and from the state and federal resources to help. Many of these social needs are not created within Gary but are due to outmoded government patterns which have long since been inadequate to meet present needs. No community exists by itself. Gary carries heavy burdens because its urban needs have long surpassed the characteristic rural outlook of its state legislators.

Gary is demonstrating that the real need now is for a revolution in the attitudes in the minds and hearts of white Americans. To a degree they have demonstrated this and to a degree this achievement is reflected in the goodwill and respect given to its present mayor leadership.

Gary is a city of hope for all those who are feeling in their hearts a new sense of the dignity of each man. To those who are as yet closed to the demands of the times, who cling stubbornly to their hates—for them Gary has no hope, for they have not yet learned to love "others as themselves".

SOLID EDITORIAL SUPPORT FOR THE PRESIDENT'S SUPREME COURT NOMINATIONS

Mr. MOSS. Mr. President, President Johnson's nominations for the Supreme Court have received the overwhelming endorsement of editorial writers in our Nation's press. I am delighted to report this fact to my colleagues, for it indicates, beyond question, the true sentiments of the majority of the American people in this matter.

The press supports the President for two basic reasons. First, because he has nominated two outstanding jurists in Justice Abe Fortas and Judge Homer Thornberry. As the Denver Post noted:

Abe Fortas, we believe, is likely to make another great Chief Justice. To reject him for partisan purposes would be a tragic mistake.

As for the President's nomination of Judge Thornberry, the Post concludes:

We believe the selection to be a good one.

As for the charge that the President has appointed "two cronies" to the Court, the Wichita Eagle has this to say:

One thing about Lyndon Baines Johnson—he has impressive cronies.

The paper goes on to point out that neither man can truthfully be called a political appointee, and that the President is well within his rights to make Court nominations or fill any existing vacancy in the Federal Establishment.

In my view, the Minneapolis Star demolishes, once and for all, the argument that the President is a lameduck who has no moral right to make these nominations. The paper notes that the President is not a defeated politician serving out an expired term, and declares:

L.B.J. was not defeated. He has the duty and moral right to exercise all powers of office.

I think the vast majority of my colleagues will agree that the judgment of the Nation's editorial writers that the attack on President Johnson's nominees is politically motivated and part of the narrow partisanship that often accompanies a presidential election year.

I doubt very much whether the Senate of the United States will pay heed to those who are desperately seeking a campaign issue by trying to involve the Supreme Court in partisan politics.

In my view, President Johnson is discharging the duties of his office in submitting these nominations. I believe he has acted wisely and well to serve the highest interests of the Court and of the American people.

I ask unanimous consent to insert into the RECORD a sample of editorial opinion concerning the President's nominees to the Court and his right to hold the powers of his Office until next January.

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

[From Newsday, June 28, 1968]

A NEW CHIEF JUSTICE

Amid rumblings of opposition from Republican senators, President Johnson has designated Justice Abe Fortas as the new chief justice of the U.S. Supreme Court to succeed Earl Warren. He has also named an old Texas friend, Homer Thornberry of the Circuit Court of Appeals, to succeed Fortas as a justice. Both men conform with the present "liberal" orientation of the court.

As to the qualifications of Justice Fortas there can be no argument. He is a thoughtful and compassionate scholar of long tenure in government. He came to Washington as one of the energetic young lawyers recruited by Franklin D. Roosevelt to bolster the New Deal. In later years he has been a highly-esteemed corporation lawyer, who believes that big business—when conducted responsibly—can coexist with big government. Thornberry, in common with Justice Fortas, has the approval of the American Bar Association.

Some threats of filibuster over the confirmation of these two men have come from certain Republican members of the Senate. The threats should be reconsidered. The President has the right to name his own appointees to vacant positions. He is President until the end of his term, and cries of "lame duck" are in reality cries of sour grapes. Former Vice President Nixon, unfortunately, has leaped into the argument. First he insisted that a new President should select a new chief justice. When he learned the appointment had been made, he again repeated his views. He should have kept his silence.

The consternation among some Republicans seems to be based upon the fear that the court will continue to be "liberal" instead of conservative as a result of the appointments the President has made. Those who cry loudest downgrade the dispassionateness of justices of the Supreme Court. Felix Frankfurter in his time with the New Deal, was vilified for his so-called left-wing views; after he became a justice, he was criticized for his conservatism. The appointments are within the right of the President to make. The merits of those appointed will be best judged after enough opinions are given to establish their contributions to the trends of thought.

[From the Denver Post, June 27, 1968]

FORTAS' NOMINATION SHOULD BE APPROVED

The constitutional authority of President Johnson to nominate Abe Fortas to be chief justice of the U.S. Supreme Court is unquestioned and talk that Senate Republicans may try to block confirmation of the appointment carries a revolting flavor of bitter partisan politics.

If there were reasons—other than political reasons—for rejecting Fortas, the case might be different. Actually, there are no such reasons.

When Fortas was named an associate justice of the Supreme Court in 1965 he submitted to the usual examination of his qualifications by the Senate judiciary committee, which unanimously approved his nomination.

He was officially confirmed for that appointment by the Senate by a voice vote,

which means no one in the Senate, Republican or Democrat, wanted to go on record as opposing him.

Since then Fortas has served on the court with distinction.

Any effort to prevent his elevation to chief justice would, admittedly, be a scheme to deprive President Johnson of his authority to name a successaor to Chief Justice Warren in the hope that a Republican may be elected president in November and would then name a member of his own party to head the court.

For the Republicans this might amount to reckless finagling with appointive processes because Democrats may still control the Senate next year and might look on the rejection of Fortas as an open invitation to them to reject the Republican nominee of the new president.

The federal government would present a sorry picture if excessive partisan zeal were to be introduced into the matter of confirming appointments made under presidential and constitutional authority.

The propriety of making "lame duck" appointments to the courts was pretty well settled back in 1801 when President John Adams, who had been defeated for re-election, nominated 16 new circuit court judges and a new chief justice of the U.S. Supreme Court just before leaving office.

Political rivals stormed against the appointment of the "midnight judges" and even repealed the law under which the circuit judges had been named.

But the appointment of the new chief justice was generally recognized as proper and legal. It was not disturbed.

That chief justice, by the way, was the great John Marshall who guided the American legal system through its formative years and left an indelible imprint on judicial history.

Abe Fortas, we believe, is likely to make another great chief justice. To reject him for partisan purposes would be a tragic mistake.

As for President Johnson's nomination of U.S. Appeals Judge Homer Thornberry to be an associate justice of the U.S. Supreme Court, we believe the selection to be a good one.

Fortunately, political considerations are not likely to raise any objections to his confirmation and his nomination may be expected to be weighed by the Senate on its merits—just as the nomination of Fortas should be weighed, and approved.

[From the Atlanta Constitution, June 28, 1968]

No Place for Politics

U.S. senators should think a long time before making a political issue of President Johnson's right to name a new chief justice.

Michigan Sen. Robert Griffin in particular would be ill advised to carry out his threat of an organized filibuster against the elevation of Justice Abe Fortas and the nomination of Circuit Judge Homer Thornberry to Fortas' old position.

The public will see opposition for what it is: petty politics, not a question of Fortas' and Thornberry's qualifications.

The basis of the opposition is the tenuous one that Richard Nixon might be the next president and that it is therefore dirty pool for a Democratic president to name a successor to Chief Justice Warren now.

Even Mr. Nixon has injected himself obliquely into the controversy by predicting that the nomination fight could result in a "donnybrook" damaging the court's reputation.

Mr. Nixon's politics would be better served if he kept his mouth shut on this one. For anything he says only serves to remind the public that the Chief Justice probably picked this time to resign because he feared Mr. Nixon might win. Mr. Warren's decision is a strong if quiet repudiation of a fellow Republican.

Abe Fortas was examined by the Senate when he was nominated to the high court. His qualifications were well established then.

Any opposition to his being Chief Justice now pretty patently would be based on political objections to his rulings, not doubts about his qualifications. There might be a trace of anti-Semitism in the opposition, too.

Chief Justice Warren had a right to decide when to resign. President Johnson has a right and duty to fill the vacancy. He has chosen well.

Senators who oppose the nomination out of partisan political reasons do so at their peril.

[From the Wichita Eagle, June 28, 1968]

The President's "Cronies" Are Both Outstanding Men

One thing about Lyndon Baines Johnson—he has impressive cronies.

Cronyism and lame-duckism are going to be the two main arguments used by those who oppose President Johnson's two Supreme Court nominations, Abe Fortas for chief justice, and Homer Thornberry for associate justice.

The President fairly well cuts the ground out from under the critics by his astute choices. Neither Fortas nor Thornberry are second-raters. Viciously attacked as merely a "crony" when Johnson appointed him in 1965, Fortas has proved an able associate justice, whose performance in the court has won the respect of most observers. If confirmed, Fortas would become the first Jew ever to be chief justice of the U.S. Supreme Court.

It's hard to level a charge of provincial cronyism at a President who appointed the first Negro to the court, and who now wants to see a Jew presiding.

Thornberry, another close friend of the President, is also a man of proven ability. While his appointment would put a Texan upon the bench again, presumably pleasing both Texas and the South, he is no Southern conservative, but a man who has shown liberal views in his federal court decisions on such questions as civil rights, desegregation and freedom of speech.

Neither Fortas nor Thornberry can truthfully be called a "political" appointee.

If these two men are confirmed, President Johnson will have left a mark upon the Supreme Court that will last for years. Fortas is 58, Thornberry is 59, and the other Johnson appointee, Thurgood Marshall, is 60. In a body where longevity and long service are the rule (Justice Hugo Black, is 82 and has served 31 years), these men are likely to be around a long while. And they would comprise one-third of the court.

This is what is infuriating some congressmen—that LBJ would have the effrontery, in the declining months of his last year in office, to make such important appointments. Eighteen senators are reported ready to block them. That includes Kansas Senator Frank Carlson, who also happens to be in the lame duck category. However, majority and minority leaders are reported to be pleased with the nominations. So the nation shouldn't be surprised if both men are approved.

[From the Minneapolis Star, June 28, 1968]

A Pair of Good Appointments

President Johnson's appointment of Abe Fortas to succeed Earl Warren as chief justice and Judge Homer Thornberry of a U.S. Court of Appeals in Texas to the vacant seat was an astute political move, a typical Johnsonian exhibit of personal loyalty, and at the same time a guarantee of the continuity of the progressive Warren traditions.

By obtaining in advance the enthusiastic approval of Senate GOP leader Everett Dirksen, LBJ countered carping about "lame duck" appointments. He's not really a "lame duck," which means a defeated politician serving out an expiring term.

LBJ was not defeated. He has the duty and moral right to exercise all powers of office.

That both Fortas and Thornberry are old personal friends, that the first is Jewish, and both are Southerners, is less important than that both are a credit to the bench intellectually, and put the highest priority on individual rights and dignity.

Fortas is a tough-minded legal scholar who can be expected to "marshal the court" as did Warren. For all his toughness he is sensitive to the civil rights and civil liberties issues that make half the court's business. Thornberry, who served LBJ's old congressional district, was the only southern liberal on the House Rules Committee. As a subsequent federal judge he has been strong on desegregation and civil rights.

One of Warren's accomplishments as chief justice was to minimize internal dispute that can result in 5-to-4 decisions which in turn can subtly undermine the Supreme Court's prestige. The Fortas and Thornberry appointments are double assurance that "the Fortas court" will continue on the humane course that produced for that august body, the most powerful court in the world, some of its finest hours.

[From the Anderson (S.C.) Independent, June 28, 1968]

President Makes an Excellent Choice in Naming Fortas as Chief Justice

President Johnson's nomination of Justice Abe Fortas to be Chief Justice of the U.S. Supreme Court will meet with widespread approval.

An individual of unquestionable integrity, Justice Fortas has long been recognized by the legal fraternity as one of the most able minds in the profession.

A native of Tennessee, the son of an immigrant English cabinet maker, Abe Fortas has won his way in this world by hard work and earnest application of his talents.

For more than 30 years President Johnson and Justice Fortas have known each other, and the President's nomination bespeaks the admiration he holds for a truly dedicated American.

Republican voices already have been raised and they promise to fight confirmation in the Senate on the very shaky and unsound ground that a "lame duck" President should not be allowed to fill an important vacancy on the Supreme Court.

If any be needed—and there is no need—there is ample precedent. Former President Eisenhower named justices during his second or "lame duck" term of office without the Republicans raising opposition.

And one of the great Chief Justices of all, John Marshall of Virginia, was appointed by President John Adams when the latter had only a month left in his term of office.

Republican opposition to Abe Fortas as Chief Justice is so obviously political as to be self-defeating and we trust that will be its fate.

Justice Fortas deserves swift confirmation as Chief Justice of the U.S. Supreme Court.

[From the Hartford (Conn.) Courant, June 28, 1968]

The Supreme Court Appointments

When Earl Warren was appointed Chief Justice in 1953, it was widely predicted that he would follow a middle-of-the-road course on the Supreme Court. The 15 years since provide vivid testimony of how wrong that prediction was. And so it has proved in many cases that a man's record before his appointment does not offer a firm basis for judgement on how he will conduct himself once he is on the bench.

Further, as the record of the Chief Justice himself demonstrates, a man may change and grow during his service on the Supreme Court. The Chief Justice who wrote his last opinion as the Court recessed last week was a wiser and more mature man than the one who wrote his first opinion in 1953. So it is dangerous to speculate on what effect the elevation of Justice Abe Fortas to be Chief Justice and the appointment of Judge Homer Thornberry to the Court will be.

In this case, however, the prophet has an advantage that he did not have when Chief Justice Warren was appointed. Both appointees have distinguished judicial records behind them, although Justice Fortas has only served three years. During that period he has in general followed the "Warren line," although he has not hesitated to dissent, most recently in the 5-to-4 opinion that denied that a common drunk is a sick man who should be hospitalized rather than jailed.

Those close to the Court report that Justice Fortas' personality is more abrasive than is that of the present Chief Justice, and that he lacks the qualities of leadership and persuasiveness which enabled Mr. Warren to come up with unanimous opinions on so many of the critical issues it decided. But a man leans and grows as Chief Justice as well as when he is only an Associate Justice, and Mr. Fortas is a wise and knowing man.

Judge Thornberry's independent leanings were clear when, as a Texas Congressman, he was one of the few Southerners who worked and voted with the liberal wing of his party. As District Judge, and later as Judge of the Fifth Circuit Court of Appeals, he has indicated a concern for the rights of minorities that in at least one case went farther than the Warren Court was willing to go. That both men are close personal and political friends of the President does not affect their qualifications, although those who are trying to block their confirmation by the Senate will doubtless not hesitate to try to use it against them.

The nominations are also being assailed as "lame-duck" appointments, as if the President should have left the posts vacant for six months so that his successor could make them. So was President John Adams a "lame duck" when he named the greatest Chief Justice of them all, John Marshall, who did more to make the Constitution what it is today than any other man before or after him.

EASEMENT OF NUCLEAR CONFRONTATION

Mr. McGEE. Mr. President, recent events have given us hope that the nuclear confrontation which besets our world may be eased. Certainly much of the credit for this situation must go to President Johnson who, as Richard Wilson observed in a column published in the Evening Star of July 1, has created the atmosphere for such progress as we have recently witnessed. The Star entitled the column "Opportuniy for World Progress Appears," and nearby published another by David Lawrence, which tells of yet another opportunity.

"There is an acute need today not merely for dedicated conciliators but for the mobilization of the moral forces of mankind," wrote Lawrence, suggesting that the spiritual leaders of the world's religions should bring their weight to bear in order to utilize more effectively the great power they are not using to further the concept of brotherhood today.

One might observe that Mr. Wilson is extremely hopeful and Mr. Lawrence very idealistic in their presentation of these ideas, but hopefulness and idealism are needed if we are to succeed in establishing world peace and a relaxation of tensions between nations. 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 Evening Star, July 1, 1968]

OPPORTUNITY FOR WORLD PROGRESS APPEARS

(By Richard Wilson)

An opportunity has presented itself in the closing months of the Johnson administration for solid, and even spectacular, progress toward the settlement of major world problems. For this President Johnson's severest critics should give him full credit. He has created the atmosphere for such progress, is attempting to exploit every opportunity, and in this field continual references to him as a lame duck President have no meaning except to reflect the political animus of those who use the term.

There are three major problems which cannot, in all reality, be related to the term of office of the presidency. These problems are national and international in character, not political, and the solution of them will be just as difficult whoever is President. Solutions in Vietnam, the Mideast, and relaxation of the nuclear confrontation need not and should not await the presidential election or the inauguration of the next President.

Whatever the Republicans and Democrats may wish to do about the President's Supreme Court nominations is another matter; the court will go on in much the same way as before. But there is no excuse to throw away precious months in failing to walk through the doors the President has opened for progress on major world problems.

It should be borne in mind that none of the alternatives to Johnson—Humphrey, Nixon, McCarthy or Rockefeller—has any magic formula for solution of these problems, and it is one man's opinion that their approach to a solution, once they held the highest office, would be little different than the approach to be taken now in the Johnson administration.

The President therefore needs and deserves support in his final efforts to move toward solutions. It should be recognized that he has made his withdrawal from the presidential race a creative matter, and that results have, in fact, flowed from this creativity.

The Russian agreement to talk about the limitation of nuclear armament, in response to the President's personal diplomacy, is a major breakthrough. It represents also a new condition of affairs related to Russia's attitude toward a settlement in Vietnam, and related also to the break-up which appears to be going on in China at an accelerated pace.

Not all these events, nor their relationship, is clearly understood at the highest levels here, but there is a definite premonition of change. This premonition is marked with respect to China, where renewed and extensive violence and demonstrations against the Paris peace talks are thought to be symptoms of intense ferment.

Whether or not these premonitions prove to be justified, the time to pursue any possibility of constructive change is now, and not after next January 20 when a new President will barely have had time to pull himself and his advisers together to deal with the problems before him.

The Russians have waited since the Glassboro conference a year ago to respond to the President's initiative on nuclear limitation and they could have waited a few months longer to deal with the new administration. So it must be concluded that the leaders of the Soviet Union are serious, that they now have their own reasons for moving promptly, and that they do not believe the problem will be any different after next January 20 than it is now. So they have taken a step toward avoidance of burdening their own economy with the $20 to $40 billion cost of a total missile defense system. They have assessed the situation correctly. The limited missile defense the United States is now to undertake would unavoidably have been expanded into a total missile defense, and Russia would have no alternative to expanding its own limited missile defense system. Then we would be back where we started, each searching for some new multibillion dollar technological stage to gain the advantage, and wasting vast resources in a race neither can win.

It is perhaps not too much to hope that some rationality is penetrating the nauseous fog, that this rationality may eventually extend to Vietnam and to the gravely dangerous crisis in the Mideast.

If so, the leading nations of the world can then address themselves to the problems which beset them at home. The process will be slow and the way hard, but an agreement between the two great superpowers on the limitation and control of nuclear armament would have an electrifying effect in the world.

[From the Evening Star, July 1, 1968]

CHURCH LEADERS HAVE OPPORTUNITY

(By David Lawrence)

Twice in this century peoples have wishfully persuaded themselves that big wars were far distant and that they would somehow be prevented. But World War I and World War II came anyway, and their tragic consequences have never been erased. Friction and conflicts again are emerging in Central Europe, as well as in Southeast Asia and the Middle East. The peoples of the world however, once more are not fully aware of the dangers that confront them.

It is apparent that the negotiations in Paris on the Vietnam war are not succeeding. Diplomacy requires much versatility, but this does not necessarily assure a successful result. Just seven years before World War II broke out, a keen observer of world affairs wrote a salient truth as he said:

"The successful issue of diplomatic negotiations and the peace and welfare of vast nations often hang upon the finding of just the right formula, in words which will smooth down the ruffled feathers and bristling hair, and draw back into their sheaths the outflung claws, talons, beaks, fangs, of all the 'human' eagles, bears and lions concerned."

There is an acute need today not merely for dedicated conciliators but for the mobilization of the moral forces of mankind. Never before have the heads of governments, large and small, possessed such an opportunity to appeal to humanity. President Johnson could, for example, urge the leaders of the principal religions of the world to meet in Paris and there unite in a prayerful search for peace in Vietnam. This would make a profound impression everywhere.

Internal peace is directly related to economic conditions. As they grow worse, a feeling is created that military force is the only way to acquire benefits for the individual. What could be offered, therefore, which would promise a brighter future than a united Vietnam rehabilitated on a strong economic foundation? The whole world would stand ready to furnish the material means of providing a better life for the 16 million South Vietnamese and the 19 million North Vietnamese.

As modern communications and technology bring the peoples of the world closer together, they not only become more conscious of their cultural uniqueness; the process also provides a better basis for judging their neighbors. The peoples I have mentioned are all very aware that India has a stagnant economy and that Burma is a economic failure of desperate proportions. They are equally conscious that, by comparison, Thailand is an economically vigorous nation-State.

The Government of Thailand has quite properly not encouraged those new nationalists who would like to look to Thailand, rather than to India-Burma or China, as a window to the outside world and as an alternative political anchor for the South-East Asian subcontinent. Those nationalists believe, however, that the logic and pressure of events in the area may produce what Thailand itself may not even desire.

How realistic these hopes and aspirations may be will depend in part on American policy towards the region. Automatic American support of existing Governments without consideration of the long-range implications of their policies might encourage the Indians to try to crush rebellions in Assam by the massive use of force. This would probably compel the independence movements there to rely heavily on China for military support and might provide the opportunity and pretext for Chinese expansion through Assam to the Indian Ocean.

Again, substantial American support of General Ne Win against the emerging nations in Burma could have a similar effect there. It would almost certainly force those peoples into a fatal reliance on Chinese support. Indeed, strongly pro-Western Shan leaders asked me to convey a warning that such American military participation in Burmese affairs would probably have just that effect.

Given freedom to conduct their revolution without outside intervention, the Shans are confident that the present Ne Win regime, which now has more than 30,000 political prisoners, will be replaced in Burma by a reconstituted union, willing and able to defend itself against any outside pressure other than a massive Chinese invasion. None of the leaders with whom I spoke expressed any fear of such an invasion, provided that they could complete their independence struggle before China recovered from its present internal turmoil.

A WARNING

The more perceptive young nationalists of the area warned that China is trying to associate the US with regimes that have inherited the European colonial empires and to align the US against genuine independence movements. They also warned that a decisive Western victory against the emerging nation-States of the western flank of South-East Asia would be impossible. The only result of such Western opposition would be a protracted conflict, from which the sole beneficiary would be China.

The vision and responsibility of those who lead the emerging nation-States of South-East Asia may offer the only hope for genuine freedom and independence in this part of the world. In adopting a policy towards these emerging peoples, US policymakers should aim at a longer-range goal than the illusory attempt to maintain the political *status quo*.

The US should at least refuse to participate even indirectly in the suppression of these peoples. Better still, it should publicly reassert its traditional support of the principle of self-determination of peoples and thus give moral encouragement to responsible local nationalism in South-East Asia.

Mr. METCALF. Mr. President, Mr. Crane discusses the political tensions of a vast area of Southeast Asia extending a thousand miles from the Indian Himalayas on the northwest to the borders of Laos and Thailand on the southeast. The recognized national boundaries of this area, a legacy of colonial surveyors, are artificial in the extreme. Both Burma and India include within their borders ethnic minorities with territorial homelands and with nationalistic aspirations. One gets the impression that the Nagas, the Shans, the Kachins, and other peoples Americans have hardly heard of, are capable of being every bit as fierce and assertive as the Biafrans today or the Irish in the 19th century. Throughout the area there is apparently a growing resentment against rule from New Delhi and Rangoon.

We have had experience with these ethnic tangles in the past. In Burma and eastern India, another situation is made to order for American intervention. That is to say, the American Army could dive into it and disappear without a trace. I am quite alarmed, therefore, at what Mr. Crane says about our recent activities in Burma:

> At the end of last year, U.S. military aircraft began airlifting arms and ammunition into Rangoon to help General Ne Win crush the growing and allegedly Communist-dominated independence movements in his country.

Mr. President, does America have a national commitment to defend the military government of Burma against its internal enemies? I am not an expert in these matters, but I have looked through the list of countries to which we have treaty commitments, and nowhere could I find any mention of Burma. I would like to know what we are doing over there and why we are doing it.

Mr. Crane's words on the likely consequences of American intervention in India and Burma are worth quoting in full:

> Automatic American support of existing Governments without consideration of the long-range implications of their policies might encourage the Indians to try to crush rebellions in Assam by the massive use of force. This would probably compel the independence movements there to rely heavily on China for military support and might provide the opportunity and pretext for Chinese expansion through Assam to the Indian Ocean. Again, substantial American support of General Ne Win against the emerging nations in Burma could have a similar effect there. It would almost certainly force those peoples into a fatal reliance on Chinese support. Indeed, strongly pro-Western Shan leaders asked me to convey a warning that such American military participation in Burmese affairs would probably have just that effect.

SUPREME COURT STRENGTHENED BY L. B. J.'S NOMINATIONS

Mr. McGEE. Mr. President, in Associate Justice Abe Fortas and Judge Homer Thornberry the President has found two very capable men who are particularly well qualified for positions on the Supreme Court. Justice Fortas, in his 3 years on the Court, has had ample opportunity to study its operation and to understand the proper functions of the role of Chief Justice, and he is a man who can be expected to devote his considerable energy to the job. His former experiences in private practice give evidence to Justice Fortas' broad interests in the law; and surely he is well acquainted with the problems of those who appear before the Court, having done so many times himself. Judge Thornberry would come to the Court with more judicial experience than any of its present members, save one, had at the times of their appointments. And it is experience marked by intelligent and forthright decisions.

It would be wrong, I think, to pass judgment on these men in terms other than of their evident qualifications. To do so in terms of what we expect of them, once in office, is to engage in a kind of guessing game at which failure tends to be the rule as often as the exception. The case of the present Chief Justice is a cardinal example, as discussed in a recent comment by Thomas O'Neill in the Baltimore Sun, which I ask unanimous consent to have printed in the RECORD.

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

POLITICS AND PEOPLE: GUESSING GAME

(By Thomas O'Neill)

WASHINGTON.—President Eisenhower's most significant appointment to a public position during his White House years, that of Chief Justice Warren, was also to become the appointment he most grievously lamented. Such are the hazards, plentifully encountered by Presidents over the years, of trying to peg the philosophical stance of any choice once the lifelong freedom from political pressures of the high court is attained.

The congressional conservatives balking at the elevation of Justice Fortas as successor to the Chief Justice are nevertheless betting that a new Administration will offer an appointment closer to their anti-court way of thinking.

A joker in the deck is that by blocking Justice Fortas they may end up with the bitterly assailed Chief Justice Warren still on the court.

There is a tentative aspect to the resignation sent President Johnson by Justice Warren. It specified no date for retirement, leaving that to the pleasure of the President. The wily Mr. Johnson acted on cue and put off acceptance until a successor has been confirmed by the Senate.

Having thus neatly cornered the obstructionists, the President can look forward with considerable confidence to a favorable vote before Congress quits at the end of July.

Little question clouds confirmation on the floor of the Senate, especially since the Republicans are raising a partisan issue. Rejections of Supreme Court nominations on a partisan basis were once fairly common in the Senate, but there has been only one denial in the present century. In 1930 confirmation was denied John J. Parker, of North Carolina, an act the Senate later came to own was mistaken. It made partial amends by approving a subsequent selection of Judge Parker for the next judicial level, the Court of Appeals.

Any blockade of Justice Fortas would be more likely in the Senate Judiciary Committee, where the nomination could be left unacted upon.

The defense for inaction, that as a lame duck President Mr. Johnson should defer the nomination to his successor elected in November, is ludicrously feeble. Nearly seven months remain of the Johnson term, he holds office into January, and the Supreme

Court will be back in session in October. It needs a full complement of justices.

Mr. Johnson has ample precedent for acting as his term draws to a close. It was set in the Republic's early days. John Adams, the second President, appointed a Chief Justice with only a month to go in a lame duck term. His choice was John Marshall, who made the court into a real full partner in Government and is universally recognized as the greatest Chief Justice. (Mr. Warren may well come to be accepted as No. 2 in that ranking.)

All Presidents are now, in effect, lame ducks upon the day of inauguration. The two-term amendment sees to that, forbidding a new candidacy.

President Eisenhower's unhappiness with Justice Warren on the bench is fresh and remembered, but he was only the most recent to miscalculate a mockup of how a new justice will perform.

He thought he saw a fellow don't-rock-the-boat spirit in the unpartisan Governor of California, Earl Warren, who specialized in pleasing all hands. He was astonished when the court within a year set out on an activist course of social change, beginning with school desegregation and still in progress. The Warren Court rediscovered the Bill of Rights, which had become a quaint museum piece to be praised and forgotten, and it recognized that the post-Civil War amendments notably the Fourteenth, were meant for people.

President Eisenhower's amazement was shared widely, most pointedly by Sacramento journalists who had been chronicling the Warren acts and thoughts for a dozen years.

Wide of the mark though Mr. Eisenhower was, he was a sharpshooter when compared with an Abraham Lincoln misjudgment about a court appointee.

Lincoln wanted a Chief Justice who could be relied upon to defend the questionable paper money issued during the Civil War, which was under legal attack. No safer choice could be imagined than the man who had issued that money, Salmon P. Chase, Lincoln's Treasury Secretary. On the bench, Chief Justice Chase voted the money he issued was invalid. Lincoln by then was dead and so was spared the shock.

SUPREME COURT NOMINATIONS SHOULD BE APPROVED—NEW YORK POST APPROVES SELECTIONS

Mr. RANDOLPH. Mr. President, the President has made good selections to fill the vacancies on the Supreme Court, as I said in the Senate on Friday, June 28. There should be swift confirmation in the Senate. One essential consideration is paramount—are the nominees qualified to serve in those positions?

It is the President's duty to fill vacancies in the judical branch when they occur. He has performed this function and performed it well. The next step is for the Senate to act, and it is my hope that confirmation will be an early action on the part of this body.

The New York Post approved the selection the President has made in an editorial of June 24, 1968. I ask unanimous consent to have it inserted in the RECORD at this point.

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

EARL WARREN AND AFTER

And so another chapter has ended, and a stirring chapter it was, deplored only by those who hate and fear any advancement of human liberty or insurance of human rights. Chief Justice Earl Warren, in the still vigorous fullness of his 77 years, has tendered his resignation.

The remarkable thing about Earl Warren was that nobody, certainly not President Eisenhower, foresaw the direction in which the California Republican would move when he became a free man with his appointment to the Court. Once, long ago, as Attorney General of California during World War II, soon to become Governor, Warren had backed the disgraceful expulsion and interment of his state's Japanese-American citizens. Yet it was this same Earl Warren under whose tenure these past 15 years the Supreme Court forced tremendous breakthroughs in everything from school desegregation (1954) to open housing (just last week).

In those 15 years there was indeed only one blur, and that had nothing to do with Warren's service on the Court. It was when he was induced against his wishes to head the commission to investigate the death of President Kennedy. Put together as it was under great pressure, the Warren Commission report left many gaps not conclusively explored.

It was, however, for other reasons that the Chief Justice was endlessly villified by the howlers and the haters; it was for all the things "the Warren Court" was doing to change the face of America for the better. The battalions opposed to any such change will now try in the Senate Judiciary Committee to prevent the naming of a new Chief Justice until, as they hope, Richard Nixon is President. There is ample precedent for the appointment of a Chief Justice by a "lame duck" President—the great John Marshall, chosen by President John Adams just before the end of his term, being the celebrated case in point. We need to keep the Supreme Court looking forward for the next 15 years, and the nasty little ploy in the Senate Judiciary Committee must not be allowed to succeed.

L. B. J. AND THE RIGHT TO VOTE

Mr. BAYH. Mr. President, President Lyndon B. Johnson may be recorded in history as the Chief Executive who did the most to help extend voting rights to all Americans. In the recent past, this movement has generally benefited minority groups and poor people, and the legislative struggle in these areas has virtually been won.

But there is one large segment of Americans that is still denied the ballot—the group of men and women between the ages of 18 and 21. Only four States up to now have acted to lower the voting age below 21. In all the other States, the ballot is closed to these young Americans.

In his message to Congress, President Johnson advocated remedying this wrong. And it is a wrong. Make no mistake about it. There is no constitutional requirement for, or bar to, voting on the basis of age. The reasons for the 21-year-old standard can be traced back in English history hundreds of years. These reasons have little if anything to do with modern, 20th century America.

President Johnson seeks to bring the Constitution into line with the realities of modern times by enfranchising millions of young people. These young Americans are more educated, more experienced, and probably better motivated, than any other generation of young people in our history.

We require our 18- to 21-year-olds to accept the adult responsibilities of living in our society. They are legally liable for payment of taxes, for military service, and for the consequences of their personal actions. In simple justice, they should be given the right to participate as adults in the democratic process.

The President has accurately gaged the needs of the times in his proposal for a constitutional amendment to lower the voting age. He is responding to the changing conditions of America. During the 8 years of my service in the Indiana General Assembly, I introduced measures which would have extended the privilege of voting to younger citizens, and the Subcommittee on Constitutional Amendments has recently held hearings on proposed changes in the Constitution designed to achieve this purpose. I am pleased to join the President in this endeavor. I urge Senators to support this important move to broaden and strengthen the machinery of democracy.

PROPOSED CANCELLATION OF NAVY DEEP-DIVING SUBMARINE PROJECT

Mr. McINTYRE. Mr. President, this morning's Washington Post contains an alarming article written by Ted Sell, revealing Pentagon plans to kill a Navy deep-diving submarine project.

I have felt for a long time that someone at the Pentagon was effectively lobbying against our submarine program, but it seems to me that the cancellation of this project hits a new low.

I ask unanimous consent that the article outlining plans to cancel this project be printed at this point in the RECORD.

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

PENTAGON IS SET TO KILL PROJECT FOR A DEEP-DIVING QUIET SUB

(By Ted Sell)

The Defense Department, over strenuous Navy objections, is about to kill a project to build a deep-diving quiet submarine which Navy officers say is necessary to guard against Soviet missile-launching submarines.

The cancellation is expected Wednesday, it was learned. It will come after $50 million of $125 million authorized by Congress last year for the project already had been obligated.

The Navy feels the upcoming cancellation shows duplicity on the part of John S. Foster, director of defense research and engineering. As recently as March, Foster was claiming partical credit for helping persuade the Defense Department to push ahead with development of the vessel.

Now, Foster reportedly is spearheading efforts to slash the remaining $75-million expenditure as part of Pentagon efforts to cut $3 billion in the overall defense budget. That is reportedly the Defense Department's share of a $6-billion budget reduction forced on President Johnson by Congress as the price for his 10 per cent income tax surcharge.

Navy officers feel so strongly about the need to push development of the quiet submarine that they are willing to divert money allocated for surface ship construction and conversion in order to stay ahead of the Soviet Union in submarine technology.

The submarine, specifically designed for operation on surveillance missions, would have joined the fleet in early 1973, after construction by the Electric Boat Co. in Groton, Conn.

Russia is known to be pushing development of similar quiet vessels.

And once it is, then almost the whole basis of the Arab-Israeli conflict would disappear, or at least be diminished to a small fraction of its present intensity.

How wild is the dream? A three-week survey of part of the scene of conflict provides varying answers.

FANTASY TO SOME

To the dedicated Palestinian nationalist—from the intellectual at the American University of Beirut to the Fedayin commando in the Jordanian hills—it is fantasy born of an opium pipe. Illegally and by force, the Zionist state raped Palestinians of their land and property, they declare, and there can be no peace, no reconciliation, no respite until that injustice is rectified by restoration.

In Amman, there are two different answers. The royal palace and the Jordanian Establishment pant for a final settlement, an "honorable" one, to be sure.

The trouble is, they are not in a position of decision. The majority of Jordan's people are Palestinian and it is they, plus the governments of other Arab countries, who call the tune.

The "moderates" in Jordan nevertheless insist that even the majority of Palestinians want a negotiated settlement. But the fact that King Hussein dares not enter into negotiations with the Israelis by himself casts doubt on the proposition.

The difficulty is that there is no public opinion poll in Jordan or any useful substitute. No one knows where the majority stands, but it is all too obvious that no voice dares speak in Jordan publicly and unequivocably in favor of such a settlement.

The Israelis, to whom the wish may be the mother of the thought, cite the evidence of the West Bank.

Its occupation by Israel is accomplished with the minimum of presence of the occupiers. Local administration remains almost entirely in the hands of the Palestinian municipal authorities.

CONDITIONS "GOOD"

The population has refused, with the most minor exceptions, to aid the Fedayin infiltrators. There have been incredibly few "incidents" and almost no violence.

Economic conditions have been as good as, if not better than, before the war. The normal trade between the West Bank and Jordan has been resumed in almost its full previous volume. When Israel crossed the river to destroy the Fedayin base of Karamen in March, the cross-river commerce was back in full swing the next day.

A significant factor in the situation is that for the first time in 20 years there is an open border between Israel and the Palestinians. And also for the first time, those Palestinians have the possibility of some independence from the political thralldom in which they were held by the Arab states. They may come to see a chance to make their own decisions about their fate.

Will they make decisions that a Western mind would find "reasonable"? Or, as Arabs who live in a world with a different, non-Western, logic, will they come to other conclusions? As patriots, as nationalists, or simply as people who have lived for two decades on a diet of hate and resentment, will they choose not peace but the sword?

Israel hopes that the present atmosphere is a portent of the future. That, plus Jordan's need for peace, infinitely more urgent than Egypt's, may produce a situation in the future in which the Palestinians on both sides of the river will take matters into their own hands, resist the roars of intransigence from the rest of the Arab world, and opt for coexistence.

The premise may be flimsy, as noted above, but it is the only hopeful one Israel can put its hands on at the moment.

SOME TRIBUTES TO HOMER THORNBERRY FROM HIS COLLEAGUES IN THE HOUSE OF REPRESENTATIVES

Mr. YARBOROUGH. Mr. President, on this occasion, I think it would be appropriate for us to recall what was said about Homer Thornberry when he left the House to become a district court judge in 1963.

His colleagues, who had worked with him for 15 years, expressed firm confidence in him as a wise and conscientious jurist.

Representative PATMAN, for example, dean of the Texas delegation, cited Mr. Thornberry's dedication to "the progress of freedom and the recognition of the dignity of the individual."

Representative CARL ALBERT, majority leader of the House, called him "one of the finest, ablest men I have ever known. I do not know of anyone who has more outstanding traits of character and mind."

Representative GEORGE MAHON, chairman of the House Appropriations Committee, reminded us all that Mr. Thornberry "believes in representative government, believes in our country, and believes in his colleagues."

Representative MENDEL RIVERS, of South Carolina, called him a "deep and indefatigable student of legislation and of the law. He impresses one with his capacity to sift the wheat from the chaff."

Representative OMAR BURLESON, chairman of the House Administration Committee, said he had "never observed a more dedicated public servant than Homer Thornberry. I have always believed that if a man in public sought the truth, exercised commonsense judgment, and wholly dedicated himself to serving the Nation and his people, in the final analysis he was usually right in his actions. I believe this description to be wholly and unreservedly applicable to him."

Representative JOHN YOUNG praised Mr. Thornberry's "devotion to duty, exceptionally high standard of morality, character, and sense of justice."

Homer Thornberry's ardent supporters came not just from his home State and not just from the Democratic Party, to which he belongs. Representative BOLAND, of Massachusetts, had words to say about his "magnificent personality, fine judicial demeanor, and very keen intellect."

Representative ARENDS, of Illinois, called him a "great American and a truly outstanding individual."

Representative HALLECK, of Indiana, then the House minority leader, said:

I know he will do the same magnificent job for the people who come before him there that he did in the House of Representatives for the people who sent him here, as well as for his State and our beloved country.

The list goes on, with high praise for Homer Thornberry's judicial, personal, and legislative qualities—for his wisdom, his fairness, and his devotion to the dignity of the individual.

I am sure that those men who praised him then, as I did, feel today, as I do, that Homer Thornberry on the U.S. District Court and on the U.S. Circuit Court, has lived up to our predictions.

Representative ALBERT said in 1963:

If I ever met a man in my life who has judgment, it is Homer Thornberry.

COMMUNITY RADIO WATCH

Mr. PERCY. Mr. President, at a time when the focus of national attention is on the passage of laws to secure additional protection to society from the current wave of lawlessness that plagues our society, we will do well to note and promote other nonlegislative efforts being made to achieve the same ends.

A critical need is to improve the public attitude toward the police, and to stimulate our citizens to assist crime victims as well as to reinforce police efforts in law enforcement work whenever they can. Stories of apathetic citizens standing by or turning away as a crime is committed in their presence have appeared too frequently in the press and the other public media in recent months.

The Communications Division of Motorola Communication and Electronics of Chicago has for the past year actively sponsored a community radio watch program. Under the program, drivers of radio-equipped vehicles are encouraged to act under specific instructions as "the eyes and ears" of public safety agencies as they go about their daily rounds. In addition to being a deterrent to crime, and an aid to rapid law enforcement reaction to crime I believe that this program effectively promotes constructive community-police relationships, and underscores the responsibility of each individual to aid in promoting greater public safety. The Motorola Co. and the participants in this program are to be commended for this public spiritual undertaking. I ask unanimous consent that two press releases outlining the achievements of vehicle drivers who have received the Community Radio Watch Distinguished Service Award be printed in the RECORD.

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

CHICAGO, ILL., May 16, 1968.—Nine vehicle drivers have received the Community Radio Watch Distinguished Service Award for using two-way radio to cooperate with public safety agencies during the last three weeks.

Seven have just been given during this *Police Week* and two awards were given on the week of May 6. These events, plus the growth of the Community Radio Watch program, has proved that many citizens are concerned with the rapid growth of crime, that they will help law enforcement agencies prevent crime.

Six of these award winners helped capture criminals. Two came to the aid of victims of serious automobile accidents; and one helped save a baby from suffocation. Here are the facts.

On February 26, 1968, shortly before 11:30 PM, Gene Hunt—a serviceman for the Niagara Mohawk Power Company—noticed a man loitering in front of Jim's Soda Spot in Fulton, New York.

The direst predictions for the future comes from the brilliant and pseudonymous financial writer, "Adam Smith." He raises the question, quoting a perhaps mythical Gnome of Zurich (Swiss banker): "Would you believe government bonds yielding 10 per cent? Mortgages at 12 per cent? Would you believe the Dow-Jones Average down 500 points?"

Not in the next fiscal year, Adam Smith seems to say. But sooner or later, if we don't fail to meet completely our monetary crisis.

BROAD-BASED SUPPORT FOR PRESIDENT'S SUPREME COURT APPOINTMENTS

Mr. BAYH. Mr. President, editorial reaction from all parts of the country supports the two appointments by President Johnson to the Supreme Court.

Typical of the widespread approval are the following excerpts from newspaper editorials:

From the South Carolina Independent, Anderson:

President makes an Excellent Choice in Naming Fortas as Chief Justice.

From the St. Louis Post-Dispatch:

Congress has no serious reason to reject the nominations, however, for they are good ones.

From the Harrisburg, Pa., Patriot:

L. B. J. Appointments are Justified.

From the Hartford Courant:

Both appointees have distinguished judicial records behind them, although Justice Fortas has only served three years.

From the Cleveland Plain Dealer:

The Senate's obligation is to confirm or deny the nominations on the basis of the character and ability of the nominees.

There is opposition to the nominations in some quarters. It is incumbent upon the opposition, however, to demonstrate its good faith by arguing the issue on the qualities of the nominees and on valid constitutional questions.

Mr. President, I ask unanimous consent that the following editorials be printed in full in the RECORD at the conclusion of my remarks.

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

[From the Anderson (S.C.) Independent, June 28, 1968]

PRESIDENT MAKES AN EXCELLENT CHOICE IN NAMING FORTAS AS CHIEF JUSTICE

President Johnson's nomination of Justice Abe Fortas to be Chief Justice of the U.S. Supreme Court will meet with widespread approval.

An individual of unquestionable integrity, Justice Fortas has long been recognized by the legal fraternity as one of the most able minds in the profession.

A native of Tennessee, the son of an immigrant English cabinet maker, Abe Fortas has won his way in this world by hard work and earnest application of his talents.

For more than 30 years President Johnson and Justice Fortas have known each other, and the President's nomination bespeaks the admiration he holds for a truly dedicated American.

Republican voices already have been raised and they promise to fight confirmation in the Senate on the very shaky and unsound ground that a "lame duck" President should not be allowed to fill an important vacancy on the Supreme Court.

If any be needed—and there is no need—there is ample precedent. Former President Eisenhower named justices during his second or "lame duck" term of office without the Republicans raising opposition.

And one of the great Chief Justices of all, John Marshall of Virginia, was appointed by President John Adams when the latter had only a month left in his term of office.

Republican opposition to Abe Fortas as Chief Justice is so obviously political as to be self-defeating and we trust that will be its fate.

Justice Fortas deserves swift confirmation as Chief Justice of the U.S. Supreme Court.

[From the St. Louis Post-Dispatch, June 27, 1968]

THE CONTINUITY OF THE COURT

The most significant aspect of President Johnson's proposed changes in the Supreme Court is that they should not alter the vitality and progressive attitude of the Warren court. Yet the element of personal and political association involved could make confirmation more difficult.

Justice Abe Fortas named to succeed Earl Warren as Chief Justice, is a man of nearly impeccable credentials for the post. A Yale Law School faculty member, a government servant of long experience and recognized as one of the most astute private attorneys in Washington, Mr. Fortas has proved himself on the high bench.

His record in the recent session, including dissents in the cases allowing state textbook aid to parochial schools and permitting continued arrests of alcoholics, mark him as, if anything, more "libertarian" than Chief Justice Warren. Still, it was the humanitarian view of the retiring Chief Justice that will be hard to match.

Judge Homer Thornberry, nominated to the Supreme Court vacancy, has also made a judge in the liberal tradition. This was not surprising. The former Congressman was nominated to the federal district bench by the late President Kennedy, after championing the latter's programs through difficult days in the House Rules Committee.

When President Johnson placed him on the critical Fifth Circuit Court of Appeals, Judge Thornberry quickly made his mark there. He provided the margin for a major 2-1 decision requiring total desegregation of all public schools in the Deep South. The decision accepted the controversial guidelines of the Department of Health, Education and Welfare for integration. When this judgment was confirmed by the full appeals court, it replaced the doctrine of "all deliberate speed" with one of urgency.

A Supreme Court under the leadership of a Justice Fortas, and with the addition of Judge Thornberry, seems most unlikely to turn away from the Warren court's great achievements toward equality of opportunity, representative government, fair trial procedures and individual liberties. That is the main thing.

Nevertheless, President Johnson must expect his critics to raise the charge of cronyism. Justice Fortas was one of his most intimate friends and political advisers for years. Congress was not deterred by that from confirming a sound court appointment, but now the President has chosen another old friend and a fellow-Texan in Judge Thornberry. Mr. Johnson could have avoided criticism had be made a clearly objective choice from a list of distinguished judges and constitutional authorities which, in this country, would be considerable.

Congress has no serious reason to reject the nominations, however, for they are good ones. A President has a right to make Supreme Court nominations as they occur, and whether or not he may soon leave office. President Johnson has at the very least supported the continuity of the Warren court and what the President rightly termed its "capacity to meet with vigor and strength the challenge of changing times."

[From the Harrisburg (Pa.) Patriot, June 28, 1968]

SUPREME COURT: L. B. J. APPOINTMENTS ARE JUSTIFIED

The 18 Republican senators who are threatening a filibuster to block President Johnson's nominees to the Supreme Court would be well advised to back off while the backing's good. "A lot has to do with the country's reaction," says a leader of the effort, the "moderate" Sen. Robert Griffin of Michigan. "I think a lot of people feel that a new President with a November vote behind him should make the Supreme Court appointments."

We do not pretend to know what the country's reaction is or will be, but we feel, and we suspect that many people will agree, that this is a transparent political maneuver which cannot be justified.

The Supreme Court is a political force, but it ought not to be made a political football. This is June. President Johnson will be in the White House for another six months. He is, technically, a "lame duck," but then so was President Eisenhower for all four years of his second term.

Would the country really react favorably to a filibuster, of all things, designed to keep the Senate from voting to fill a vacancy on the most important court in the country, and for purely partisan motives.

So long as Mr. Johnson is President, just so long must he execute the responsibilities of his office. In nominating Associate Justice Abe Fortas to succeed Chief Justice Earl Warren, and Federal Judge William H. Thornberry to succeed Justice Fortas, Mr. Johnson has executed his responsibilities; he would be guilty of negligence if he did not. Now the Senate must exercise its responsibilities, but in a responsible way.

That Justice Fortas is a friend for 30 years of the President is common knowledge; that he is one of the most brilliant lawyers in the nation, a man of breadth and depth, courage and compassion, is also a matter of public record.

The appointment of Judge Thornberry, a former congressman who represented Mr. Johnson's former district, is less distinguished but by no means unjustifiable. Judge Thornberry is a liberal Texan, which is not a conflict in terms, and he is well-regarded on the federal bench, not only for his carefully reasoned decisions but for his dedication to equal justice under the law for all men, white and black.

In general approach, Justice Fortas is close to Chief Justice Warren. The continuity will be good for the country, for in the 15 years during which Earl Warren has presided over it the Supreme Court has produced landmark decisions to maintain individual liberty against government, to compel government to be responsive to the people, to strike down segregation and to uphold free speech.

Those have been years upon which—as former Pennsylvania Bar Association President Gilbert Nurick of Harrisburg has declared—historians will look and conclude that the Supreme Court has made meaningful and long-needed contributions "toward the accommodation of our great Constitution to the present and future needs of our nation."

[From the Hartford, (Conn.) Courant, June 28, 1968]

THE SUPREME COURT APPOINTMENTS

When Earl Warren was appointed Chief Justice in 1953, it was widely predicted that he would follow a middle-of-the-road course on the Supreme Court. The 15 years since provide vivid testimony of how wrong that prediction was. And so it has proved in many cases that a man's record before his appointment does not offer a firm basis for judgment on how he will conduct himself once he is on the bench.

Further, as the record of the Chief Justice himself demonstrates, a man may change and grow during his service on the Supreme Court. The Chief Justice who wrote his last opinion as the Court recessed last week was a wiser and more mature man than the one who wrote his first opinion in 1953. So it is dangerous to speculate on what effect the elevation of Justice Abe Fortas to be Chief Justice and the appointment of Judge Homer Thornberry to the Court will be.

In this case, however, the prophet has an advantage that he did not have when Chief Justice Warren was appointed. Both appointees have distinguished judicial records behind them, although Justice Fortas has only served three years. During that period he has in general followed the "Warren line," although he has not hesitated to dissent, most recently in the 5-to-4 opinion that denied that a common drunk is a sick man who should be hospitalized rather than jailed.

Those close to the Court report that Justice Fortas' personality is more abrasive than is that of the present Chief Justice, and that he lacks the qualities of leadership and persuasiveness which enabled Mr. Warren to come up with unanimous opinions on so many of the critical issues it decided. But a man leans and grows as Chief Justice as well as when he is only an Associate Justice, and Mr. Fortas is a wise and knowing man.

Judge Thornberry's independent leanings were clear when, as a Texas Congressman, he was one of the few Southerners who worked and voted with the liberal wing of his party. As District Judge, and later as Judge of the Fifth Circuit Court of Appeals, he has indicated a concern for the rights of minorities that in a least one case went farther than the Warren Court was willing to go. That both men are close personal and political friends of the President does not affect their qualifications, although those who are trying to block their confirmation by the Senate will doubtless not hesitate to try to use it against them.

The nominations are also being assailed as "lame-duck" appointments, as if the President should have left the posts vacant for six months so that his successor could make them. So was President John Adams a "lame duck" when he named the greatest Chief Justice of them all, John Marshall, who did more to make the Constitution what it is today than any other man before or after him.

[From the Cleveland (Ohio) Plain Dealer, June 27, 1968]

COURT WOULD KEEP LIBERAL TAG

The liberal tag usually attached to the United States Supreme Court presumably will remain if President Lyndon B. Johnson's nominations affecting that body are confirmed by the Senate.

Abe Fortas, associate justice who has been nominated to succeed retiring Chief Justice Earl Warren, has been on the libertarian side of things, a member of the five-man majority that sometimes has troubled certain members of Congress, strong for civil rights and the right to dissent.

Justice Homer Thornberry of the Fifth Circuit Court of Appeals, was a member of the Texas legislature who succeeded Mr. Johnson in the United States House of Representatives when Mr. Johnson went to the Senate. Thornberry first was appointed to the federal bench by President John F. Kennedy. On his way up to nomination to the Supreme Court, Thornberry—like Fortas—has worn the "liberal" label.

The Senate's obligation is to confirm or deny the nominations on the basis of the character and ability of the nominees. While some senators have spoken out against President Johnson's filling places on the Supreme Court in the closing months of his administration, it is hoped that consideration of the nominations will not be unduly delayed.

In almost three years as an associate justice, since he succeeded Arthur J. Goldberg, Judge Fortas slowly has emerged as one of the stronger men of the court. At 58, his prospects of a long career are excellent; Thornberry, if age is a prime factor, is but one year older.

The liberal appellation attached to Judge Fortas conveniently can be reexamined by senators through perusal of a pamphlet he published this month, "Concerning Dissent and Civil Disobedience." Nowhere does Fortas contend that disobedience to the state is necessarily evil, yet he argues that "violence never has succeeded in securing massive reform in an open society where there were alternative methods of winning the minds of others to one's cause."

Both Justice Fortas and Judge Thornberry have been close to Mr. Johnson. The Senate now must set them apart for its judgment.

THE STAR FIGHTS THE BOOM

Mr. PROXMIRE. Mr. President, the Washington Evening Star has been a consistently eloquent opponent of the Government's supersonic transport project and the serenity-shattering sonic boom it would leave in its wake. It has on its editorial page pleaded repeatedly for an injection of sanity into the decisionmaking on this project which threatens the peace and well-being of millions for the benefit of the world's handful of privileged jet-setters.

In an excellent editorial published on July 2, the Star concluded:

There comes a time when the convenience of the few and the profit of the even fewer simply have to be made secondary to the sanity of the many. That time is arriving in the sonic boom business. There is no imaginable excuse for unleashing the boom against defenseless citizens.

I ask unanimous consent that the Star editorial be printed in the RECORD.

Columnist James J. Kilpatrick also wrote a perceptive essay recently on the subject of the SST which I commend to the attention of the Senators. I ask unanimous consent that it be printed in the RECORD.

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

[From the Washington Star, July 2, 1968]

BAN THE BOOM

The National Academy of Sciences has completed an extensive research project on sonic boom caused by supersonic airplanes and concludes that people don't like it.

The report, by a panel of distinguished boomers in psychology, sociology and, for some reason, the Harvard Business School, says more work is needed on individual, group and communal reactions to the big boom and to lesser booms. "Community reactions," it claims, "cannot be predicted with certainty."

Yes, they can. Any community subjected to the boom will be appalled at what human greed—remember the man from the business school—can inflict upon human beings.

The report seems to be a shoehorn in the door of booming for all. Noting that the first supersonic flights are scheduled for over water, the scientists, in a note of "optimism," said that overland flights could he developed if enginsers had more solid data on the "levels of acceptability" of booms. "We can only speak in terms of the probability of effective organized reaction. This will increase as the annoyance of the individuals increases. The effective expression may depend on some dramatic trigger incident or the emergence of a vocal leader of public opinion."

For a dramatic trigger, try the first flight over the Washington area. For a vocal leader of opinion against the whole idea—here we are.

There comes a time when the convenience of the few and the profit of the even fewer simply have to be made secondary to the sanity of the many. That time is arriving in the sonic boom business. There is no imaginable excuse for unleashing the boom against defenseless citizens.

[From the Washington Star, June 23, 1968]

THE SST: ANOTHER VERY GLOOMY MILESTONE

(By James J. Kilpatrick)

Winston Churchill once remarked upon the replacement of the horse by the internal combustion engine. The event, he said, "marked a very gloomy milestone in the progress of mankind."

The observation may be applied emphatically to development of the SST—the supersonic transport airplane. If this project represents progress in any sense, it is progress to the rear; it is a false progress, purchased largely by tax dollars taken from persons who never will fly in the aircraft and will only be irritated by it. It is a particularly arrogant manifestation of man's obsession with hurry-hurry-hurry.

Within the next few weeks, a decision will have to be made in Congress on an appropriation for the SST in the coming fiscal year. The administration has asked $223 million. At a time of massive federal deficits, the budgetary crisis alone should demand that the item be deleted.

Yet budgetary considerations are the least of the considerations. The matter involves questions of political principle and public philosophy that never have received sufficient thought. It is high time, while the White House request is actively pending, to give these questions a closer look.

If the armed services could expect some truly useful fall-out from research and development on the SST, perhaps the appropriation—and the prospective public nuisance—could be justified. This is not the case. The SST is a commercial proposition, pure and simple. It is an airliner intended for private use and private profit.

Why should the taxpayers be compelled to finance such a venture? Congressmen Bow of Ohio and MacGregor of Minnesota have asked the question repeatedly. They have never received a sensible answer. Of the roughly $700 million already plowed into the SST, private capital has provided barely $50 million. In theory—in very doubtful and speculative theory—the taxpayers may recover their investment some time in the next century out of royalties on sales of the SST. The prospect is pie in the sky. Through the fog of hocuspocus, the plump, impassive face of state socialism is clearly to be seen.

But it is said, by proponents of the SST, that the United States must plunge ahead or risk the loss of world aircraft markets to the Anglo-French "Concorde" or to the Soviet Union's TU-144. The argument is getting weaker all the time. Recent reports from London and Paris indicate that the Concorde is in deep trouble; costs are skyrocketing, orders are few, and the Anglo-French plane—a small one by today's standards—is far behind schedule. The Soviet version offers no significant competition.

Philosophical objections are more compelling still. The SST would carry 280 passengers at a cruising speed of 1,800 miles per hour. Revenue projections are based upon a load factor of 58 per cent, or about 162 passengers. That is all we are talking about. The object is to get these particular hurry-hurry travelers from, say, Chicago to London in three hours instead of seven. Big deal.

The SST would fly at 64,000 feet. At that altitude, it would create a sonic boom path 64 miles wide. What is contemplated, in brief, is that perhaps ten million persons on earth

2. Civil Rights.
3. Crime.
4. Inflation.
5. Riots.
6. Balance of payments.
7. Disrespect for authority.
8. High Taxes.
9. Education.
10. Air and Water Pollution.
11. Unemployment.
12. Narcotics.
13. Foreign Policy.

SENATOR RANDOLPH CITES EDITORIAL IN FAIRMONT, W. VA., TIMES ON APPROVAL OF SUPREME COURT APPOINTMENTS

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Wednesday, July 3, 1968

Mr. RANDOLPH. Mr. President, last Friday, I stated that "the President has the right and the responsibility to fill vacancies on the Nation's highest court during his entire term." This contention cannot be reasonably disputed. I reiterate my support for the appointments of Justice Abe Fortas to be Chief Justice and Judge Homer Thornberry to be Associate Justice of the U.S. Supreme Court.

The argument that President Johnson should not take this action because he is a "lameduck" Chief Executive begs the issue. The charge of cronyism is not worth answering.

Mr. President, a distinguished West Virginia journalist, William D. "Bill" Evans, in an editorial, "The Pettiest Kind of Politics," in the June 29, 1968, Fairmont Times calls the threat of a filibuster to block confirmation of the two nominations a "sordid maneuver." I agree.

I ask unanimous consent, Mr. President, to have this well-reasoned comment by Mr. Evans inserted in the RECORD.

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

THE PETTIEST KIND OF POLITICS

Motivated entirely by sheer partisan malice, some 18 Republican members of the Senate are attempting to thwart the Constitution by trying to block the confirmation of Justice Abe Fortas to be chief justice of the United States and Judge Homer Thornberry to be an associate justice of the Supreme Court. If they fail to halt approval within the Senate Judiciary Committee, they are prepared to filibuster against confirmation until the end of the present session.

Behind this sordid maneuver is the desire of the GOP bloc to delay the selection of the two high court members until after the November election, hoping that it will be a Republican President who will then have the opportunity to make the appointments after his inauguration in January.

Because President Johnson, last March 31, took himself out of the 1968 campaign, he is described by the Republican senators as a "lame duck." They know full well that this is a total distortion of facts.

The 22nd Amendment which prohibits the election of a President more than twice makes the holder of that office a "lame duck" in his second term. This has been true since March 1, 1951, and Dwight D. Eisenhower was the first to come under the ban that had been launched by Republicans who never forgave Franklin D. Roosevelt for winning four terms.

But Lyndon Baines Johnson is President of the United States until Jan. 20, 1969, with the full powers and privileges of his office. Since he would still be eligible to run for another term, having come to the presidency with less than two years of the late John F. Kennedy's tenure to serve, if that was his wish, he can in no way be considered a "lame duck" in the common acceptation of the term.

Many other Presidents have made appointments to the Supreme Court with far less of their terms remaining than Johnson has of his. He acted not only constitutionally but with the precedents to support him in nominating Mr. Justice Fortas and Judge Thornberry.

The other excuse offered by the Republican opposition is that the President sent up the names of two "cronies" to fill the high judicial posts. This attack on two jurists whose nominations have been generally acclaimed and to which approval was given by the American Bar Association's committee on the federal judiciary is even more reprehensible than the cry of "lame duck."

It is quite unlikely that a president would name a personal enemy or a political opponent to the Supreme Court. The history of this country is full of examples where the sole criterion has been political expediency, which is surely not true in the Fortas-Thornberry case.

Even if it were true that "cronyism" had entered into the nominations, the Republicans might well recall how Eisenhower, when President, surrounded himself with high ranking officers and executives of big defense contractors. They did not rise to cry "cronyism" then and they have no reason for doing so now.

Flimsiest of all the objections is the question of whether a vacancy for chief justice actually exists. Chief Justice Earl Warren was asked to stay on until his successor had qualified, a perfectly natural request to insure continuity of the court and one to which he was glad to accede. To say that no one can be chosen to take Warren's place until he has actually stepped down is nit-picking in its purest form.

As a matter of practical politics, too, the recalcitrant Republicans may be taking exactly the wrong tack. A lot of people already have the idea that Chief Justice Warren submitted his resignation to avoid any chance that Richard Nixon, as President, would name his successor. If the Republicans are able to block the Fortas-Thornberry confirmations, a majority of voters may concur with Warren and make absolutely sure that Nixon doesn't get the opportunity to appoint anyone.

Curiously enough, it is always the Republicans who are crying "petty politics." Their own conduct in the Senate with respect to the pending nominations is a precise example of what this expression means and they are certainly not going to win any awards for statesmanship by it.

IN MEMORY OF GORDON McDONOUGH

HON. CHARLES M. TEAGUE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, June 27, 1968

Mr. TEAGUE of California. Mr. Speaker, my respect and admiration for Gordon McDonough grew every day during the many years we served together in the House. He was indeed a fine American in every sense of the word, a most conscientious and effective legislator, and a devoted husband and father. He contributed immeasurably to the betterment of our country. I extend to Mrs. McDonough and to the other members of his family my deep sympathy.

KATY JO LANCIANESE, ST. MARYS, W. VA., HIGH SCHOOL STUDENT, STRESSED AMERICANISM IN WINNING ESSAY

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Wednesday, July 3, 1968

Mr. RANDOLPH. Mr. President, we will celebrate tomorrow our Fourth of July. And there is a need—a compelling need—to rededicate ourselves to citizenship responsibilities.

People are inclined to be critical of youth. There are, however, evidences of genuine patriotism by high school students, as evidenced by Miss Katy Jo Lancianese. She participated in the essay contest sponsored by the American Legion Auxiliary Post 79, St. Marys, W. Va. Katy Jo received the first prize.

Her father, George Lancianese, wrote me, under date of July 1:

The deep meaning of Americanism expressed by my daughter during these critical times, when youth have been accused of lacking in the meaning of Americanism, touched me to the extent that I have taken the liberty of sharing the essay with you. It reinforces my feelings of long standing that young people have not lost their sense of values, that they are responsible and trustworthy Americans and, if given an opportunity they will respond to and defend the true meaning of Americanism. There are many thoustands of young people who share Katy Jo's deep feelings for America. She firmly believes that youth is dedicated to the democratic principles established by our forefathers.

Mr. President, I ask unanimous consent to have the winning essay, "America, the Land of Hope," by Katy Jo Lancianese, printed at this point in the RECORD.

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

AMERICA, THE LAND OF HOPE

(By Katy Jo Lancianese)

As we look backward along the pathway of human progress, we can be proud of the many gains made by the American nation.

During the critical period at the end of the Revolution, our forefathers were faced with the difficult problem of bringing diverse people and conflicting interesta into a unified body. In the face of serious difficulties their efforts were successful. The new government emphasized the individual and gave him more liberty than had been given to the people of any other nation. It kindled hope in the hearts of the citizens and this burning torch was passed on to future generations.

In the years between 1860–65, when ties of brotherhood and loyalty to the nation were sharply severed and Americans began to fear that never again would the Stars and Stripes reign from sea to sea, the people

was instrumental in gaining greatly increased support for medical research at the National Institutes of Health, the Nation's medical schools and other research institutions—all designed to investigate the cause and cure of crippling and killing diseases.

LISTER HILL is rightly known as the Nation's "statesman for health."

A citation from the University of Pennsylvania awarding him the honorary degree of doctor of laws, puts its well:

> The brilliant son of a distinguished surgeon, Lister Hill has advanced the cause of medicine through a series of extraordinary legislative enactments. It may be that, during his four decades in the Congress of the United States, he has done more for public health than any American.

Senator HILL has been the recipient of countless honorary degrees including one from Washington University, that outstanding medical school in my own State of Missouri. It was at the University of Alabama and Columbia University respectively that he earned academic and law degrees.

To the Nation's rare good fortune, personal charm and grace have combined with industry and wisdom to establish the character of the distinguished senior Senator from Alabama. His retirement is a loss to the Senate as well as a deep personal loss to my wife and myself, because he has been and is a beloved friend.

To his lovely wife Henrietta as well as to LISTER himself, we wish many more years of happiness that have been so richly earned by this great public servant.

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

Mr. SYMINGTON. Mr. President, I am delighted to yield to my beloved colleague, the distinguished Senator from Alabama.

Mr. HILL. Mr. President, I express my heartfelt and sincere appreciation to the distinguished senior Senator from Missouri for his most generous words, not only because they come from one of my dearest and best friends, but also because they come from one of America's outstanding statesmen.

I am deeply grateful to the Senator, and I am sure that my wife, Henrietta, will join with me in my words of appreciation to the Senator and his lovely wife.

Mr. SYMINGTON. Mr. President, I thank the distinguished Senator. He could have said my thoughts better than I, but not with greater sincerity.

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

Mr. SYMINGTON. Mr. President, I yield to the distinguished senior Senator from Tennessee.

Mr. GORE. Mr. President, I concur in and associate myself with the eloquent statement made by the distinguished senior Senator from Missouri regarding the career and service of the able senior Senator from Alabama.

At an earlier testimonial dinner, I had the opportunity to speak in eulogy of the service and the record of the distinguished senior Senator from Alabama. I then spoke at greater length, if not with greater eloquence, than has the distinguished senior Senator from Missouri.

The service of the distinguished senior Senator from Alabama has encompassed not only his State and his Nation, but also the world. His service has been particularly appreciated and has been especially valuable to the people whom I have the honor, in part, to represent. The role he has played in the TVA Act, in health, in hospital construction, and in many other programs from which the people of my State have directly and multitudinously benefited, makes him a beloved character to all Tennesseans and, I am sure, to all other Americans.

Mr. SYMINGTON. Mr. President, I thank the able senior Senator from Tennessee for his remarks and concur in them without reservation. The way the people of Tennessee feel about LISTER HILL is exactly the way the people of Missouri feel about LISTER HILL.

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

Mr. SYMINGTON. I yield.

Mr. HILL. Mr. President, I express to the distinguished senior Senator from Tennessee my heartfelt thanks and appreciation for his generous remarks. I deeply appreciate the remarks coming from a dear friend of mine and one with whom I have worked through the years in the advancement of these different programs to which the Senator has referred.

I am deeply grateful to him and thank him again and again.

Mr. GORE. Mr. President, upon the occasion of the testimonial dinner at which I delivered this speech, I pointed out that the senior Senator from Alabama in a very genial and generous way described my speech as the most eloquent of my career ,and then he added, "Because, of course, you had the best subject."

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

Mr. SYMINGTON. I yield to the distinguished senior Senator from Florida.

Mr. HOLLAND. Mr. President, I add my voice to the eloquent words of tribute being paid to the distinguished senior Senator from Alabama.

Years ago I coined a term for him which I have used since, and if he resents it, he has not indicated that he does. I call him, "the Lord Chesterfield of the Senate," and I think very properly so, because of his generosity, his cordiality, and his always gentlemanly words on every occasion and toward every person.

Whenever I go to any health or hospital meeting or to any hospital in Florida, one of the first questions I am asked is, "How is Senator HILL, of Alabama?"

Then they go on to tell me that their hospital or their health center has been made possible in the size that it exists—or, perhaps, at all—by the generous help extended through the provisions of the Hill-Burton Act.

I believe that no other Member of Congress is better loved in my State. I hope he will come there more frequently than he has recently, I can assure him and the Senate that the people of Florida always will feel greatly indebted to LISTER HILL, of Alabama.

The same applies with respect to his dear wife, Henrietta. My wife, Mary, thinks there is nobody quite like Henrietta. Some 2 or 3 years ago, when Henrietta sent us an autographed copy of a book she had written, it was understood that that was to be one of our treasured possessions, and it has so remained.

They are a remarkable pair, who have done great things, not only for their State and for their Nation but also in the field of bringing together the Senate and the House of Representatives in a relationship which otherwise would not have been so warm and so kindly and so generous as it has been because of the presence and the attitude of LISTER HILL and his good wife, Henrietta.

I join in these expressions of tribute to LISTER HILL.

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

Mr. SYMINGTON. I yield.

Mr. HILL. I thank my good friend and neighbor, with whom I have worked in close cooperation in the Senate for some years, for his most generous remarks. I deeply appreciate them. I hope that in some way I may be worthy of the kind and generous remarks that have been made this morning.

Surely, I know that my good, sweet wife, Henrietta, will greatly appreciate the kind words that have been spoken about her today.

From the depths of my heart, I thank you.

Mr. HOLLAND. Mr. President, if it were necessary to do so, I believe the distinguished Senator from Alabama has shown why, for years now, I have chosen to call him "the Lord Chesterfield of the Senate." He is going to be the Lord Chesterfield of the Senate in my book always.

Mr. SYMINGTON. Mr. President, the able senior Senator from Florida, as usual, has put his fine mind on the core of the problem of recognition of this great man.

Millions of Americans who are or have been ill, or old, or crippled, or poor, have benefited by his magnificent efforts to ameliorate, if not to solve, their problems. To him it will all be an eternal monument.

In addition, I like the phrase "Lord Chesterfield," as used by the senior Senator from Florida, because surely no finer gentleman, in the true sense of that word, has ever been a Member of this body.

When the late John F. Kennedy left us, perhaps the finest article written about him, by one of his closest friends, was entitled "He Had That Special Grace." One of the reasons we all love and respect LISTER HILL is that he has that special grace.

Mr. President, I yield the floor.

THE SUPREME COURT NOMINATIONS

Mr. GORE. Mr. President, earlier today, I listened to the colloquy between the distinguished majority leader and the distinguished minority leader with respect to the possible sine die adjournment of Congress.

I wish to express the view that the Senate should not adjourn or even consider sine die adjournment until action is had upon President Johnson's nomination of Justice Fortas for Chief Justice of the United States. To do so would set an unwise precedent; because the objection raised to the confirmation of the nomination of Justice Fortas has not been directed to the merits of the man, to the probity of the opinions rendered, or to the quality of the service he has rendered, but, rather, upon the ground that President Johnson, who submitted the nomination in June 1968, had announced that he will not seek reelection. In other words, the objection to action by the Senate now is based upon the caveat that President Johnson is a "lame-duck President."

Mr. President, the American people elected Lyndon Baines Johnson President of the United States not for 3½ years but for a constitutional term. It seems to me peculiarly groundless and illogical to take the position and to ask the Senate to endorse and sanction the position, by inaction on its own part, that though Mr. Johnson is President of the United States, he should not exercise the full powers, duties, and prerogatives of that high office. It would be equally illogical, equally groundless to suggest that President Johnson should not conclude a peaceful settlement of the Vietnam war on the grounds that such an important function should not be performed by the present President but be reserved or postponed for action by the next President.

So, for the Senate to refuse or to fail to come to a vote upon this nomination on such illogical and groundless terms would be a dangerous, an unworthy, and an unwise precedent.

I will not speak to the merits of this nomination at this time. I do raise the question of the advisability of adjourning or even considering adjournment before action is had upon this nomination. The President has exercised his constitutional responsibilities, performed his lawful duty. It is now for the Senate to consider the nomination. I do not maintain that the Senate has the duty to confirm. It does have the duty to consider and to take action upon the nomination. The performance of duty is more important than an early adjournment and, for that matter, more important than recesses for political conventions.

REPRESENTATIVE ROBERT L. F. SIKES, OF FLORIDA

Mr. HOLLAND. Mr. President, today, his colleagues in the House and the Senate are paying tribute, as I now am pleased to do, to Representative ROBERT L. F. SIKES, of Florida's First Congressional District, for setting a new mark for length of service in Congress of a Member from Florida.

On July 5, 1968, Representative SIKES exceeded the service of the former recordholder, the late Senator Duncan U. Fletcher, who ably served our State here for 27 years and 106 days. Also, in 1963 BOB SIKES surpassed the service mark in the House of Representatives of a Member from Florida which was set by the late Stephen M. Sparkman, of Tampa, who retired in 1917 after 22 years of service in that body. He would have attained both marks earlier had it not been for his resignation from the House near the end of the 78th Congress in October 1944, to perform commissioned service in the U.S. Army on an important overseas mission. Reelected in November of that year, he resumed his seat in the House for the 79th Congress in January 1945.

BOB SIKES began his long period of highly capable service to the people of Florida and to the Nation as a Member of the House of Representatives on January 3, 1941. He has been reelected to each succeeding Congress and bids fair to repeat that process in November.

It is not how long BOB SIKES has served that is of major importance, but the type of service he has rendered to the people of Florida and the United States forms the basis for the honor we pay our colleague on this occasion. His ability to go quickly and aggressively to the heart of problems, and his wisdom in arriving at their solutions have been a strong force in the House for many years and a bulwark to our close-knit delegation in Congress whose reputation for close cooperation is exceeded by no other. BOB has been a splendid representative of the people of his district and, on many occasions, the people of all of Florida.

I salute my colleague and friend, BOB SIKES, and wish him many more years of constructive service in the House.

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

Mr. HOLLAND. I am happy to yield to my colleague from Florida.

BOB SIKES' GETS SERVICE RECORD

Mr. SMATHERS. Mr. President, I wish to concur in all that has been said by my distinguished senior colleague with respect to BOB SIKES.

Today there will be held in the Rayburn House Office Building a reception honoring the dean of the Florida congressional delegation, ROBERT L. F. SIKES, who has now served in the Congress longer than any Floridian has served. BOB SIKES, who has completed more than 27 years of service in the House of Representatives, has also demonstrated outstanding qualities of leadership during that period of service, not only among our own Florida congressional delegation but in the House itself. As a key member of the distinguished Committee on Appropriations, BOB SIKES, is acknowledged to be one of the most knowledgeable and hard-working Members of the House.

BOB SIKES, who has been elected to Congress 14 times, has now served Florida longer than the previous recordholder, the late Senator Duncan U. Fletcher, who had served 27 years and 106 days. We who serve with BOB SIKES from Florida are hoping that he will continue to add to his record of service, one which has been of benefit to his State and his Nation, for so long.

I join with the members of our Florida delegation, the Florida State Society, the University of Florida and Florida State Alumni Associations and with the University of Georgia Alumni Asosciation, all of whom are paying tribute to BOB SIKES today, in saluting this great American.

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

Mr. HOLLAND. I am glad to yield to the distinguished Senator from Georgia.

Mr. RUSSELL. Mr. President, as one who has known the able Representative from Florida, ROBERT SIKES, for practically all of his life, I desire to associate myself with the remarks made by both distinguished Senators from that State.

Under any standard that might be applied, BOB SIKES is an outstanding Member of the Congress of the United States. I have had the good fortune to be on the same side with him on a number of issues, in conference particularly; and I have had the misfortune to have him as an adversary on one or two occasions. He is a stout fighter who is always informed on the subject in which he is interested.

I am particularly proud of the fact that BOB SIKES was born in Georgia, is a native of Georgia, and is a graduate of the University of Georgia, as well as the University of Florida. We are very proud of him in Georgia and we share the feelings just expressed by the Senators from Florida.

Mr. HOLLAND. Mr. President, I thank my distinguished colleague from Georgia and also my distinguished colleague from Florida for their kind comments. Their comments are fully merited by the personality and record of Representative BOB SIKES.

DARTMOUTH COLLEGE MEDAL

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1339, S. 3671.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The ASSISTANT LEGISLATIVE CLERK. A bill (S. 3671) to provide for the striking of medals in commemoration of the 200th anniversary of the founding of Dartmouth College.

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

Their being no objection, the bill was considered, ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in commemoration of the two hundredth anniversary of the founding of Dartmouth College by the grant of a royal charter from King George III on December 13, 1769, the Secretary of the Treasury is authorized and directed to strike and furnish to Dartmouth College, Hanover, New Hampshire, not more than twenty-five thousand medals with suitable emblems, devices, and inscriptions to be determined by Dartmouth College subject to the approval of the Secretary of the Treasury. The medals shall be made and delivered at such times as may be required by Dartmouth College in quantities of not less than two thousand, but no medals shall be made after December 31, 1970. The medals shall be considered to be national medals within the meaning of section 3551 of the Revised Statutes (31 U.S.C. 368).

SEC. 2. The Secretary of the Treasury shall

(hereinafter referred to as the "Commission"), which shall be composed of nine members, at least five of whom shall be persons between the ages of eighteen and twenty-four at the time of their appointments. The Director of the Office shall be an ex officio member of the Commission.

(b) The Secretary of Health, Education, and Welfare shall seek recommendations as to the membership of the Commission from youth organizations in schools, colleges and universities, and from other youth organizations, and shall appoint members of the Commission for two-year terms, except that the members first appointed may be for a greater or lesser period in order to assure that the terms of not more than three members shall expire at the same time. In appointing members of the Commission, the Secretary shall seek to assure that they are representative of a broad range of experience, background, and personal characteristics, with with respect to sex, educational attainment, residence, occupation, ethnic origin, and age within the age limits prescribed in section 4(a) of this Act.

(c) Members of the Commission shall select from their number a chairman and co-chairman, who shall serve in those positions for one year.

(d) Members of the Commission shall be compensated, including necessary expenses, as determined by the Secretary of Health, Education, and Welfare. The Secretary shall provide the Commission with necessary staff support.

(e) The Commission shall—

(1) advise the Secretary of Health, Education, and Welfare with respect to policy matters concerning the administration of this Act and with respect to ways of increasing the involvement of youth in programs administered by the Department of Health, Education, and Welfare;

(2) consult with and advise the heads of Federal agencies administering programs which directly affect the lives of young people, including, but not limited to, the Selective Service System, the Justice Department, and the Office of Economic Opportunity, as to ways of improving such programs and making them more responsive to the needs and concerns of young people; and

(3) hold and publish hearings, and conduct and publish studies, on problems and issues of concern to youth in American society, and make recommendations from time to time for additional means of incorporating young people more fully in meaningful and responsible roles in the American society and economy.

APPROPRIATIONS AUTHORIZED

SEC. 5. For purposes of carrying out this Act, there is hereby authorized to be appropriated not to exceed $5 million for any fiscal year.

Mr. HARRIS. 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. TYDINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

NOMINATIONS OF JUSTICE ABE FORTAS TO BE CHIEF JUSTICE OF THE UNITED STATES AND JUDGE HOMER THORNBERRY TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. SMATHERS. Mr. President, I ask unanimous consent to have printed in the RECORD the following editorials published in the Independent, of Anderson, S.C.; the Macon News; the Atlanta Constitution; the Courier-Journal; the Kansas City Times; the Minneapolis Star; and the Minneapolis Tribune, commending the President for making an excellent choice in nominating Associate Justice Abe Fortas to be Chief Justice of the United States and Judge Homer Thornberry to be an Associate Justice of the Supreme Court of the United States.

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

[From the Anderson (S.C.) Independent, June 28, 1968]

PRESIDENT MAKES AN EXCELLENT CHOICE IN NAMING FORTAS AS CHIEF JUSTICE

President Johnson's nomination of Justice Abe Fortas to be Chief Justice of the U.S. Supreme Court will meet with widespread approval.

An individual of unquestionable integrity, Justice Fortas has long been recognized by the legal fraternity as one of the most able minds in the profession.

A native of Tennessee, the son of an immigrant English cabinet maker, Abe Fortas has won his way in this world by hard work and earnest application of his talents.

For more than 30 years President Johnson and Justice Fortas have known each other, and the President's nomination bespeaks the admiration he holds for a truly dedicated American.

Republican voices already have been raised and they promote to fight confirmation in the Senate on the very shaky and unsound ground that a "lame duck" President should not be allowed to fill an important vacancy on the Supreme Court.

If any be needed—and there is no need—there is ample precedent. Former President Eisenhower named justices during his second or "lame duck" term of office without the Republicans raising opposition.

And one of the great Chief Justice of all, John Marshall of Virginia, was appointed by President John Adams when the latter had only a month left in his term of office.

Republican opposition to Abe Fortas as Chief Justice is so obviously political as to be self-defeating and we trust that will be its fate.

Justice Fortas deserves swift confirmation as Chief Justice of the U.S. Supreme Court.

[From the Macon News, June 28, 1968]

FORTAS IS THE CHOICE

Southern Democrats may hold the key to confirmation of U S. Supreme Court Associate Justice Abe Fortas' appointment as chief justice as well as the selection of Homer Thornberry to sit on the court. A number of Republicans have signed a petition opposing this action by the President.

The contention of opponents is that Mr. Johnson is a lame duck and a lame duck president shouldn't make such appointments.

This is nonsense. History shows other lame duck presidents have done exactly as Mr. Johnson has done.

Certainly, the balance of the court is a delicate matter and the choice of a successor to Chief Justice Earl Warren is important. Fortas, a liberal, will no doubt try to keep the court on the liberal path. The wisdom of that may be debated but Mr. Johnson's right to name Fortas to replace Warren cannot be disputed.

[From the Atlanta Constitution, June 27, 1968]

MR. FORTAS' LEGACY

In deciding to resign at this time, Chief Justice Earl Warren implied his faith in President Johnson to fill the vacancy wisely. The President has justified that faith.

Justice Abe Fortas is a superb choice for Chief Justice.

He is a devoted civil libertarian, but his long experience in government—dating from the New Deal—also has made him aware of the practicalities of governing.

His appointment, incidentally, allows the President another "first." Mr. Fortas will be the first Jewish Chief Justice.

U.S. Circuit Judge Homer Thornberry, who will take the seat created by Fortas' elevation, likewise is a man of sound and proven, progressive judgment. He will be the first Southerner named to the high court in many years.

There is no question about Chief Justice Earl Warren's place in history. He will be rated as one of the three or four great Chief justices of America.

This has been the era of individual rights in the high court and Chief Justice Warren has been a major influence in defining these rights in three areas:

Racial equality, representative government and rights of defendants—Mr. Warren's three Rs.

The first big breakthrough on racial justice came with the 1954 *Brown vs. Board of Education*, written by the Chief Justice himself, outlawing enforced segregation in the schools.

From this precedent flowed dozens of other rulings striking down one form of legal segregation after another. If any segregation statute remains on the books anywhere in the country, we don't know where it is, but we are sure of its fate: It is unconstitutional.

The legal basis for most of these racial justice decisions has been the 14th Amendment, guaranteeing equal protection to all citizens. Just last week the court upheld a 102-year-old open housing law under the 13th (antislavery) Amendment, on grounds that housing discrimination was a vestige of slavery.

Baker vs. Carr was the leading case in a series of cases establishing the one-man, one-vote principle in state legislatures, congressional districts and more recently in local governments. Among other results, the 1962 precedent led to destruction of Georgia's iniquitous county unit system.

Baker vs. Carr was written by Mr. Justice Brennan, but as in so many decisions of ths Warren Court, the Chief Justice was a major influence.

The third area in which the Warren Court has been active has been in protecting procedural rights of persons accused of crimes. These range from witnesses before congressional committees to persons arrested and interrogated without the benefit of legal counsel.

Each area has raised great storm clouds of controversy. Southerners thundered at the attack on the "Southern way of life" implicit in outlawing racial discrimination. Benefactors of the rotton borough system were angry at the "intrusion" of the courts into representation questions. Police officials and many others have complained that the court was "coddling" criminals by protecting their constitutional rights.

But in each area, the Warren Court has been making the Constitution mean what it says, and after long screams, the nation has learned it can live with the Constitution.

For years, Chief Justice Warren has been the object of an impeachment campaign sponsored by the John Birch Society. The Chief Justice perhaps decided he can retire now that the Birch Society has given up.

He exits in controversy. Some Republicans are infuriated that Warren, former Republican governor of California, appointed to the bench by Republican President Eisenhower, will let Democratic President Johnson name his successor. But we see no reason why Mr. Warren should not exercise his judgment in this matter, as he has in so many others.

We salute the Chief Justice at the culmination of a long, honorable and valuable career on the bench.

[From the Courier-Journal, June 29, 1968]

APPOINTMENTS TO COURT IMPOSE DUTY ON SENATE

A highly partisan outcry has arisen against President Johnson's two Supreme Court nominations. Some Senate Republicans are threatening a July filibuster to prevent consideration of the matter. It is disappointing to find Kentucky's Thruston B. Morton in this group.

The argument that there is not a clear vacancy on the court until Chief Justice Warren has actually vacated his seat appears to be a technicality, which should be quickly settled. The other points being raised have no real relevance to the two men involved, Abe Fortas and Homer Thornberry. They are in fact forms of attack on the President.

One of the contentions is that the selection of these two individuals is an example of "cronyism." There is no doubt that both are long-time personal friends of Lyndon Johnson. One of them happens to be from Texas, which was represented on the court by Justice Tom Clark until his resignation a few months ago. The logical extension of the "crony" argument would forbid a President to appoint to the court any man from his own state, or any man he knew well. Such a contention would be an absurdity.

HAS THE RESPONSIBILITY

The other argument is that a "lame duck" President should not be permitted to make nominations to the court. Mr. Johnson has chosen not to run for re-election next November, but he will legally hold office until January. It would not make sense to bar a President from federal court appointments during the last six months of his term as a general practice. As Gov. Nelson Rockefeller notes, "The President under the Constitution has the responsibility to make these appointments."

The Senate has its own clear responsibility under the Constitution, too. Its duty is to give sober and serious consideration to the President's nominations to the Supreme Court and to endorse or reject them on the qualifications of the individuals. All other considerations are irrelevant.

Senators who refuse to allow this orderly procedure to take place, through the device of a filibuster, will not just be taking a slap at the President. They will be demeaning the Senate, by preventing it from performing in a reasonable time one of its most responsible duties.

[From the Kansas City Times, June 28, 1968]

THE PROPRIETY OF FILLING HIGH COURT VACANCIES

It is fair enough to criticize any President's nominations to the Supreme court or to any—other high position. The senatorial obligation of confirmation not only permits such criticism but also raises the possibility of rejection by the Senate if it so decides. But it is quite another thing—and a very political thing, it seems to us—to suggest that a President, when his term in office is definitely limited, should not fill such vacancies.

In this instance, President Johnson's term is limited by his own choice. He has not been defeated at the polls and thus, in the classical sense, is not a lame duck. We won't quibble about that, however. The fact is that Mr. Johnson presumably has another six months in office and during that period the business of government must go on, and the court must go back into session. Is it proper to suggest that the presidency should, in effect, be paralyzed, unable to make decisions on the assumption that in November the people will deliver a new mandate?

We think not. And this is by no means intended as a defense of the President's appointments. Rather, it is a defense of his right to appoint, even though he is soon to leave office. Were a chief executive to fail to exercise that right, he would in effect be confessing to White House paralysis of his remaining months. These are problems enough when an incumbent is serving out his final term without this type of restriction.

Yet that is what the Republican senators—who have protested the appointments are suggesting. The cynic would say that they might have reacted otherwise had the incumbent been a Republican. And they are in part prompted by the hope that the next President will be a Republican. He might be, but that is quite irrelevant to the vacancies of June, 1968, on the court. The next President might also be a Democrat, or, for that matter, he might be George Wallace, but let's not talk about that.

What is at issue here is the right of any President to fill the vacancies that exist during his administration. Perhaps Mr. Johnson could have talked Chief Justice Warren into serving until January. But either he did not try or Warren was set on retirement. He is 77 years old, and no man could criticize him from wanting to rest.

The situation having besn created, the President could not afford to sit back and do nothing. It would have been an abdication of his own responsibility to lead while he is still the leader.

[From the Minneapolis Star, June 28, 1968]

A PAIR OF GOOD APPOINTMENTS

President Johnson's appointment of Abe Fortas to succeed Earl Warren as chief justice and Judge Homer Thornberry of a U.S. Court of Appeals in Texas to the vacant seat was an astute political move, a typical Johnsonian exhibit of personal loyalty, and at the same time a guarantee of the continuity of the progressive Warren traditions.

By obtaining in advance the enthusiastic approval of Senate GOP leader Everett Dirksen, LBJ countered carping about "lame duck" appointments. He's not really a "lame duck," which means a defeated politician serving out an expiring term.

LBJ was not defeated. He has the duty and moral right to exercise all powers of office.

That both Fortas and Thornberry are old personal friends, that the first is Jewish, and both are Southerners is less important than that both are a credit to the bench intellectually, and put the highest priority on individual rights and dignity.

Fortas is a tough-minded legal scholar who can be expected to "marshal the court" as did Warren. For all his toughness he is sensitive to the civil rights and civil liberties issues that make up half the court's business. Thornberry, who served LBJ's old congressional district, was the only southern liberal on the House Rules Committee. As a subsequent federal judge he has been strong on desegregation and civil rights.

One of Warren's accomplishments as chief justice was to minimize internal dispute that can result in 5-to-4 decisions which in turn can subtly undermine the Supreme Court's prestige. The Fortas and Thornberry appointments are double assurance that "the Fortas court" will continue on the humane course that produced for that august body the most powerful court in the world, some of its finest hours.

[From the Minneapolis Tribune, June 28, 1968]

A FRESH MANDATE FOR CHIEF JUSTICE?

Two questions are raised by the President's nomination of Abe Fortas as chief justice of the Supreme Court and Homer Thornberry as associate justice to fill the seat that would be vacated by Fortas. Are these the right men for the jobs? Should a "lame duck" president make such appointments, or would they more appropriately be made by a new president in 1969?

The argument against Thornberry is that he has been the President's political crony since 1948, when Thornberry was elected to Congress in the district represented by Mr. Johnson before he moved to the Senate. Against that are Thornberry's experience in lower courts and his reputation, political and judicial, of constructive liberalism on civil rights, desegregation and free speech.

A similar argument is made against the choice of Fortas, perhaps Mr. Johnson's closest friend and adviser, with the added charge that despite his many years in the practice of law, he had no judicial experience before becoming associate justice three years ago. Fortas has been described as "a great legal mind," which we think has been demonstrated by his persuasive opinions in a number of Supreme Court decisions. And there is an obvious comparison with retiring Chief Justice Warren, whose views Fortas generally shares. Warren had no lower court experience before President Eisenhower appointed him chief justice; he was not even a lawyer.

The "lame duck" complaint voiced by Richard Nixon and others seems to us almost defeated by its own reasoning. Such an appointment, according to Nixon, should be made by "a new president with a fresh mandate." The implication, is that a mandate for fresh jurisprudence is called for and that the constitutional separation of judicial and executive branches is related to a presidential election.

Whatever were Earl Warren's reasons for resigning now, we believe the court's and the country's interests will be best served by prompt action to fill the vacancy. The President's choices seem suitable; and we think it would be wrong to delay the decision on naming a chief justice until next year.

WHERE ARE THE HANDWRINGERS?

Mr. FANNIN. Mr. President, before our unilateral reduction in the bombing rate of North Vietnam, this Nation was "treated" to almost daily accounts of the damage our bombs were doing to the civilian population there. We saw pictures of supposedly napalmed children. North Vietnamese women were depicted in their grief at losing loved ones. Refugee families with their pitifully small set of household stores were seen on the TV screens displaced from their wretched huts. The great, grand New York Times managed a special set of stories by Mr. Harrison Salisbury telling us and all the world what bad folks we were because some of our bombs, though admittedly aimed at military targets, exploded too close to civilian areas.

I believe this Nation to be made of individuals who, for the most part, believe in fair play. We, in the main, subscribe to the idea that "what's sauce for the goose is the same for the gander." If the proposition is that it is bad to see civilians killed at war—and I believe it is—then it must be bad to see civilians killed whether north or south of the demilitarized zone.

But that does not seem to be the case with some national media. The great American handwringers seem only to look northward. So far as I know, Mr. Salisbury has written no report condemning the Vietcong for their deliberate torture and mutilation of South Vietnamese civilians. Although we have all seen pictures of the crude rocket launchers used to send death into the

able chairman of the subcommittee [Mr. BARTLETT] was greatly appreciated. Senator PROXMIRE's deep and ready knowledge of the various parts of this funding measure assured its swift adoption by the Senate.

Assisting him greatly in bringing this bill to completion was the ranking minority member of the subcommittee [Mr. KUCHEL], whose cooperation helped so much to move us toward the hoped for adjournment of early August. And the Senator from Delaware [Mr. WILLIAMS] once again gave us the benefit of his strong and sincere views, and he is also to be commended for urging an amendment that was so widely accepted.

These and other Senators joined to dispose of this measure in a thoughtful and expeditious manner. The Senate may be proud of another fine achievement.

THE CONSTITUTION MUST NOT BECOME A PARTISAN DOCUMENT

Mr. MORSE. Mr. President, reasonable men may disagree on political issues, but let us hope the day never comes when the U.S. Constitution is distorted for the purpose of advancing the interests of a political party. Does this danger seem even remotely possible? I wish that I could answer with an absolute "No." Unfortunately, however, this danger has become a distinct possibility with the announced intentions of some Senators and certain public figures to do everything in their power to prevent President Johnson from exercising his constitutional right and obligation to nominate and appoint members of the Supreme Court, with the advice and consent of the Senate.

On this vital issue, the opposition to the nominations has gone to great lengths to assure everyone that the qualifications of the nominees are not at all in dispute. Even the briefest look at the backgrounds of Justice Fortas and Judge Thornberry would reveal their clear qualification to serve on the Nation's Highest Court.

Instead, the opposition to the nominations is based, at least publicly, on issues such as: First, the propriety of President Johnson naming people to the Supreme Court when his term in office will end next January; and, second, whether it is possible to confirm a man for high public office before the incumbent has left the office.

As for the first point, the Constitution places no limitation on the power and duty of the President to appoint persons to the Supreme Court, subject to confirmation by the Senate. This fact may be an inconvenience to certain politicians, but it is a great protection to the American people.

Furthermore, there are ample examples of a President appointing members to the Supreme Court when he is a so-called lameduck President, or his continuation in office is uncertain. In October 1956, in the midst of a then undecided national election campaign, President Eisenhower named Justice Brennan to the High Court. Two years later, in his final term in office, President Eisenhower named Justice Stewart to the Supreme Court. By definitions now being proclaimed, Mr. Eisenhower was a lameduck President at the time. Yet no hue and outcry was raised at his action. Some people who claim to base their actions on the lameduck theory may end up by destroying the American eagle.

The second objection raised by the opposition is based on fine points of timing and language. They are not concerned with the timing of due process of the law, but rather with the timing of presidential election campaigns. And they are not concerned with the language of the Constitution, either, but with the language in an exchange of letters between the President and the Chief Justice.

There is so much precedent for nominees to be confirmed before their predecessors have left office that one could almost refer to the practice as routine. I ask unanimous consent to insert at this point in my remarks a list of Ambassadors who were confirmed by the Senate before the incumbent relinquished his post. I direct your attention to the fact that the listing goes back more than 3 years. I do not recall any objections to the practice.

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

EXAMPLES OF STATE DEPARTMENT PRESIDENTIAL APPOINTMENTS CONFIRMED BY SENATE PRIOR TO RELINQUISHMENT OF POST BY PREVIOUS INCUMBENT

Post	Nominee	Confirmation date	Predecessor relinquished post
Austria	Ambassador Douglas MacArthur II	May 5, 1967	May 10, 1967
Ceylon	Ambassador Andrew V. Corry	May 24, 1967	June 17, 1967
Costa Rica	Ambassador Clarence Boonstra	Jan. 26, 1967	Feb. 19, 1967
Czechoslovakia	Ambassador Jacob D. Beam	May 27, 1966	Aug. 1, 1966
Germany	Ambassador Henry Cabot Lodge	Apr. 19, 1968	May 21, 1968
Haiti	Ambassador Claude G. Ross	Apr. 17, 1967	May 21, 1967
Jordan	Ambassador Harrison M. Symmes	Oct. 18, 1967	Nov. 5, 1967
Paraguay	Ambassador Benigno C. Hernandez	June 8, 1967	June 25, 1967
Portugal	Ambassador W. Tapley Bennett, Jr	May 9, 1966	June 1, 1966
Thailand	Ambassador Leonard Unger	Aug. 11, 1967	Sept. 8, 1967
Trinidad and Tobago	Ambassador William A. Costello	Sept. 13, 1967	Sept. 18, 1967
U.S.S.R.	Ambassador Llewellyn E. Thompson	Oct. 12, 1966	Dec. 14, 1967
United Nations	Ambassador George Ball	May 13, 1968	June 24, 1968
Vietnam	Ambassador Ellsworth Bunker	Apr. 5, 1967	Apr. 25, 1967

Mr. MORSE. To hone this fine point even finer, I ask unanimous consent to insert in the RECORD a list of nominees for high office in the State Department, all of whom were confirmed by the Senate before the effective date of resignation of the people who preceded them in office. One of these examples took place more than 18 years ago.

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

EXAMPLES OF STATE DEPARTMENT (NOT CHIEF OF MISSION) PRESIDENTIAL APPOINTMENTS CONFIRMED BY SENATE PRIOR TO EFFECTIVE DATE OF RESIGNATION

Post	Nominee	Confirmation date	Predecessor	Effective date of resignation
Under Secretary of State	David K. E. Bruce	Feb. 6, 1952	James E. Webb	Feb. 29, 1952
Do	Herbert Hoover, Jr.	Aug. 18, 1954	Walter B. Smith	Oct. 1, 1954
Under Secretary for Political Affairs	Thomas C. Mann	Mar. 9, 1965	W. Averell Harriman	Mar. 17, 1965
Under Secretary for Economic Affairs				
Deputy Under Secretary	William J. Crockett	June 4, 1963	William H. Orrick, Jr	June 7, 1963
Assistant Secretary	Covey T. Oliver	June 8, 1967	Lincoln Gordon	June 30, 1967
Do	Norman Armour	June 10, 1947	Spruille Braden	June 30, 1947
Do	Robert D. Murphy	Mar. 20, 1953	John D. Hickerson	July 27, 1953
Do	H. Freeman Matthews	June 26, 1950	W. Walton Butterworth	July 4, 1950
Do	Issac W. Carpenter, Jr	June 18, 1954	Edward T. Wailes	June 22, 1954
Do	William M. Rountree	July 26, 1956	George V. Allen	Aug. 27, 1956
Representative of the United States to the United Nations with the rank and status of Ambassador Extraordinary and Plenipotentiary.	James J. Wadsworth	Aug. 27, 1960	Henry Cabot Lodge	Sept. 3, 1960

Mr. MORSE. Unfortunately, this important constitutional issue is not being debated in all quarters by reasonable men of good will who harbor honest differences of opinion. Some unusual voices not normally associated with questions of constitutional law are being heard; including a former motion picture star, now Governor of our most populous State.

Any doubt about the motivations of those crying the loudest to permit the next President to fill vacancies on the court has been clearly removed by the entrance of former Vice President Nixon into the fray. The transparent attempt by Mr. Nixon to transform this country from a system of government based on constitutional law to a system of government based on the spoils of election wars turns the harsh spotlight of truth on the old Nixon, as he always was, and as he always will be. Long a colorful fixture in American political life, Mr. Nixon has once again demonstrated that he is a man for all the reasons—all the reasons not to be entrusted with the highest elective office in the land.

The shabby nature of Mr. Nixon's crusade on behalf of the Federal Judiciary becomes apparent when we take a look at the record. President Johnson announced on March 31, 1968, that he would not seek, nor would he accept, the nomination of his party as candidate for the Presidency. According to the Nixon theory of constitutional law, all appointments to the Federal judiciary should have been terminated at that time in

order to preserve the purity and integrity of the judicial branch of our Government.

I should like, at this point, to list the names of persons nominated by President Johnson and confirmed by the U.S. Senate after the President's announcement of March 31:

Name	Court	Nominated	Confirmed by the Senate
John H. Pratt	U.S. district judge, District of Columbia	Apr. 11, 1968	June 6, 1968
June L. Green	U.S. district judge, District of Columbia	do	Do.
Orrin G. Judd	U.S. district judge, New York, eastern	Apr. 25, 1968	June 24, 1968
Anthony J. Travia	U.S. district judge, New York, eastern	do	Do.
Myron H. Bright	U.S. circuit judge, 8th circuit	do	June 6, 1968
James B. McMillan	U.S. district judge, North Carolina, western	do	Do.
William Wayne Justice	U.S. district judge, Texas, eastern	do	Do.
Halbert O. Woodward	U.S. district judge, Texas, northern	do	Do.
John W. Kern III	Associate judge, District of Columbia, Court of Appeals	May 29, 1968	June 21, 1968
Walter L. Nixon, Jr	U.S. district judge, Mississippi, southern	do	June 6, 1968
Bernard Newman	Judge, Customs Court	do	June 24, 1968

All of these appointments and confirmations were a matter of public record. I may have missed the news, but I do not recall Mr. Nixon and his cohorts rising in outraged indignation when these judicial appointments were nominated and confirmed by the U.S. Senate since March 31, 1968, when the President made his announcement that he would not seek renomination.

There could be a reasonable explanation for this apparent inconsistency, though. Apparently the Nixon theory of constitutional law had not been developed at the time these appointments were announced.

Mr. President, let us take a look at the Constitution, for, pray God, this is still a government of laws and not of men.

Under the Constitution, the President of the United States has a duty to fill vacancies by nomination. The Senate has the duty, under the advise and consent clause, to confirm or reject.

Mr. President, the American people do not expect the Constitution to be suspended because a group of politicians think, for political reasons or any reasons, that the President should not exercise his Presidential duties.

The President, under our system of government by law, has the clear obligation to carry out those constitutional duties. He has that obligation until the very last moment of his term of office. It will do violence to this maintenance of this system of government by law, and to the continued implementation of the consitutional rights of 200 million Americans, if the President of the United States is ever thwarted by an attempt such as some Senators are reported to be planning to make to prevent him from carrying out his clear constitutional rights under our system of government by law and not by men.

Therefore, Mr. President, I say to the leadership of the Senate that I think we have a clear duty as Senators to proceed, before adjournment, to see to it that these nominations come to the floor of the Senate and that the Senate act upon them, up or down. If it is necessary to protect the constitutional rights of the American people in respect to this subject matter, then we should come back after the convention; or, if there are those Senators who wish to exercise parliamentary prerogatives under the existing rules of the Senate, seeking to prevent confirmation or passing upon the issue as to whether or not the nomination should be confirmed, then the remainder of the Senate has the duty to exercise whatever parliamentary prerogatives are available to the majority to break any such attempt to set aside the implementation of the Constitution.

One final word, Mr. President, with respect to the nominations: Justice Abe Fortas is a brilliant American lawyer, with whom I was closely associated for many years before he came to the Supreme Court, when he was active in various Government assignments under President Roosevelt. He is one of the keenest scholars and one of the most brilliant minds within the legal profession of our country. His nomination as Chief Justice is a very much deserved nomination on the basis of his qualifications. He should be confirmed as Chief Justice of the United States before adjournment.

I do not know Judge Thornberry as I know Justice Fortas; but I have analyzed his record. He has already, during the brief time that he has served on the Federal bench, demonstrated that he is a man of exceedingly able judicial qualifications, and his nomination is highly deserving of confirmation by the Senate.

Mr. President, those who may for one reason or another wish to challenge the professional competency of any person nominated by the President of the United States may express their viewpoints. That prerogative exists for any U.S. Senator under the advice and consent clause. But I respectfully submit that, in my judgment, we cannot justify denying to the President the opportunity to carry out his constitutional powers and duties on the basis of any argument that he is an alleged "lameduck" President, and therefore should be denied the opportunity to exercise his constitutional duties.

Furthermore, the precedents that I have cited to the Senate of the past practices, as recognized for many decades in respect to the Presidents augur well in support of my argument that the Senate ought to stop playing partisan politics with this issue and get on with its obligation of confirming or rejecting these nominees.

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

Mr. MORSE. I yield.

Mr. PASTORE. Mr. President, I associate myself with everything that the distinguished senior Senator from Oregon has said.

I want to say as strongly as I can say it that our responsibility and our duty and our functions as Senators are not so much to attend national conventions as they are to stay here and do our work. If that means that the conventions are going to act as a barricade to our functioning as we should in the interest of the Nation, then we should stay here and perform our duty—conventions or no conventions.

If it develops that there is no vacancy or that the interpretation is that there is no vacancy arising from the exchange of letters between the President and the Chief Justice of the United States, then I think that what the President should do is merely to accept the retirement clearly and affirmatively and send up the names again, and then we should act on the matter. If anybody is a lameduck, it is the Chief Justice of the United States under the present circumstances—suspended between his desire to retire and a Senate effort to deny or delay him in his personal wish.

Mr. MORSE. Mr. President, I completely agree with the Senator from Rhode Island.

ADDRESS BY MRS. LYNDON B. JOHNSON AT CONVENTION OF AMERICAN INSTITUTE OF ARCHITECTS

Mr. MORSE. Mr. President, Portland, Oreg., was the scene of an event of national moment in late June. It took place during the hundredth convention of the American Institute of Architects, which was attended by about 3,000 architects and guests. The architects had chosen as their theme "Man, Architecture, Nature."

On the last day of the convention, June 26, when "Nature" was the theme, our First Lady, Mrs. Lyndon B. Johnson, gave the key address.

This address was the first B. Y. Morrison Memorial Lecture, and was sponsored by the Agricultural Research Service of the U.S. Department of Agriculture. The lectureship, which honors one of the Department's most distinguished scientists, was established to recognize and encourage outstanding accomplishments in the science and practice of ornamental horticulture. The lecture is to be given annually by an individual chosen for his—or her—significant contributions in this field.

In her address, Mrs. Johnson emphasized the importance of growing and caring for flowers, trees and shrubs in helping to solve the problems of the environmental crisis that man is facing. She urged the architects of America to become "thoughtful political activists" and work for a "new conservation" that is concerned with the total human and community environment. She called for improvement of urban areas and for the blending of urban forms and countryside at the city fringes, which are now ragged, unplanned, and garish.

She deplored the sacrifice of human values that we have often made to commercial values. Such unconcern has allowed a crisis to gather which threatens health—even life itself. America must undertake a vast rebuilding to create an environment that gives scope to people's imagination and variety of choice. Mrs. Johnson pointed out:

On the wall there are the pelts of a goat, a wolverine, a sea lion, a racoon, a caribou, an elk, a badger, a moose, a wolf, an antelope, a lynx, a bobcat, and others. Mr. Murphy shot them all.

Mr. Murphy keeps a herd of buffalo on his Z-Bar-Lazy-3 ranch.

"Used to have 37," he said. 'Now down to six."

Why buffalo? The large bald head swiveled on the heavy shoulders as he looked out toward the distant peaks. "Just something you like to look out at," he said.

Out in the barnyard, the bray of a jackass echoed among the buildings and a milk cow complained of the heaviness of her udder.

Harold Murphy, Joe's son, worked to repair a hay loader, watched by this three sons. With his brother, Tom, he runs three or four pack trips for hunters each autumn into the Montana wilderness.

Strings of pack horses and mules, up to a dozen to a string, haul in camping equipment and food and haul out the quartered elk.

One ranch building was full of saddles, bridles, lead lines, pack saddles and saddle pads. Outside, a tangled pile of used horseshoes rusted in the weather.

These are the trappings of the hunt—these and the guns. The hunters bring their own weapons. The Murphys carry rifles in scabbards attached to the saddle horn, and usually a pistol.

"You go out in the mountains, if you got a gun you feel better," said Harold Murphy, who keeps a pistol in his sleeping bag.

He grew up with guns, and one National Rifle Association argument has been that such early training produced the backbone of infantry units in the nation's wars.

"I was three and a half years in the marines," Harold Murphy said. "They made me into a repair man for aerial cameras."

NOMINATIONS TO THE SUPREME COURT

Mr. McINTYRE. Mr. President, the American press has, by and large, reacted favorably to President Johnson's recent Supreme Court nominations.

This editorial support is confined to neither one region nor one political ideology. Rather it seems to reflect a common view that the two men appointed by the President are well qualified to serve in these high posts and a general agreement that President Johnson has the right and duty to fill any Federal vacancy as long as he serves in office.

I might add that the U.S. Senate has, on previous occasions, reviewed the qualifications of Justice Fortas and Judge Thornberry and found them deserving and fit to serve on the Federal bench.

I think many Senators will agree that President Johnson has named an outstanding jurist to head the Supreme Court. Justice Fortas is, by any standard of measurement, an outstanding and articulate advocate of our legal system, and has already served the Supreme Court with honor and distinction.

Judge Thornberry has established a solid record of public service over many years, first as a Member of the U.S. House of Representatives and later on the bench.

I sincerely hope that the Senate will consider these nominations and base its approval on the nominees' qualifications—not on political considerations.

Editorial comment throughout the Nation reflects the need to consider these nominations on their merits. Because I believe that their arguments should be studied by Senators, I ask unanimous consent that a selection 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 Baltimore (Md.) News American, June 28, 1968]

HIGH COURT DECISIONS

President Johnson's new Supreme Court appointments honor two of his closest personal associates, both of whom are imbued, like the President, with a deep sense of social conviction.

Justice Abe Fortas, who moves up to Chief Justice, is a former Washington attorney whose friendship with the President dates to New Deal days. Appeals Court Judge Homer Thornberry, a former Texas Democratic Congressman, is an intensely humane man who has also been close to the President for much of his public life.

Thus the President possessed intimate knowledge of the two men before he made the appointments. This knowledge obviously went into the naming of Mr. Fortas as an associate justice of the court three years ago. The appointment filled the vacancy created by Justice Arthur Goldberg's departure from the court to become United States Ambassador to the United Nations.

The departure of Justice Goldberg left very big shoes to fill and necessitated the selection of an American with the finest possible qualifications. Few who have known Justice Fortas in his public and private life will doubt that he possesses such qualifications; the legal community in particular, in Washington and elsewhere, is honored by his elevation to the highest seat of jurisprudence in the land.

President Johnson observed that he consulted with Democratic and Republican leaders before making the appointments. In this connection it is hardly worthwhile commenting on some recent Republican objections to Supreme Court appointments by what was termed a "lame duck" president, in view of President Johnson's decision not to seek office again.

We can only say, with some weariness, that the President has the right and duty to make such appointments. Quite properly, LBJ ignored the objections, which were ill-advised and in poor taste.

[From the Atlanta (Ga.) Constitution, June 27, 1968]

MR. FORTAS' LEGACY

In deciding to resign at this time, Chief Justice Earl Warren implied his faith in President Johnson to fill the vacancy wisely. The President has justified that faith.

Justice Abe Fortas is a superb choice for Chief Justice.

He is a devoted civil libertarian, but his long experience in government—dating from the New Deal—also has made him aware of the practicalities of governing.

His appointment, incidentally, allows the President another "first." Mr. Fortas will be the first Jewish Chief Justice.

U.S. Circuit Judge Homer Thornberry, who will take the seat created by Fortas' elevation, likewise is a man of sound and proven, progressive judgment. He will be the first Southerner named to the high court in many years.

There is no question about Chief Justice Earl Warren's place in history. He will be rated as one of the three or four great chief justices of America.

This has been the era of individual rights in the high court and Chief Justice Warren has been a major influence in defining these rights in three areas:

Racial equality, representative government and rights of defendants—Mr. Warren's three Rs.

The first big breakthrough on racial justice came with the 1954 *Brown vs. Board of Education*, written by the Chief Justice himself, outlawing enforced segregation in the schools.

From this precedent flowed dozens of other rulings striking down one form of legal segregation after another. If any segregation statute remains on the books anywhere in the country, we don't know where it is, but we are sure of its fate: It is unconstitutional.

The legal basis for most of these racial justice decisions has been the 14th Amendment, guaranteeing equal protection to all citizens. Just last week the court upheld a 102-year-old open housing law under the 13th (anti-slavery) Amendment, on grounds that housing discrimination was a vestige of slavery.

Baker vs. Carr was the leading case in a series of cases establishing the one-man, one-vote principle in state legislatures, congressional districts and more recently in local governments. Among other results, the 1962 precedent led to destruction of Georgia's iniquitous county unit system.

Baker vs. Carr was written by Mr. Justice Brennan, but as in so many decisions of the Warren Court, the Chief Justice was a major influence.

The third area in which the Warren Court has been active has been in protecting procedural rights of persons accused of crimes. These range from witnesses before congressional committees to persons arrested and interrogated without the benefit of legal counsel.

Each area has raised great storm clouds of controversy. Southerners thundered at the attack on the "Southern way of life" implicit in outlawing racial discrimination. Benefactors of the rotten borough system were angry at the "intrusion" of the courts into representation questions. Police officials and many others have complained that the court was "coddling" criminals by protecting their constitutional rights.

But in each area, the Warren Court has been making the Constitution mean what it says, and after long screams, the nation has learned it can live with the Consitution.

For years, Chief Justice Warren has been the object of an impeachment campaign sponsored by the John Birch Society. The Chief Justice perhaps decided he can retire now that the Birch Society has given up.

He exits in controversy. Some Republicans are infuriated that Warren, former Republican governor of California, appointed to the bench by Republican President Eisenhower, will let Democratic President Johnson name his successor. But we see no reason why Mr. Warren should not exercise his judgment in this matter, as he has in so many others.

We salute the Chief Justice at the culmination of a long, honorable and valuable career on the bench.

[From the Christian Science Monitor, June 28, 1968]

THE "FORTAS" COURT?

It is never safe to predict how new or relatively new justices on the United States Supreme Court will eventually align themselves. Offhand one would expect that President Johnson's nomination of Justice Abe Fortas to be Chief Justice, and Judge Homer Thornberry of Texas to be associate justice, would effectively continue the "liberal" and interventionist outlook of the Warren court.

But it may be that the nation, from here on, will see a bit more hewing to the center by the high tribunal, due not only to the caliber of these nominees, but also to a visible national sentiment in favor of consolidation and clarification where, in hectic recent years, the court has been bold and innovating.

"His philosophy is quite sound," says Senate Minority Leader (and influential Republican) Everett Dirksen of Justice Fortas, and that understatement bespeaks high regard. Quite probably, despite Republican reservations about court appointments by a "lame duck" President, the nominations will receive the necessary Senate approval. President Johnson thus may have a hand in determining basic national thought and philosophy long years after his own retirement.

Justice Fortas has of course been an intimate adviser to President Johnson ever since his congressional years, perhaps the most influential of all. The evidence is that his advice has been uniformly responsible—and shrewd.

In his brief Supreme Court career this first Jew to be nominated for the chief justiceship has participated in such liberalizing decisions as that outlawing the poll tax in state and local elections, and the ruling against self-incriminating evidence where police are held to have faultily protected suspects' rights. Judge Thornberry, too, is rated as a liberal.

Probably, if the next President turns out to be a Republican, he will have opportunity to nominate justices who will importantly influence individual and national views in directions contrary to present egalitarian trends. There is, however, a soundness and incisiveness about Justice Fortas which is reassuring. He has spoken out strongly for the "rule of law." He has inveighed against hooligan tactics at Columbia University. He has urged careful limits to civil disobedience. And he has declared that, in this age of revolution, the individual must tolerate the established verdict of the majority.

He is not likely to be a meddlesome, emotional Chief Justice.

[From the Portland Oregonian, June 27, 1968]

JOHNSON'S COURT

Two colleagues and personal friends of Lyndon B. Johnson from the old New Deal days of Franklin D. Roosevelt will assure the continued "liberal" direction of the U.S. Supreme Court. Despite the mutterings of southern Democrats and some Republicans, the Senate is almost certain to confirm their nominations.

Justice Abe Fortas, 58, two years on the high bench, succeeds Chief Justice Earl Warren. Homer Thornberry, 59, of Austin, Tex., will move up from the 5th U.S. Circuit Court of Appeals to replace Fortas.

The Senate found no excuse to deny confirmation when Fortas was appointed to the high court or when President Kennedy named Thornberry to the district court in Texas and President Johnson advanced him to the circuit court. Despite the antipathy of Sen. James Eastland of Mississippi, chairman of Senate Judiciary, it is most unlikely that these appointments by a "lame duck" President will be rejected unless opponents can find something besides political liberalism with which to charge them.

Chief Justice Warren, 77, said in his letter of resignation to the President he was retiring solely because of age. But surely in the back of his mind was the desire to assure continuance of the "activist" trend of the "Warren Court". History will judge the stupendous record of that court in civil rights, voters' rights and law enforcement—and the verdict, on the whole, we believe, will be more favorable than unfavorable.

Still, the times cry for a more conservative approach to the interpretation of the Constitution and the laws, and a decrease in legislating by judicial processes. This isn't going to happen for awhile, it would seem, although Judge Thornberry may have a different slant on rights of criminals than have some members of the Warren Court. He worked his way through the University of Texas law school as a deputy sheriff and served 14 years in Congress.

[From the Des Moines (Iowa) Register, June 28, 1968]

NEW COURT APPOINTMENTS

Justice Abe Fortas, President Johnson's choice to replace Earl Warren as chief justice of the United States, is a distinguished lawyer who has fitted in well in his first two years on the high court. He is best known for his work in a variety of civil liberties cases, and as something of a political fixer and a friend of President Johnson's.

Judge Homer Thornberry of the U.S. Circuit Court of Appeals, President Johnson's choice to replace Fortas, is a former congressman, which should stand him in good stead in the coming fight over confirmation. Thornberry, a lifelong resident of Austin, Tex., was in Congress from 1948 to 1963, much of the time on the formidable Rules Committee, where his record was one of moderate conservatism. On the federal bench, as district court judge since 1963, circuit judge since 1965, his record is considered liberal.

We are not impressed by the justice of the plaint of Republican Senators George Murphy, Robert P. Griffin, John Tower, Everett Dirksen and others that Chief Justice Earl Warren at 77 should have waited another seven months before resigning to avoid giving the right of selection to "a lame duck president." President Johnson is fully President as long as he is in office.

Besides, whoever is President in 1969 is likely to get his share of appointments: Justice Hugo Black is 82, Justices John M. Harlan and William O. Douglas are both 69 and in poor health. All three are unwilling to step down now.

Republican grumbling is based largely on the thought that Richard Nixon might be the next President and might name much more conservative persons than Johnson. Since any nominee must be approved by a majority of the Senate, ordinarily following approval by a majority of the Senate Judiciary Committee, the grumbling has an operative side.

Three of the five Republicans on the 16-member committee are among the grumblers: Senators Dirksen, Strom Thurmond and Hiram L. Fong. Three of the Democrats on the committee have been bitter critics of the recent Supreme Court: Senators James Eastland, John McClellan and Sam J. Ervin. With two more recruits, these six could block committee action. Dirksen isn't sure he wants to go that far.

President Johnson, however, said he had consulted ahead of time with party leaders in Congress and with committee chairmen. He is confident the nominations will go through. They should.

[From the Sacramento (Calif.) Bee, June 25, 1968]

WARREN'S NAME IS WRIT IN GREATNESS

One of America's greatest jurists is about to leave the United States Supreme Court with the stepping down of Chief Justice of the United States Earl Warren.

In his 16 years as chief justice, Warren has enlarged the field of freedom, fought successfully to undo much of the evil of the McCarthy era and brought almost unprecedented renown to the high court.

It is very significant that, unlike such justices as Harlan Stone, Warren did not have to overcome early conditioning but evolved logically as a product of the Hiram Johnson liberal Republican revolution in California.

The nation was alerted in 1954 to the fact it had no ordinary chief justice in Warren. This alert was sounded when the Warren court overturned the fatefully enshrined Plessy versus Ferguson "separate but equal" ruling of an 1890 Supreme Court.

This unanimous decision, which initiated racial desegregation in the public schools and turned America to new concepts of equality, is a testimonial to Warren and the court.

From this time on Warren led the court to a series of decisions which defended the rights of minorities, the poor and the underprivileged against the unconditional power so long enjoyed by the establishment.

The potentially Fascist Smith Act was made to conform to the Constitution and thus disarmed of its menace. Warren led the court in cutting down the cancerous growth of congressional witch hunts by ruling legislative investigations must be in furtherance of a legitimate end of Congress.

Warren has been accused of making sociological rather than legal rulings. But what he and the majority of the court did was to demonstrate legal bases in the Constitution for social innovations.

The Warren court gave to the individual, no matter what his color, income, morality or creed, the rights the Constitution meant for him to have. By sweeping back the encroaching power of wealth, police tyranny and regional prejudice, Warren's leadership scraped many of the barnacles from the Constitution and made it truly a dynamic document to fit the needs of a growing nation.

The Warren court's one-man, one-vote ruling gave people, rather than cows, representation thus strengthening majority rule.

Warren's staggering achievements on the court can be fully evaluated only by history but the nation already knows history will rate him one of the truly great justices, both because of his enlargement of democracy and because of the jackals which have yapped at his robe.

[From the Milwaukee (Wis.) Journal, June 27, 1968]

NEW CHIEF JUSTICE

President Johnson's nomination of the second newest justice of the supreme court to be chief justice is as orthodox as it was expected, and no reflection on Abe Fortas' more senior colleagues. Chief Justice of the United States is a separate position by itself and presidents not uncommonly have brought men to it from outside the court altogether and even from outside the judiciary—President Eisenhower did just that when he named the now retiring Earl Warren.

To the extent that a chief justice can lead the court, Fortas will undoubtedly have as active, illuminating and impactful a tenure as Warren's has been for the last 15 years. But a chief justice has no specific power to direct the decision making. His vote is only one of nine; his public prestige does not intimidate his colleagues. His tools of influence are no different from any of theirs—personality, persuasiveness and intellect.

Fortas is already known to be as thorough a defender and promulgator of historic American and human liberties as Warren turned out to be. In addition, as one of the most admired technicians in the land at the practice of constitutional and other law, he will probably be a more precise judicial craftsman than his predecessor.

Fortas has been an intimate of the president, to be sure; it was Johnson who put him on the court in the first place. But now making him chief justice cannot be faulted as near cronyism; the choice of a man like Fortas shows the president faithful enough to this great responsibility.

The same cannot surely be said in advance about Johnson's award of the vacant seat as associate justice to his fellow Texan, a former congressman and now a federal circuit judge, Homer Thornberry. The position does often bring out unexpected quality in the men it honors. Whether Thornberry's best is good enough will just have to be seen.

[From the Nashville Tennessean, June 29, 1968]

THE REPUBLICANS AND THE COURT

The Republicans who are opposing President Johnson's nominees for Supreme Court posts—and that includes Sen. Howard Baker of Tennessee—are acting without regard to reason or tradition.

In the first place, it is the responsibility of the President of the United States to fill vacancies when they occur. And the argument that the chief justice is still in office although he has resigned is a specious one. In the second place, the Republicans should reflect that Chief Justice Earl Warren is a Republican himself and could have easily have waited to retire after the inauguration of the next president.

What Chief Justice Warren has said, in effect, is that he doesn't want his party to name his successor.

Finally, the ridiculous idea that a "lame duck" president shouldn't fill vacancies would be a bad precedent, not only for the Republicans who put forth this childish argument, but the country as well.

In his last term and as a "lame duck" president, General Eisenhower made two appointments to the Supreme Court: Justices Charles E. Whittaker and Potter Stewart. President Hoover named Justice Benjamin Cardozo in the last year of his term, although Mr. Hoover wasn't limited to two terms.

As a matter of fact, it was a Republican-inspired move that brought about a limitation of presidential terms, something that chagrined the party no end in 1960.

If the GOP really wants to be angry at somebody, it ought to be angry at Chief Justice Warren.

Senator Baker's attitude is surprising since Tennessee has never had a chief justice on the Supreme Court. While this is by no means an overriding factor, it would be a notable distinction for the state.

Yesterday Senate Majority Leader Mike Mansfield said that if a Republican filibuster develops and cannot be broken he assumes Justice Warren will reconsider his resignation and stay on the court.

Senator Mansfield may have brought about the quickest end to a filibuster in history.

[From the Des Moines (Iowa) Register, June 28, 1968]

WARREN COURT'S LEGACY

"Yes, yes—but were you fair?" Chief Justice Earl Warren sometimes asked lawyers arguing a point before the Supreme Court of the United States. During his 16 years of chief justice he brought to the court a wholesome whiff of concern for substantial justice and not just legal technicalities and precedents.

When Warren was appointed to the high court, he had behind him a decade as governor of California, 24 years of public service as a prosecuting officer, only three years of private practice of law and no experience whatever as a judge.

Legend has it that his appointment as chief justice was in part an accommodation to Vice-President Richard Nixon and Senator William Knowland—to get their rival, Warren, out of California Republican politics. Be that as it may, Warren made a great chief justice.

Under Warren, the court moved into fields long neglected by earlier courts, fields where the ordinary political process had ignored basic principles of the U.S. Constitution. It set new standards for fairness, often in unanimous decisions. In 1954 the Warren court declared unconstitutional compulsory school segregation by race and began the long task of ending the practice. Just this spring it interpreted an old Reconstruction Era law as giving members of racial minorities the right to buy or rent property without discrimination. In between came a whole host of civil rights decisions, revolutionizing this area of the law.

It was the Warren court also which boldly entered a thicket long shunned by the courts as "political": fairness in apportioning state legislatures and in drawing congressional district lines. "Legislators represent people, not trees or acres," the chief justice ruled.

Another long line of decisions upheld the rights of persons charged with crimes to legal counsel and protection against self-incrimination.

The court drew more sharply the line between church and state and wrestled manfully to interpret changing views of what is pornographic.

All these endeavors were controversial. Conservative lawyers sputtered, Southern governors stood in doorways, roadsides blossomed with "Impeach Earl Warren" billboards, police and prosecutors wondered out loud how they could do their jobs under the new limitations.

But America will look back on those 15 years of the Warren court as an astonishing achievement, when the "nine old men" turned from upholding the status quo and the precedents and transformed the nation's legal system in accord with ideals which the nation had long proclaimed but often failed to practice.

[From the Denver (Colo.) Post, June 30, 1968]

ANTI-FORTAS FILIBUSTER LACKS MERIT

Some Republican senators now are talking of a filibuster against confirmation of Abe Fortas as chief justice of the U.S. Supreme Court.

Maybe, in an election year, they can put together a filibuster team on a purely political basis. But we should think any responsible Republican senator will be uncomfortable about joining such a venture, because on the merits of the nomination they have no case.

Fortas is simply outstandingly qualified for the position of chief justice—not only because of his own background but particularly in view of the kind of cases the court is facing—and anyone who knows Fortas, and the court's docket, knows it.

The Supreme Court is now moving into a significantly different era from the one in which the Warren court has operated. As far ahead as human vision can penetrate, there are no earthshaking constitutional issues to be adjudicated—nothing on the order of school desegregation or one man-one vote redistricting.

What the court does face are two other types of case which call less for constitutional innovation and more for incisive legal analysis and pragmatic wisdom.

First, there will be for some time to come the need to spell out applications of many of the Warren court's landmark decisions to specific situations.

Second, just beginning to arrive at Supreme Court level is a new type of case arising from the provision of various services to specific groups of citizens by a benevolent but highly bureaucratic government.

These cases, now arising in the fields of education and welfare but probably soon to come also from health service disputes, commonly ask this short of question: Where is the line to be drawn between services the state may bestow on certain classes of people at its discretion, and those services the state must provide to all citizens, as a matter of constitutionally-guaranteed equal treatment, if it provides them to any?

One tricky example: how much and what kind of educational aid may the government provide to children in non-public schools?

We think most GOP senators would agree that there is no man better qualified than Fortas to lead the court through the intricacies of such problems.

For nearly 30 years, Fortas has been advising corporate clients and government officials on how to cope with intricate problems arising from conflicts between laws and bureaucratic regulations adopted pursuant to those laws, or conflicts between the laws and regulations and people's (or corporate) needs. In so doing, Fortas has earned a towering reputation for coupling incisive legal analysis of a problem with eminently pragmatic wisdom as to what to do about it.

It has helped, of course, that he has known personally practically everyone in high office during those years. But the reason he knows them is not only that he is a nice guy, but that his advice is so highly valued by all who know him.

Those people include, we're sure, many of the senators who may now be asked to filibuster against his nomination. We find it hard to believe that any Republican senators of statute will do so.

We know that they shouldn't.

CONTINUING CRISIS IN EDUCATION FINANCE

Mr. YARBOROUGH. Mr. President, the recent House vote to cut $127 million from the appropriation bill for title I of the Elementary and Secondary Education Act is a massive backward leap in our efforts to salvage millions of children from the vicious and despairing cycle of poverty. Only a few years ago did this Nation begin to acknowledge directly that hundreds of thousands of impoverished children were being victimized by educational discrimination. Causes for this discrimination were—and still are: apathy and despair in the home which the children carry with them into the school; low energy levels because of inadequate nutrition and health, and learning requires energy; inappropriate instructional materials; overcrowded and dilapidated schools in low-income areas; underpaid and often ill-prepared teachers; and understaffing of special services, such as psychologists, nurses, and social workers.

The effects were—and often still are—substantially higher dropout rates and significantly lower achievement levels among impoverished children when compared with favored children. With our awareness of the educational discrimination against a sizable segment of tomorrow's citizens, we enacted legislation to give these children a chance. The progress gained must not lose its momentum now. It is imperative that our Senate Appropriations Committee vote to restore the $127 million for title I. And it is even more imperative that the Senate as a whole vote to restore these moneys and persist to retain them in conference.

For example, in my own State, Texas, we will have to drastically curtail our title I program if there is a 15-percent reduction in funds as indicated in the House vote.

In dealing with some of the specifics of our crisis, let me first explode a myth posed by the House Committee on Appropriations which maintains that their cuts affects only equipment. This fallacy can be shown in all the States, and I will demonstrate it for my State of Texas. Last year Texas schools used at least 90 percent of their title I funds for salaries. This year that cost goes up some 5 percent for salary increases. In general, the schools of my State would have to cut

the shoe and textile industries which are of more immediate concern to New Hampshire.

This represents a compromise with the free trade concept so dear to the one-world idealists. But we don't live in an ideal world. We live in this one.

As Mr. Roche says: "Show us any significant steel nation in the world which either opens its own market freely to competitors of other nations or does not materially infringe free trade concepts by the assistance it gives its own steelmakers in order to help them sell abroad."

Mr. Ackley and the President's Council of Economic Advisers had better begin getting their fine theories together with reality or they too may be priced out of the market.

Mr. LONG of Louisiana. Mr. President, will the Senator from New Hampshire yield?

Mr. COTTON. I am glad to yield to the Senator from Louisiana.

Mr. LONG of Louisiana. I wish to compliment the Senator for the statement he has just made. As a member of the Finance Committee, it becomes fairly obvious to me that if nothing is done about the trend which has been developing with regard to the steel industry, that industry will suffer very badly and lose a great deal of its market right here in the United States.

A similar situation exists with regard to the textile industry, so ably defended by the Senator from South Carolina [Mr. HOLLINGS], now the present occupant of the chair.

We have also had some experience with regard to the problem of petroleum. Without an import program with regard to petroleum, our balance of payments would perhaps be $1 billion worse than it is today.

The fact is, no nation other than ours, to my knowledge, permits one of its major, established, essential industries to run the danger of being completely destroyed and driven from its own markets.

The time will come when the Nation will feel that it should look after its own industries, at least to some reasonable extent.

I am certainly aware of the fact that the steel industry is one of those which is more threatened than others by the great rise in imports.

We have this choice: We can do nothing and let the trend continue until eventually the steel industry is crippled; or, we can move with foresight—we can see that this is a very serious problem—and act to stem imports in the interest of maintaining a healthy steel industry. This is a matter we will have to correct sooner or later.

I think the Senator from New Hampshire has analyzed very well the general nature of the problem which has developed with regard to steel. As he pointed out, foreign trade in New Orleans, the largest city in the State I have the honor in part to represent, is involved here. I can certainly appreciate his problem. I am trying to say here that if we did not have some subsidy to protect the American shipping industry, there would be no shipyards in New Orleans. The ships would all be manufactured either in Japan or Italy, but we would not be manufacturing them in New Orleans. Thus, I certainly have great sympathy with the problem which the Senator from New Hampshire has so ably set forth here this afternoon.

As I do have the honor to represent, in part, the State of Louisiana, I want to assure the Senator from New Hampshire that at such time as we are able to move to find the overall answer to the steel problem, we shall do so, but it will take considerable doing in light of the trend the Senator from New Hampshire mentioned; namely, the large increase in steel production in Japan which, so far as we know, has no other market to go to but the United States. It will take some real doing.

I anticipate being one of those helping him with this problem when the time comes.

Mr. COTTON. I thank the distinguished Senator from Louisiana, chairman of the Committee on Finance. I would say to him that my reference to the subzone in New Orleans was not intended in any sense as an attack upon that particular situation or upon those who, very naturally, are availing themselves of it. But I pointed out that it can be the forerunner of similar operations which might extend throughout the length and breadth of the United States. It is the possibility, the danger, and the continued practice which I emphasize. I assure the Senator that I was not singling out his State, or any of its great cities, for an attack in any way.

I join the Senator from Louisiana in commending the present occupant of the chair, the distinguished Senator from South Carolina [Mr. HOLLINGS] for his recent efforts to aid the textile industry. I point out that more than 10 years ago, I introduced a resolution which caused the creation of a special committee on textiles, whose chairman was the very able Senator from Rhode Island [Mr. PASTORE] and on which the Senator from South Carolina [Mr. HOLLINGS], his colleague [Mr. THURMOND], and I served.

We fought through three administrations to try, by the imposition of reasonable quotas, to save the dying textile industry of this country. We fought with indifferent success.

It would seem that all three Presidents in whose administration we were striving—two of them Democrats and one Republican—were all equally influenced by by the policies of the State Department, to such an extent that their desire to so accommodate American trade policies as to satisfy and make happy all our friends, neutrals, and some of our enemies throughout the world, seemed to override their desire to save jobs in this country for American workers.

So far as my own State of New Hampshire is concerned, we have watched practically the death of the cotton textile industry. We still have a remnant of the woolen textile industry left. We foresee now the same fight to try to protect the shoe industry which is, at the present time, the largest and most vital employer and job maker in the State which I have the honor to represent. We already see the oncoming inroads of electronics imports which can deprive our State and other States of many, many jobs for American workers.

It is easy to send raw materials abroad. It does not take many workers to do that. But when those materials are made into the finished product, it requires many workers. When we get the answer again and again from downtown that the balance of trade against this or that country is still in our favor, in many cases they are talking about raw materials.

It takes comparatively few workers to ship cotton abroad, but when the workers abroad proceed to make that cotton into shirts and dresses and send them back, it means that a great number of American workers have been deprived of their jobs. We have been busily engaged in the last few years in exporting one particular product, and that has been American jobs.

I thank the Senator for his comments, and I yield the floor.

NOMINATIONS OF JUSTICE ABE FORTAS AND JUDGE HOMER THORNBERRY

Mr. MOSS. Mr. President, during recent days various distinguished Senators have taken the Senate floor to speak in support of President Johnson's nomination of Justice Abe Fortas to be Chief Justice of the Supreme Court, and for Judge Homer Thornberry to be a Supreme Court Justice.

Most of these supporting speeches have referred to the purely political activities of the "lonely 20." I refer to those 19 Senators who have signed a letter opposing the appointments because of some imagined lameduck status of the President and former Vice President Richard Nixon who has joined their feeble protest.

I agree with the distinguished senior Senator from Oregon [Mr. MORSE] that Mr. Nixon's entry into this matter is strong evidence, if indeed any was needed, that the position of the 19 Senators is nothing but partisan politics. Mr. Nixon's support is not surprising, but it is interesting to see he is the only candidate to join.

I refer to these men as the lonely 20 because there have been very few, if any, other Government figures who have joined their political maneuvering. On the contrary, Senator after Senator has risen to support the President's right and duty to make these appointments. I pointed out on June 28 that the Constitution left him no alternative but to make the appointments. The language of the Constitution requires the President to do so.

Again on July 2 in a Senate speech, listed seven newspaper editorials from throughout the country supporting the President and criticizing his opposition.

Since signing their letter, these 19 Senators must have indeed realized the loneliness of their position because the tide of information and public comment has been almost unanimously against them. Perhaps that is why Senator DIRKSEN, who does not support their position, now says that he knows of four of the 19 who will vote to support the President's appointments.

It is interesting to me that we have not heard much from the 19 signatories of that letter since the letter was released to the public. They have not defended their position on the supposed lameduck status of the President. We

have not heard them on the Senate floor as we have heard the supporters of the nominations.

Perhaps the columnists Evans and Novak explain why in their column in the Washington Post this morning. Today's piece starts by saying that the reason the attack is crumbling is that "from the outset it was almost entirely an instinctive partisan attack against President Johnson."

This would explain why we have not heard from any of the 19 that Abe Fortas is not qualified to be Chief Justice. On the contrary, some have indicated that they felt he should be nominated, but then their habitual obstructionism and no saying gets in the way, so they come up with the feeble, so-called lameduck reasoning. And then, having raised this transparent excuse, they have gone days without trying to defend it on the Senate floor or by other public means.

There is no question but what we in the Senate have the responsibility to look long and hard at these important nominations sent to us by the President. It is true that Abe Fortas could serve as Chief Justice for a long time. We should investigate his qualifications to do the job. The same is true of Judge Thornberry.

But, we should not make the matter one of political bickering, which is the only way one can describe the single question which the opposition has raised.

If any of the lonely 20 has some other reason besides the now defunct lameduck question why these nominations should not be approved, then they should take the floor of the Senate and let us hear it. But, if they have no other point of opposition to raise, then we should complete our hearings and call the roll.

I would like to quote from an editorial from the Salt Lake Tribune, which I feel expresses the situation very well:

> We trust that opponents of the appointments will have their say and cast their votes quickly. If, as leaders of both parties now predict, the appointments will be confirmed no good will come of protracted debate and maneuvering solely for the sake of making trouble. Senators should not forget that the important thing is to secure a capable chief justice and associate justice. If the appointments are good ones, and we believe they are, then it doesn't really matter that a "lame duck" made them.

Mr. LONG of Louisiana. 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. LONG of Louisiana. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PUBLIC PARKING IN THE DISTRICT OF COLUMBIA

Mr. BREWSTER. Mr. President, the Senate has passed legislation to establish a public parking authority in the District of Columbia. This legislation, sponsored by my distinguished colleague, the junior Senator from Maryland, is an effective approach toward solution of the acute parking problems that afflict this city.

The legislation that we have passed provides powers for the public parking authority to finance and maintain parking facilities for Federal employes and visitors. The situation faced by Federal employes is particularly serious. They must come to work every day and scramble for parking space near their offices. It is imperative that the Government help provide parking space for them. Indeed, it is my feeling that all future construction of Government buildings should include parking facilities for the employes who will work in those buildings.

The legislation passed by the Senate is now being considered in the House. There, unfortunately, efforts are underway to obstruct it. Weakened, watered-down versions of the Senate legislation have been introduced.

The legislation introduced in the House is preferred by the parking lobby over the legislation we have passed in the Senate. This is understandable. The parking lobby, which has a virtual hammer-lock on parking facilities in this city, has nothing to gain and much to lose in the legislation approved by the Senate.

The parking lobby will benefit from the legislation introduced in the House. But the public will suffer. The public will benefit only from the legislation passed by the Senate to establish an effective and workable public parking authority.

It is unfortunate that certain Members of the House apparently feel that the special interests of the parking lobby are more important than the general public interest. If they are sincere in their efforts to improve the parking situation in the District of Columbia, these obstructionists will disavow their support of the weak parking legislation introduced in the House and will give their full support to the legislation we have approved in the Senate.

Mr. President, the Washington Post, on July 5, published an editorial entitled "Parking Obstructions" addressed to the subject. I ask unanimous consent that it be printed in the RECORD.

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

PARKING OBSTRUCTIONS

Washington's shortage of parking facilities is so acute that its streets and avenues are choked by traffic seeking spaces or lots. Those who suffer each morning and evening through the tortuous process of getting in and out of those facilities might reflect a moment during the next traffic jam on the success the powerful parking lobby seems to be enjoying in preventing anything from being done about it.

Hurried efforts are being made in the House to curb the limited success of Senator Tydings' bill calling for the establishment of a Public Parking Authority for the District. The Tydings proposal would give to the Authority powers to finance and maintain facilities for Federal employes and visitors, thus easing and distributing the load on both parking lots and city streets. The bill has the backing of the business community, the Federal City Council and Downtown Progress. It has passed the Senate as part of the National Highway Bill.

Meanwhile, Representatives Joel Broyhill and Charles Mathias have also introduced bills calling for a Public Parking Authority. Their proposals are totally unworkable, however, and can only serve to obstruct passage of a decent bill. Quick hearings have been called on the two bills. The strategy is to give to the chairman of the House District Committee enough authority to quash the impact of the Tydings proposal if it ever gets to conference committee.

It is surprising that a Congressman of the stature of Mr. Mathias would lend his name to such a move, if he was aware of it. His bill, like Mr. Broyhill's, barely pays lip service to the Authority it would establish. It does not mention where the money to finance parking lots is to come from, nor does it grant the Authority the essential right of eminent domain. It does not give to the Mayor, as a member of the Authority, power to negotiate for the use of Federal property, but only to "consult" with the Administrator of General Services—to make no mention of the Interior Department, which is, after all, responsible for Federal lands.

The public deserves better than this. A Public Parking Authority is desperately needed here, but if it is to be set up at all, it must be the kind of authority that does indeed serve the public, not the special interests of the parking magnates.

Mr. LONG of Louisiana. 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. LONG of Louisiana. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

JUVENILE DELINQUENCY PREVENTION AND CONTROL ACT OF 1968

Mr. LONG of Louisiana. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 12120.

The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 12120) to assist courts, correctional systems, and community agencies to prevent, treat, and control juvenile delinquency; to support research and training efforts in the prevention, treatment, and control of juvenile delinquency; and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. LONG of Louisiana. I move that the Senate insist upon its amendment and agree to the request of the House for a conference, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. CLARK, Mr. RANDOLPH, Mr. NELSON, Mr. JAVITS, and Mr. PROUTY conferees on the part of the Senate.

ADJOURNMENT

Mr. LONG of Louisiana. Mr. President, if there be no further business to come before the Senate, I move that the Sen-

House had agreed to 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. 16703) to authorize certain construction at military installations, and for other purposes.

The message also announced that the House insisted upon its amendments to the bill (S. 222) to insure that public buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. GRAY, Mr. JONES of Alabama, Mr. WRIGHT, Mr. GROVER, and Mr. MCEWEN were appointed managers on the part of the House at the conference.

The message further announced that the House insisted upon its amendment to the bill (S. 3418) to authorize appropriations for the fiscal years 1970 and 1971 for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. FALLON, Mr. KLUCZYNSKI, Mr. WRIGHT, Mr. EDMONDSON, Mr. CRAMER, Mr. HARSHA, and Mr. DON H. CLAUSEN were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 18038) making appropriations for the legislative branch for the fiscal year ending June 30, 1969, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. ANDREWS of Alabama, Mr. STEED, Mr. KIRWAN, Mr. YATES, Mr. CASEY, Mr. MAHON, Mr. LANGEN, Mr. REIFEL, Mr. ANDREWS of Alabama, Mr. STEED, Mr. and Mr. BOW were appointed managers on the part of the House at the conference.

The message further announced that the House had agreed to the amendments of the Senate to the concurrent resolution (H. Con. Res. 785) relating to the pay of the U.S. Capitol Police force for duty performed in emergencies.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (S. 3102) to extend until November 1, 1970, the period for compliance with certain safety standards in the case of passenger vessels operating on the inland rivers and waterways.

PRESIDENT JOHNSON'S SUPREME COURT NOMINATIONS

Mr. MORSE. Mr. President, I have two letters I wish to read into the RECORD. An oncoming issue which will confront the Senate concerns the confirmation of Supreme Court Justices, including a Chief Justice. I wish to make available to the Senate two very interesting letters; the first is dated July 2, 1902, and was written by Justice Horace Gray, of the U.S. Supreme Court, to President Theodore Roosevelt, which reads as follows:

DEAR MR. PRESIDENT: Being advised by my physicians that to hold the office of Justice of the Supreme Court for another term may seriously endanger my health, I have decided to avail myself of the privilege allowed by Congress to judges of seventy years of age and who have held office more than ten years. I should resign to take effect immediately, but for a doubt whether a resignation to take effect at a future day, or on the appointment of my successor, may be more agreeable to you.

Wishing that the first notice of my intention should go to yourself, I have not as yet mentioned it to any one else.

Very respectfully and truly yours

HORACE GRAY.

Mr. President, President Theodore Roosevelt replied to Justice Gray's letter on July 11, 1902, from Oyster Bay, N.Y., as follows:

MY DEAR JUDGE GRAY: It is with deep regret that I receive your letter of the 9th instant, and accept your resignation. As you know, it has always been my hope that you would continue on the bench for many years. If agreeable to you, I will ask that the resignation take effect on the appointment of your successor.

It seems to me that the valiant captain who takes off his harness at the close of a long career of high service faithfully rendered, holds a position more enviable than that of almost any other man; and this position is yours. It has been your good fortune to render striking and distinguished service to the whole country in certain crises while you have been on the court—and this in addition of course to uniformly helping shape its action so as to keep it on the highest standard set by the great constitutional jurists of the past. I am very sorry that you have to leave, but you go with your honors thick upon you, and with behind you a career such as few Americans have had the chance to have.

With warm regards to Mrs. Gray, believe me,

Faithfully yours,

THEODORE ROOSEVELT.

Mr. President, then, an interesting P.S.:

Hon. HORACE GRAY,
Nahant, Mass.
Personal.

P.S.—The sentence I am about to write I suppose must not be made public because it might mistakenly be held to imply that I had anticipated a change in the Chief Justiceship. If through any accident to my good friend, the Chief Justice, there had been such a vacancy, it had been my intention to appoint you to it.

Mr. President, it is very interesting, with reference to the exchange of letters, that on August 11, 1902, President Theodore Roosevelt announced his intention to appoint Oliver Wendell Holmes to succeed Justice Gray.

On September 15, 1902, Mr. Justice Gray died before Holmes took office. On December 4, 1902—not very long before the adjournment of that session of Congress, by the way—the Senate confirmed Holmes' nomination.

Mr. President, I thought this bit of information, which I gleaned from trying to do my study work, bears a very interesting application to the oncoming confirmation debate which I think will take place in the Senate before adjournment. It is appropriate to mention this today because we cannot read this historic incident without recognizing its application to the current vacancy in the Chief Justiceship of the Supreme Court to which President Johnson has nominated a very, very able Justice of the Supreme Court. I trust it will be kept in mind by Senators as they review this nomination and that of Judge Thornberry of Texas to be Associate Justice.

VIEWS OF FARMERS ON EXTENSION OF NATIONAL LABOR RELATIONS BOARD

Mr. MORSE. Mr. President, while I am on my feet, I ask unanimous consent to have printed in the RECORD some material I recently received reflecting the views of farmers concerning the matter of extension of the National Labor Relations Board to agricultural workers. I submit both letters and attachments which consist of some questionnaires to my colleagues for their inspection because I believe it behooves everyone to glean as many insights as possible about this problem for this purpose.

I ask unanimous consent that the letters which I have received from Mr. Robert W. Hukari, president of the Hood River County Farm Bureau, and Mr. James P. Mallon, president of the Hood River County Chamber of Commerce, together with the questionnaires which are attached, be printed in the RECORD.

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

HOOD RIVER COUNTY CHAMBER OF COMMERCE,
Hood River, Oreg., May 23, 1968.

Hon. WAYNE MORSE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MORSE: The Hood River County Farm Bureau and the Chamber of Commerce conducted a survey of nearly 600 farmers in the county in an attempt to determine how they would be affected by provisions in HR 16014. We are forwarding to you the questionnaires which were returned along with a tabulation of the results. To date we find that:

From a total sample of 190, 88 farmers would be covered under the present provisions of more than 12 workers on any day of the preceding year, or total labor costs in excess of $10,000. These 88 farmers operate a total of 6,550 acres for an average farm of 74.4 acres. They paid a gross of $1,533,190 in wages last year; an average payroll of $17,422. At the peak period they employed a total of 2,107 workers, which figures 24 workers per farm. To a man, these 88 farmers were opposed to the concept embodied in HR 16014, with typical comments such as:

123 acres Mr. Aubert: "This bill would eliminate a lot of people from employment that need the money. Today agriculture utilizes many people who otherwise would be on the welfare roles. I'm speaking of the wino and the older citizen who is supplementing his social security. Neither group can be classed as productive workers in that their physical conditions or emotional stability prevents them from regular employment but because of the flexibility of farm routine, agriculture can utilize their labor for possibly 2 or 3 days a week. There is no other industry who can absorb this kind of employee and if they are phased out of agriculture you can be sure their needs

S.J. RES. 130

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Trade Commission is authorized and directed to—

(a) conduct a full and complete investigation of the purchasing, processing, marketing (including advertising and franchising), pricing and financing practices of persons, partnerships, and corporations engaged in producing, selling, installing, or financing home improvement products, or services in connection therewith, in commerce (as that term is defined in section 4 of the Federal Trade Commission Act) with a view to determining whether any such practices are in violation of the provisions of the Federal Trade Commission Act, and whether further legislation is needed to protect competitors and consumers adequately from such practices;

(b) transmit to the Congress within one year after the effective date of this joint resolution, a report which shall include a comprehensive statement of (1) the facts and circumstances disclosed by such investigation, (2) the action taken and contemplated by the Commission with respect to violations of law disclosed by such investigation, and (3) such recommendations for further legislation as the Commission may deem appropriate;

(c) undertake a rigorous and expanded enforcement program with respect to any such violations of the Federal Trade Commission Act within the home improvement industry and

(d) transmit to the Congress within six months after the effective date of this joint resolution, and annually thereafter for three years, a report which shall include a comprehensive statement of (1) the status of these enforcement activities, including a brief description of the action taken and contemplated by the Commission under its enforcement program, and (2) such recommendations for further legislation as the Commission may deem appropriate.

SEC. 2. (a) The Commission is authorized, whenever it has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, an unfair method of competition in commerce, or an unfair or deceptive act or practice in commerce within the meaning of section 5 of the Federal Trade Commission Act, and in connection with the production, sale, installation, or financing of home improvement products, or the performance of any services in connection therewith, and

(2) that the enjoining thereof, pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public,

to bring suit, by any of its attorneys designated by it for such purpose, in a district court of the United States or in the United States court of any territory, to enjoin such unfair method of competition or such unfair or deceptive act or practice. Upon proper showing, the court, in its sound discretion, may grant a preliminary injunction without bond as it shall deem just in the premises, under the same conditions and principles as injunctive relief against conduct or threatened conduct that will cause loss or damage is granted by courts of equity. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business.

(b) Authorization conferred upon the Commission by this section shall not continue in effect after a date which follows by three years and six months the effective date of this Act. Nothing contained in this subsection shall be effective to abate any proceeding instituted by the Commission during the effective period of this section, or to prevent the enforcement of any injunction or order issued by any court in any such proceeding.

SEC. 3. There is hereby authorized to be appropriated to the Federal Trade Commission the sum of $300,000 each year for three years to carry into effect the provisions of this joint resolution.

SEC. 4. This joint resolution shall take effect on the date on which funds to carry into effect the provisions of this Act first become available to the Federal Trade Commission pursuant to an appropriation Act enacted after the date of enactment of this Act.

Mr. MONRONEY. Mr. President, I move that the Senate reconsider the vote by which the joint resolution was passed.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Oklahoma?

Mr. GRIFFIN. Mr. President, for what purpose does the Senator from Oklahoma wish me to yield, and for how long?

Mr. MONRONEY. I should like to ask the Senator from Michigan to yield for perhaps 30 minutes, hopefully less, because these are all legislative items which have been passed by the House or which the House is waiting to pass.

Mr. GRIFFIN. Mr. President, I understand there are several amendments, the disposition of which will take an hour or so. Under the circumstances, I should like to proceed with my statement, if I may do so.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

THE NOMINATIONS OF MR. FORTAS AND MR. THORNBERRY

Mr. GRIFFIN. Mr. President, positions on the Supreme Court of the United States should never be regarded as ordinary political plums; and when they are, the Senate has a clear responsibility.

Mr. President, a good deal of the current controversy revolves around the appropriate functions of the President and of the Senate in circumstances such as these. There are some who suggest that the Senate's role is limited to merely 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 Government is wrong; and it does not square with the precedents or with the intention of those who conferred the "advice and consent" power upon the Senate.

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 Goverment. 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 his own 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 go along, and the matter was put aside. It was not finally resolved until next to the 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 does not confer upon the President an unlimited power to appoint within the executive branch. And, by its terms, the language does not give the Senate a similar power of appointment with respect to the judiciary, as Madison suggested. But it is interesting and significant to observe how far we have moved in actual practice over the years toward those original objectives of Madison.

It is a fact, though sometimes deplored by political scientists, that judges of the lower Federal courts are actually "nominated" by Senators—and that the President really has 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 his Cabinet, he cannot be held accountable for the administration of the executive branch of Government.

Throughout our history, only eight out of 564 Cabinet nominations have failed to win Senate confirmation. The last such instance, of course, was the refusal in 1959 of a Senate majority, led by Senator Lyndon Johnson, to confirm the nomination of Lewis Strauss to be Secretary of Commerce in President Eisenhower's Cabinet.

But the general attitude of the Senate over the years with respect to Cabinet nominations was expressed by Senator Guy Gillette 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 . . .

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 10 years, it was difficult to argue that he lacked qualifications.

Senator HUBERT HUMPHREY supported the reappointment of Olds. But Senator Lyndon Johnson was a leading opponent, and the Senate finally voted to reject the nomination. Afterward, there was general comment in the press that the real issue had little or 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." For example, 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 as 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 and declared 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 for 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 7 to 6 against confirmation and the matter never reached the Senate floor.

One may argue reasonably with respect to nominations within the executive branch, for which the President can be held accountable, that it should be enough for the Senate merely to ask: "Is he qualified?" But, obviously, even in that sphere there is nothing new about the Senate considering "cronyism" or other matters beyond the mere qualifications of a nominee.

However, it is very important to recognize, against the backdrop of history, 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. It is clear that in the case of nominations to the Supreme Court, the Senate has a duty to look beyond the question: "Is he qualified?"

A distinguished former colleague, Senator Paul Douglas of Illinois, put it this way:

> The "advice 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 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 was believed that the Judiciary would be made more independent.

To assure the independence of the judiciary as a separate and coordinate branch, it is important then to recognize that the "advice and consent" 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.

Of course, the service of a Cabinet officer usually ends with the term of the appointing President. But when a President and the Senate jointly fill a vacancy on the Supreme Court, they affect judicial policy with all its impact on the lives of the people for generations to come.

Throughout our history as a Nation, up until the pending nominations were submitted, 125 persons have been nominated to be Justice of the Supreme Court. Of that number, 21, or one-sixth, have failed to receive confirmation by the Senate.

It may be of interest that the question of qualifications or fitness was an issue on only four of the 21 instances when Supreme Court nominations failed to win Senate approval.

In debating nominations for the Supreme Court, the Senate has never hesitated to take into account a nominee's political views, his philosophy, writings, and attitude on particular issues, or other matters.

No less a spokesman than Felix Frankfurter has emphasized the responsibility of the Senate to look beyond mere qualifications in the case of a Supreme Court nominee. He said:

> 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.

Of course, everyone is familiar with the oft-quoted statement of Chief Justice Hughes:

> We are under a Constitution, but the Constitution is what the judges say it is.

If there are some who believe, even for purely political reasons, that the opportunity to make such nominations at this particular point in time should be reserved for the new President soon to be elected by the people, there is ample precedent for such a position.

In September, before the election of 1828, when Andrew Jackson defeated John Quincy Adams, a Justice died, leaving a vacancy on the Supreme Court. Well aware of the problems he might face with a politically hostile Senate, Adams sought out and nominated—not a personal "crony," but the most distinguished lawyer he could find, John J. Crittenden of Kentucky. Even Chief Justice Marshall praised this nomination in the highest terms by writing:

> I do not know of a man I could prefer to him.

But the position of a majority in the Senate was simple and straightforward: the appointment should be left to the next President. The Senate stood its ground, refused to confirm, and the new President, Andrew Jackson, a Democrat, filled the vacancy.

In August 1852, Whig President Fillmore tried to fill a Supreme Court vacancy by nominating—not a personal crony, but a very distinguished lawyer, Edward A. Bradford of Louisiana. But a majority in the Senate took the position that the appointment should be made by the President about to be elected that November.

After election of Franklin Pierce, but before his inauguration, Fillmore tried once again to fill the vacancy. Thinking that the nomination of one of its own members might commend itself to the Senate, Fillmore sent up the name of Senator Badger of North Carolina, a most able, eloquent lawyer and former Secretary of the Navy under two Presidents. But the Senate refused to budge and the new President, Franklin Pierce, made the appointment following his inauguration in March 1853, nearly 8 months after the vacancy occurred.

Mr. President, I have dwelled at some length upon this background because I believe it is significant to a realization of the breadth, as well as the importance, of the Senate's responsibility as we turn our attention to the nominations before us.

Mr. President, despite what I have said, I recognize full well that it would be unusual for this Senate in this century to reject the pending nominations. But the circumstances which surround these nominations are highly unusual, and they should be rejected.

It is true, that in this century, only one nomination to the Supreme Court has failed to win Senate confirmation. That was the nomination by President Hoover of John J. Parker, who was bitterly opposed by some groups, not because he lacked outstanding qualifications, but because of his alleged views on social and economic issues.

That the Senate has asserted itself on only one such occasion in this century might attest to the high quality of the nominations which have been submitted by the several Presidents.

On the other hand, it could be evidence of a withdrawal, if not an abandonment, by the Senate of its historic and intended role in the perpetuation of an independent Supreme Court. Any such tendency to be dominated by the Executive would be a dangerous development, out of step with the high purposes and responsibilities of the Senate.

However, I suggest, Mr. President, that the principal and most significant reason relates to the fact that in this century there have been no "lameduck" nominations to the Supreme Court—except and until the two which are before the Senate. By "lameduck" I mean nominations

for the Supreme Court made by a President in the final year of his last term in office.

There have been 16 such "lameduck" nominations to the Supreme Court. History records that the Senate confirmed 7 of those nominations—including Chief Justice Marshall. But the Senate refused to confirm the other nine.

I ask unanimous consent that a list of those nominations, as furnished by the Library of Congress, be printed at the conclusion of my statement.

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

(See exhibit 1.)

Mr. GRIFFIN. Mr. President, in almost every previous instance, when "lameduck" nominations to the Supreme Court were submitted, the vacancy to be filled had been left by the death of a sitting Justice. In only three out of the 16 instances were such nominations submitted to fill vacancies which resulted from resignations.

Never before has there been such obvious political maneuvering to create a "vacancy" so that an outgoing President can fill it and thereby deny the opportunity to a new President about to be elected by the people.

Such maneuvering at a time when the people are in the process of choosing a new government is an affront to the electorate. It suggests a shocking lack of faith in our system and the people who make it work.

It should surprise no one that such a political maneuver has been met head-on by a political response from within the Senate. Indeed, it would signal a failure of our system if there were no reaction to such a blatant political move.

Those who oppose these nominations are engaged in politics—but this is nonpartisan politics in the purest and finest sense. I have no way of knowing who will be elected President in November, and the polls now indicate that the likely nominee of my party would probably lose.

But I do know that this Nation is seething with unrest and is calling for change. A new generation wants to be heard and demands a voice in charting the future of America. Particularly at this point in our history, the Senate would be unwise to put its stamp of approval on a cynical effort to thwart the orderly processes of change.

What is the reason for such haste in denying the people a voice in shaping the course of the Supreme Court for years to come?

There is no urgent reason. There is not even a vacancy on the Supreme Court.

As previously indicated, the charge of "cronyism" is not new to Senate confirmation debates. Although frequently mentioned with respect to lesser offices, it is highly unusual for a President to subject himself to the charge of "cronyism" in connection with a nomination to the Supreme Court of the United States. And never before in history has any President been so bold as to subject himself to the charge of "cronyism" with respect to two such nominations at the same time.

The argument has been advanced that if a "crony"—nominated because he is a "crony"—is "qualified," he should be approved. I reject such a view because it demeans the Senate and the Supreme Court.

At a time when there is a desperate need to restore respect for law and order, as well as respect for the institutions which bear responsibility for maintaining law and order, the cause is not well served by nominations to the Highest Court which can be branded as "cronyism"—and legitimately so.

In this connection, Mr. President, it is necessary to call attention to another matter—an issue raised in the public press which should not be ignored by this Senate.

I need not state in detail what the Members of this Senate already know: That the doctrine of separation of powers is the most fundamental concept embodied in our Constitution and that its preservation is crucial to the survival of free government.

Separation of powers was not an invention of the delegates assembled at Philadelphia in 1787. Even before the Constitutional Convention, those who drafted every State Constitution made or revised during the Revolutionary period, took the doctrine of separation of powers as the very starting point—creating in each instance separate and distinct executive, judicial, and legislative branches.

As James Madison told the Convention, separation of powers is "a fundamental principle of free government." Only when power is divided, under a system of checks and balances, can we expect to find government limited, responsible, and free.

Surely, those who assume positions of high responsibility in any of the several branches have no license to ignore this fundamental principle which is at the core of our system.

Of course, I do not suggest that a Justice of the Supreme Court should have no contact whatever with the President or with members of the legislative branch while he sits on the Bench. But I do believe the people have a right to expect that such contacts will not breach the line which necessarily separates the branches of our Government, and that such contacts will recognize the restraints customarily observed by members of the judiciary.

President Harry Truman stated very succinctly what should be the principle when he said:

> Whenever you put a man on the Supreme Court, he *ceases* to be your friend.

In this connection, it has been alleged that Mr. Fortas, since his elevation to the Bench, has continued to play an active, important role in the executive decisionmaking process.

For example, according to the New York Times Magazine of June 4, 1967:

> It doesn't occur to him (President Johnson) not to call Fortas just because he's on the Supreme Court. Fortas is also drawn into nonjudicial matters by friends who want Government jobs and know he still carries weight at the White House.
>
> Periodically word leaks out about Fortas' involvement in such matters as the unsuccessful campaign to land Bill D. Moyers the job as Under Secretary of State and his efforts to secure a Federal judgeship for David G. Bress, the United States Attorney for the District of Columbia. Other moonlighting chores are White House assignments—advising the President on coping with steel price increases and helping to frame measures to head off transportation strikes. With the increasing intensity of war in Vietnam, Fortas is also consulted more and more on foreign policy.

The relationship over the years between President Johnson and Mr. Fortas was described in the Newsweek magazine issue of July 8, 1968, as follows:

> When "Landslide Lyndon" squeaked through his first Senate primary by a disputed 87-vote margin, it was Fortas who argued him onto the November ballot—and saved his nascent career in the bargain. It was Fortas who first took on the Bobby Baker case . . . Fortas who mapped the Warren Commission and the Johnson family-trust agreement, Fortas who got Walter Jenkins into the hospital after his morals arrest and helped try to talk the papers out of printing the story. * * *

Referring to a continuing relationship after Mr. Fortas went on the Bench, the same Newsweek article reads:

> More mornings than not, says one intimate, Fortas wakes up to a phone call from the President and a pithy reading of the "literary gems" from the eight or ten morning papers Mr. Johnson peruses regularly. And *few* important Presidential problems are settled without an opinion from Mr. Justice Fortas. "My guess," says an insider well placed to make one, "is that the first person the President consults on anything is Abe Fortas."

According to the July 5, 1968, issue of Time magazine:

> No one outside knows accurately how many times Fortas has come through the back door of the White House, but any figure would probably be too low.
>
> * * * * *
>
> It probably never occurred to Johnson that his friend's elevation to the high court would make him any less a Presidential adviser. *And to date, it has not.*

The same issue of Time reported:

> One achievement for which Fortas can claim no laurels was Johnson's response to last summer's Detroit riot. *Fortas wrote the President's message ordering Federal troops into the city.*
>
> It was an unfortunate speech, blatantly political and overly technical at a time that called for reassurance. Johnson, however, was shocked that anyone would dare criticize it. "Why," he told a visitor, "I had the best Constitutional lawyer in the United States right here, and he wrote that."

Mr. President, the Senate does not know how many times Mr. Fortas has been consulted, or the extent to which he has been involved, if at all, in actions and decisions of the White House while he has been a member of the Court.

The Senate does not know whether, in fact, Mr. Fortas participated in the making of decisions and the drafting of the President's statement concerning the Detroit riots last summer.

Mr. President, if a Justice of the Supreme Court can serve as legal adviser to the President, would the Chief Executive not be better served by utilizing the legal talent and speech-writing abilities of three or four sitting Justices—or, for that matter, the whole Court?

Of course, it is not unusual for a mem-

ber of the judicial branch to disqualify himself from consideration of a case because of his activity within the executive branch before going on the Bench. But if the doctrine of separate powers is important, what justification could be offered in the event a member of the judicial branch should actively participate on a regular, undisclosed basis in decisions of the executive branch while serving on the Bench?

The principle involved was clearly established long ago in 1793, when Secretary of State Thomas Jefferson, acting in behalf of President George Washington, sought the advice of the Justices of the Supreme Court on 29 controversial matters.

At that time, Jefferson asked the Justices "whether the public may, with propriety, be availed of their advice on these questions."

The Supreme Court, however, firmly declined to give its opinion to the executive branch on such matters.

The Court said, in part:

We have considered the previous question stated . . . regarding the lines of separation, drawn by the Constitution between the three departments of government. These being in certain respects checks upon each other, and our being Judges of a Court in the last resort, are considerations which afford strong arguments against the *propriety* of our extrajudicially deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of departments for opinions, seems to have been *purposely* as well as expressly united in the *Executive* departments."

It will be recalled that in April 1952, President Truman issued an Executive order seizing the steel mills; and shortly thereafter in June 1952, the Supreme Court ruled that he had no authority as President to take such action.

Let us assume for a moment that several Justices of the Supreme Court had privately participated with President Truman in making the executive decision which culminated in seizure of the mills.

Is it in the public interest to assume that Justices who have engaged privately in such executive activity would disqualify themselves from consideration of resulting litigation?

If Justices who engage privately in such executive activity while sitting on the bench do disqualify themselves, of course, the number of Justices available on the Court to decide particular cases is reduced.

If the Senate should be satisfied that there is nothing wrong in the case of one or two Justices participating in executive decisions, then surely there could be nothing wrong if the President consults regularly and privately with four or five Justices—or more.

In such a situation who will decide the cases that come to the Supreme Court?

Mr. President, in view of the widespread reports in the press such as those to which I have called attention, it would seem incumbent upon the Senate to reexamine the matter of this relationship which was raised in the committee in 1965 when Mr. Fortas was first appointed to the Court. During the committee hearing at that time, the following colloquy took place:

Senator HRUSKA. Now, there is another general proposition that also has been widely discussed. Through the years, you have formed a very close friendship and relationship with our President, which is not merely personal and social, it has also involved professional, business, and political dealings including many personal transactions with the President's own estate, and so on . . .

I presume in due time various aspects of this administration's program will wind up before the Supreme Court of the United States. Now, for the benefit of those who have asked me to ask this question, is there anything in your relationship with the President that would militate in any way against your being able to sit on that bench and pass judgment on cases that come along and thus would affect your ability to function in the true judicial fashion and tradition?

Mr. FORTAS. The short answer to that, Senator, is absolutely not, but let me take this opportunity to say to you that there are two things which have been vastly exaggerated with respect to me.

One is the extent to which I am a Presidential adviser, and the other is the extent to which I am a proficient violinist. I am a very poor violinist but very enthusiastic, and my relations with the President have been exaggerated out of all connections with reality.

Mr. President, questions raised by the relationship between Mr. Fortas and President Johnson are brought into sharper focus by the President's simultaneous nomination of Mr. Thornberry.

The fact that Mr. Thornberry is known to be one of the President's closest confidants is not reason alone to foreclose his confirmation if the Senate is satisfied that he is one of the "best qualified" in the Nation for appointment to the Supreme Court.

Perhaps it can be overlooked that Mr. Thornberry's nomination in 1963 to the Federal District Court in Texas was generally regarded as a reward for past support of administration policies.

However, I wish to call attention to the New York Times of July 21, 1963, which reported that although Mr. Thornberry's appointment "was confirmed by the Senate last Monday, it has not yet been signed by the President and the Attorney General, as required. Mr. Thornberry plans to stay in the House until the commission is signed. Sources privy to the arrangement said they understood the commission might be held up for nearly all this session of Congress."

It is more disturbing to recall, Mr. President, that Mr. Thornberry continued to serve in the House of Representatives for more than 5 months, after being nominated to the Court and confirmed by the Senate, while the White House held onto his commission.

When a member of the legislative branch is nominated and confirmed to become a member of the judicial branch—and then continues to serve in the House of Representatives, with the President holding his commission—a question is necessarily raised. Particularly amid reports that the arrangement was designed to insure Mr. Thornberry's vote on legislative issues during the interim, this situation again suggests a flagrant disregard of the constitutional doctrine of separation of powers.

Mr. President, I have not had an opportunity to read all of the opinions of Judge Thornberry, but I have read some of them. I believe the Senate's attention should be focused on one decision in particular.

In April of this year, in a case arising out of civil disturbances surrounding a visit by President Johnson to Central Texas College near Killeen, Tex., a three judge Federal court, in a per curiam opinion signed by Judge Thornberry, held as follows:

We reach the conclusion that *Article 474 (of the Texas statutes) is impermissibly and unconstitutionally broad.* The Plaintiffs herein are entitled to their declaratory judgment to that effect, and to injunctive relief against the enforcement of Article 474 as now worded, insofar as it may affect rights guaranteed under the First Amendment. *However,* it is the Order of this Court *that the mandate shall be stayed and this Court shall retain jurisdiction of the cause pending the next session, special or general, of the Texas legislature, at which time the State of Texas may, if it so desires, enact such disturbing-the-peace statute as will meet constitutional requirements.* (Emphasis added) [*University Committee, et al. v. Lester Gunn, et al.* (Civil Action 67–63W, W.D. Texas).]

As a lawyer, I have always thought that a statute was either constitutional or unconstitutional. And that a Federal court when confronted with a Constitutional issue, appropriately raised, is under an obligation to resolve it.

In this case, however, Judge Thornberry and his two colleagues seem to be saying that a State statute which they declare to be unconstitutional shall remain in effect, affording the plaintiffs no relief whatever, until and unless the legislature may get around to changing it.

This Senate, which is composed of distinguished members of the bar, might wish to consider whether this unusual—if not unique—decision is indicative of the contribution which Mr. Thornberry would bring to the highest court in the land.

Mr. President, the circumstances surrounding these nominations raise the most serious, fundamental questions.

There are times in the course of history when the Senate of the United States must draw a line and stand up.

This is such a time.

Mr. President, I ask unanimous consent to have printed in the RECORD a number of editorials and articles.

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

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

[From the Wall Street Journal, June 27, 1968]

THE POLITICAL COURT

The appointment of Abe Fortas as Chief Justice may turn out to be a good one, even an outstanding one. Certainly in his brief time on the Supreme Court he has exhibited level-headedness and a commendable concern for law and order.

Yet the manner of the appointment carries an especially heavy aura of politics. And this we think most unfortunate.

The resignation of Chief Justice Warren at a time when President Johnson has only half a year or so left in office was bound to create the suspicion that the idea was to permit the President—and not, say, a President Nixon—to pick his own man.

Mr. Johnson was criticized for naming

Mr. Fortas to the Court in the first place, not on the issue of the latter's merits but because he is a long-standing crony of the President. Such criticism is bound to be intensified now, especially with the simultaneous appointment of a relatively unknown fellow-Texan, and we believe with justification.

Politics, cronyism are nothing new in the history of the Court; indeed, in the nature of things the Court cannot be wholly immune from politics. So it comes down to a matter of degree. The circumstances of this particular shift must impress many as a fairly flagrant example of making the highest tribunal a political football.

Unhappily it is not an isolated instance. One of the more thoughtful objections to the Johnson Administration's general conduct of Government is that its excessive politicking has tended to undermine the institutions of Government—Congress, the Court, the Presidency and lesser entities.

We wish Mr. Fortas well, but we are constrained to say we consider it little service to the Supreme Court, at a time when it is under attack anyway, to have this impression generated. And while the Court cannot be entirely divorced from politics, it is little service to the nation to have politics so forcefully injected into what should be impartial institutions.

[From the Port Huron Times Herald, July 2, 1968]

TOO IMPORTANT FOR CRONYISM

There's a key paragraph in the following statement by Michigan's Sen. Robert P. Griffin. It reads as follows:

"The appointments announced (to the Supreme Court of the United States) smack of 'cronyism' at its worst and everybody knows it."

We heartily support Senator Griffin in his objection to the naming by President Johnson of Justice Fortas as Chief of the Supreme Court and the naming of the President's friend, Thornberry, to a position on the Nation's highest court.

Here's what Senator Griffin has to say about these appointments:

"If an appropriate balance is to be maintained among the branches of our government, there are times in the course of history when the United States Senate must draw a line and stand up.

"I am convinced that this is such a time.

"Positions on the Supreme Court of the United States cannot be regarded as ordinary political plums. Such deviations as may have been condoned in the past cannot serve as a guide for the present or the future.

"The importance of the Supreme Court as an institution cannot be over-emphasized. Its decisions reach out and touch the lives of every American every day.

"It was the intention of our founding fathers that an appointment to the Supreme Court should represent the pinnacle of achievement and recognition in the field of law.

"At the very least, nominations to the Supreme Court should never be based on 'cronyism.' If and when they are, the Senate's responsibility is clear.

"I reject the view that the Senate should rubber-stamp its approval of every Presidential appointment simply because a nominee doesn't beat his wife. The responsibility of the Senate must be of a higher order, particularly with respect to the Supreme Court of the United States.

"At the present time, the American people are in the process of choosing a new government. By their votes in November the people will designate new leadership and new direction for our nation.

"Of course, a 'lame duck' President has the Constitutional power to submit nominations for the Supreme Court. But the Senate need not confirm them—and, in this case, should not do so.

"The maneuvering to deny the people and the next President their choice in this instance is wrong in principle—and everybody knows it.

"The appointments announced Wednesday smack of 'cronyism' at its worst—and everybody knows it.

"It should be recognized that if the Senate does assert itself to reject these nominations, the Court need not be shorthanded when it reconvenes in October after the summer recess.

"In the letter tendering his resignation, Chief Justice Warren made it clear that his retirement was effective at the pleasure of the President and that his action was not taken '. . . because of reasons of health or on account of any personal or association problem, but solely because of age.'

"In his reply to the letter of Chief Justice Warren, President Johnson said he would accept his decision to retire '. . . effective at such time as a successor is qualified.'

"Under the circumstances, if the Senate refuses to confirm the new appointees, I am confident that the Chief Justice, after serving his country so long and nobly, would be willing and able to continue in office a few more months until a new President takes over."

[From the Washington Star, June 26, 1968]

STIFFER TESTS NEEDED FOR JUSTICES

(By David Lawrence)

Weaknesses in government are sometimes not fully exposed until glaring cases arise. Oddly enough, the Constitution of the United States does not provide a method whereby the people can actually have a direct voice in choosing the nine men who comprise the Supreme Court of the United States. It is more than ever necessary, therefore, in view of recent developments, that a Constitutional amendment be adopted which will set forth clearly the qualifications of those individuals who may be selected to sit on the Supreme Court and perform the all-important task of interpreting the Constitution.

Today a president can appoint a political crony or a lawyer with little professional experience and ignore the many able and highly qualified judges who have served their country and are worthy of promotion. One way to cure this defect is to adopt a new amendment to the Constitution, which might read somewhat as follows:

"No person shall be eligible for appointment to the Supreme Court of the United States who has not served at least five years either in the federal or state judiciary.

"Any person nominated for the position of an associate justice or chief justice shall be confirmed only by a two-thirds vote of the Senate.

"No justice of the Supreme Court of the United States shall be eligible to serve after the age of 75. While a member of the Supreme Court, he shall not participate directly or indirectly in any political or governmental operations, including advisory or personal activities, and shall refrain from public comment on issues which are currently involved in cases pending before the courts.

"No person who has been engaged in raising funds for any political party or candidate during a period of at least five years prior to his nomination shall be eligible for an appointment to the bench.

"Before the Senate Judiciary Committee acts upon any nomination submitted by the president for an associate justice or chief justice, full public hearings shall be held at which the previous record of the nominee whether in the federal or state judiciary, shall be subjected to thorough examination."

These reforms have long been overdue. The fact that a vast number of decisions have been rendered by 5-to-4 majorities is in itself an indication of how far apart many of the justices are in their interpretation of the principles of the Constitution. Likewise, too often the opinions of Supreme Court justices have read like political speeches or treatises on sociological subjects. The high court's opinions have not always adhered to the basic rules of law which have for centuries guided English-speaking peoples. For many years, there have been appointments of judges with conscientious points of view but with prejudices based upon their long-time affiliation with one side or the other of highly controversial questions.

Again and again, federal judicial appointments have been handled as political patronage. Judges for the lower courts have really been sometimes picked through the pressures of members of congress. Many of the judges, of course, are well qualified, but frequently they are politically-minded persons whose training actually doesn't qualify them to sit in judgment upon the many important cases that come before the federal courts.

The Constitution speaks of the "Supreme Court" of the United States. This means that the people expect not merely dispassionate and impartial judgments but an adherence to the basic principles of the American Constitution. The Founding Fathers intended the document to be applied impartially and without regard to the benefits that can be bestowed by various decisions which vitally affect one or the other of the parties to the dispute.

What kind of man really makes a good judge? Certainly a lawyer with a distinctly partisan mind is not as well qualified as another person, who, however deep may be his prejudices, knows in all honesty how to be impartial and fair.

Too many justices who have sat on the Supreme Court have been ill-equipped to interpret the Constitution, yet they have had the deciding voice in many a 5-to-4 decision. The time has come for appointments to the highest court of the United States to be completely detached from the ruses and chicanery of American politics.

[From the Grand Rapids Press]

APPOINTMENT OF THORNBERRY MISUSE OF PRESIDENTIAL POWER

(By David Lawrence)

Once again the membership of the Supreme Court of the United States has been cynically made an instrument of personal and political manipulation. The audacity of presidents in giving judicial appointments to political cronies was pointed out by this correspondent in what he wrote at the time when the man now named to fill a vacancy on the nation's highest court, Homer Thornberry, was first nominated to serve on the Federal bench.

Back in July, 1963, President Kennedy announced he was naming to the federal district court Rep. Thornberry, a Texas Democrat and for many years a political ally of Lyndon Johnson, then Vice President. On July 11, 1963, this correspondent wrote:

"It is reported on Capitol Hill the administration plans to defer action in the Senats on the Thornberry nomination until toward the end of the present session in order to assure his vote for administration polices in the closely divided Rules Committee of the House while important legislation is being considered by the committee in the next few months . . .

"But why should Rep. Thornberry be rewarded with a Federal judgeship? He never has served on the bench in any court. Why should the President of the United States give anyone a lifetime post in the judicial system on the basis of favors done of a political nature? How can there be confidence in the federal judiciary if judgeships become a matter of political patronage? Were there no

lawyers or state judges in west Texas better qualified for the judgeship in question?

"Does the system of using judgeships as a reward for political favors mean that judges already on the bench can expect promotions to the United States Court of Appeals only if they 'play ball' with the administration in power?"

President Johnson in 1965 advanced Thornberry to the Court of Appeals and now has named him an associate justice of the Supreme Court.

What redress do the American people have when there is such blatant politics in appointments to the nation's highest court? The voters cannot express themselves on this issue directly at the polls, hut they can hold responsible the members of the Senate who soon may vote to confirm the Thornberry appointment. One third of the senators will be seeking re-election in November, and the people will have a chance to reject those candidates who go along with the "packing" of the Supreme Court with lifetime appointments of political cronies by a "lame-duck" President.

Senators of both parties who will be voting on whether or not to confirm but who do not happen to be up for reelection this year will hardly be indifferent, moreover, to the way puhlic opinion reacts to this strange episode. For when a President with just a few months left in office undertakes to deprive the next president of an opportunity to appoint a chief justice of the United States—a position vitally affecting the operation of the American constitutional system—it is hardly likely the American people will approve what appears to them to be a case of political manipulation.

There could be a filibuster in the Senate to prevent action until the convening of the newly elected Congress in January.

[From the Washington Star, July 2, 1968]

VACANCY ON SUPREME COURT ISN'T

(By David Lawrence)

Suprising as it may seem to many people, there is actually no "vacancy" today in the office of chief justice of the Supreme Court of the United States. Nor is there any "vacancy" in the office of associate justice, for which judge Homer Thornberry of Texas has been slated.

These strange paradoxes reveal the need for a clarification of the present law. When Chief Justice Earl Warren recently wrote to President Johnson, he did not actually resign from the Supreme Court. What he did write was this statement: "I hereby advise you of my intention to retire as chief justice of the United States effective at your pleasure."

President Johnson, in his reply, used similar language which also makes clear that there is no "vacancy" today in the office of chief justice. Johnson wrote to Warren as follows:

"In deference to your wishes, I will seek a replacement to fill the vacancy in the office of chief justice that will be occasioned when you depart. With your agreement, I will accept your decision to retire effective at such time as a successor is qualified."

The Supreme Court cannot, by statute, consist of any more than nine justices. If one justice announces that he "intends" to retire, this is not a termination of his service. He actually must specify a date for his retirement so that a successor will then be able to take office.

What has happened thus far is that Chief Justice Warren has merely announced his "intention" to retire. President Johnson, in stating that Warren will "retire" at a time when "a successor is qualified," is, in effect, affirming that there is today no vacancy in the office of chief justice.

The position which Abe Fortas now occupies as associate justice is also not vacant. The Senate cannot act, therefore, on the nomination of Judge Thornberry as his successor until an actual vacancy has been created through the withdrawal of Fortas from his present post.

The present retirement law for judges is full of weaknesses. It gives the president of the United States a tremendous power. For the device of retirement can be utilized "at the pleasure of the president," and it permits him to dangle nominations before Congress. If the Senate, for instance, doesn't currently confirm the nominees for the prospective vacancies, the president can acquiesce in Warren's stay in office indefinitely and thus can assure a continuance of a particular kind of judicial philosophy. Chief Justice Warren will not be relieved of his duties until the Senate has actually confirmed a successor.

Another prevalent misconception is that a chief justice or an associate justice really severs all connection with the judicial system upon retirement. An existing statute, however, provides that the chief justice, after stepping down from the Supreme Court, may be asked at any time to serve as a judge in the U.S. Court of Appeals or in the Court of Claims. He cannot, however, be called upon to sit on the Supreme Court.

Even though a new chief justice takes office, Warren continues to be paid the same salary he received while serving on the Supreme Court. This compensation continues during the remainder of a justice's lifetime.

The procedures described by present law can have a far-reaching significance. Thus, there are many members of the Senate who do not wish to confirm Associate Justice Fortas for the post of chief justice, and they may delay action by filibustering. Also, it is difficult to see how there can be actual "vacancies" while both Chief Justice Warren and Associate Justice Fortas continue to serve in their present posts.

The spirit of protest among senators of both parties is growing. An example is the statement by Sen. Robert P. Griffin, Republican of Michigan, who summed up the attitude of the opposition as follows:

"Positions on the Supreme Court of the United States cannot be regarded as ordinary political plums. Such deviations as may have been condoned in the past cannot serve as a guide for the present or the future. . . .

"At the present time, the American people are in the process of choosing a new government. By their votes in November the people will designate new leadership and new direction for our nation. . . .

"The maneuvering to deny the people and the next president their choice in this instance is wrong in principle—and everybody knows it."

[From the Traverse City (Mich.) Record Eagle, July 6, 1968]

GRIFFIN VERSUS L. B. J.

U.S. Senator Robert P. Griffin of Traverse City does not have a reputation for flamboyance of headline grabbing. On the contrary, he is widely respected by his fellow legislators in Washington as one who does his home work and who acts with a sense of responsibility.

It is of more than passing interest, then, that Senator Griffin has taken such an adamant stand on President Johnson's appointments of Abe Fortas as Chief Justice of the Supreme Court and of Homer Thornberry as a new member of the court. Griffin has said that he will head a filibuster, if necessary, to block Senate approval of the appointments.

"Positions on the Supreme court of the United States cannot be regarded as ordinary political plums. Such deviations as may have been condoned in the past cannot serve as a guide for the present or the future." Griffin said.

"At the very least, nominations to the Supreme Court should never be based on cronyism. If snd when they are, the Senate's responsibility is clear," he said. "At the present time, the American people are in the process of choosing a new government. By their votes in November the people will designate new leadership and new direction for our nation."

Chief Justice Earl Warren said that his retirement would be effective at the pleasure of the President, and Johnson accepted Warren's retirement "effective at such time as a successor is qualified." Such an arrangement does seem a bit cozy, and certainly less than urgent.

Griffin believes that the solution is for Warren to stay on a few more months "until a new President takes over." This would leave the choice of new justices, to some degree, up to the people, for their choice of a President would be a major determinant.

It appears that "politics," in the meaner sense of the word, is involved in the Warren-Johnson maneuver. One political move deserves another—in this case a threatened filibuster to stop some "lame duck" appointment.

[From the Pontiac (Mich.) Press, June 29, 1968]

COURT APPOINTMENTS AFFRONT NATION

In his "lame-duck" appointments to fill vacancies on the U.S. Supreme Court, President Johnson has ignobly exercised the power of his office.

The Nation's highest tribunal, envisioned by the makers of the Constitution as a nonpartisan body safeguarding the high ideals of American democracy, has by Johnson's act seen its prestige tarred with the brush of political expediency.

Regardless of the qualifications of Associate Justice Abe Fortas to assume the chief justiceship of the Court and those of Federal Judge Homer Thornberry to fill Fortas' place on the Supreme bench, the appointments at this time are open to strongest criticism.

Coming within six months of the President's announced retirement from office, the resignation of Chief Justice Earl Warren smacks of a political maneuver of the lowest order.

By every test of respect for the integrity of the Supreme Court and obligation to the American people Warren, one of the weakest chief justices ever to hold that office, should have deferred his retirement until the inauguration of the next President.

The joint action of Warren and Johnson thus forecloses the new Chief Executive in this case from exercise of his prerogative of filling vacancies on the Supreme Court and national judiciary.

Lines of Senate opposition to the White House appointments have been drawn, with promise of a battle over their confirmation.

We urge the Senate to meet its national responsibility and reject the Administration's blatant affront to the American people as evidenced by the egregious impropriety of the Supreme Court appointments.

[From the Milwaukee Sentinel, June 22, 1968]

CHIEF JUSTICE

It may be too good to be true, but as this is written the report is that Chief Justice Earl Warren, one of the prime movers in changing America's constitutional foundation from bedrock to sbifting sand, has resigned.

An immediate reaction is to wonder whether his departure from the supreme court is timed to allow President Johnson to nominate a new chief justice before he leaves the White House in January, thereby perpetuating the court's far left leanings, possibly for years to come.

The supreme court rscently adjourned for the summer. It is to begin a new term Oct. 7, a month before the presidential election, Nov. 5. The new president will not take office until Jan. 20.

A chief justice nomination would have to be acted on by the senate. Unless someone is

nominated before late July, the chances are that congress will not be in session for the remainder of the year. This means that the nomination might not be acted on until the new congress convenes early in January.

The situation appears fraught with complications, Mr. Johnson might avoid them by abstaining from making a chief justice nomination, unless it is necessary to designate one in order for the court to function this fall.

But even if Mr. Johnson were to surprise the nation in this year of shocks by naming a staunch conservative to be chief justice, the question would remain whether it would be proper for him to do so.

Sen. Robert P. Griffin (R-Mich.) made a good point when he said, in reacting to the report of Warren's retirement, that he would oppose confirmation of any chief justice nominated by Mr. Johnson.

As Griffin says, "for a lame duck president to designate the leadership of the supreme court for many years in the future would break faith with our system, and it would be an affront to the American people."

EXHIBIT 1

[Information supplied by the Library of Congress, Legislative Reference Service]

SUPREME COURT NOMINATIONS MADE DURING THE LAST YEAR OF A PRESIDENT'S LAST TERM IN OFFICE

Nominations made during the last year of a President's last term in office which were not confirmed by the Senate:

John Jordan Crittenden. nominated Dec. 17, 1828, postponed Feb. 12, 1829. John Quincy Adams made this nomination after being defeated in the election of 1828 and left office March 3, 1829

Reuben Hyde Walworth. nominated March 13, 1844, postponed June 15, 1844, withdrawn June 17, 1844. John Tyler did not run for re-election in the election of 1844 and left office March 3, 1845.

Edward King. nominated June 5, 1844, postponed June 15, 1844, renominated Dec. 4, 1844, postponed Jan. 23, 1845. John Tyler did not run for re-election in the election of 1844 and left office March 3, 1845.

John Meredith Read. nominated Feb. 7, 1845, not acted upon. John Tyler did not run for re-election in the election of 1844 and left office March 3, 1845.

Edward A. Bradford. nominated Aug. 16, 1852, not acted upon. Millard Fillmore did not receive his party's nomination for President in the election of 1852 and left office March 3, 1853

George E. Badger. nominated Jan. 10, 1853, postponed Feb. 11, 1853. Millard Fillmore did not receive his party's nomination for President in the election of 1852 and left office March 3, 1853.

William C. Micou. nominated Feb. 24, 1853, not acted upon. Millard Fillmore did not receive his party's nomination for President in the election of 1852 and left office March 3, 1853.

Jeremiah S. Black. nominated Feb. 5, 1861, rejected Feb. 21, 1861. James Buchanan did not run for reelection in the election of 1860 and left office March 3, 1861.

Stanley Matthews. nominated Jan 26, 1881, not acted upon. Rutherford B. Hayes did not seek reelection in 1880 and left office March 3, 1881. Matthews was subsequenty re-appointed on March 14, 1881 by James Garfield and the appointment was confirmed May 12, 1881.

Nominations made during the last year of a President's last term which were confirmed by the Senate:*

John Marshall. nominated Jan. 20, 1801, confirmed Jan. 27, 1801. John Adams had been defeated in the election of 1800 when this appointment was made.

John Catron. nominated March 3, 1837, confirmed March 8, 1837. Andrew Jackson had not run for reelection, and his Vice President, Martin Van Buren, had been elected when Jackson made this appointment.

Peter V. Daniel. nominated Feb. 26, 1841, confirmed March 2, 1841. Martin Van Buren had lost the election of 1840 when he made this appointment.

Samuel Nelson. nominated Feb. 4, 1845, confirmed Feb. 14, 1845. John Tyler made this appointment after the election of 1844, in which he did not run.

William B. Woods. nominated Dec. 15, 1880, confirmed Dec. 21, 1880. Rutherford B. Hayes made this appointment after the election of 1880, in which he did not run.

George Shiras, Jr. nominated July 19, 1892, confirmed July 26, 1892. Benjamin Harrison made this appointment before losing the election of 1892.

Howell E. Jackson. nominated Feb. 2, 1893, confirmed Feb. 18, 1893. Benjamin Harrison had lost the election of 1892 when he made this appointment.

Mr. MILLER. Mr. President, will the Senator from Michigan yield?

Mr. GORE. Mr. President, will the Senator from Michigan yield?

Mr. GRIFFIN. I had promised to yield to the senior Senator from Tennessee.

Mr. GORE. The Senator has said that the nominations pending before the Senate to the U.S. Supreme Court have raised some fundamental questions. I respectfully suggest that the able Senator, in his eloquent speech, has raised some fundamental questions. I hope that he will cooperate in clarification of some of the terms which he has used.

He has referred to this as a "lame-duck" appointment. He has also referred to the President of the United States as an "outgoing president."

Because the country does have an outgoing President, to use the able Senator's term, the distinguished Senator brands the nomination of Justice Fortas as a "lameduck" appointment.

My first question is, What is an outgoing President?

Mr. GRIFFIN. Mr. President, responding to the question of the Senator from Tennessee, the term "lameduck" is not magic. Perhaps, in some ways, it might be inappropriate. Some people would use "lameduck" as meaning a President who is continuing to serve during the period after he has been defeated. Others have used the term with reference to mean the final year of a President's last term.

In my statement, I made it clear that I was referring to nominations made by a President during the final year of a President's last term in office. However, let it also be clear that I have not contended that a President during such a period suddenly loses the power of his office. There is no contention that a President should not continue to make decisions, that he should not continue to make nominations, or that he should not continue to run the affairs of Government. No one is suggesting that—least of all the junior Senator from Michigan.

I recognize full well that the President has the power, and authority, under the Constitution, to make nominations for the Supreme Court.

My argument focuses rather on the coequal—and just as important—power of the Senate to confirm.

I have pointed out in my statement that over the period of history there have been 16 times when a President in the last year of his final term of office has sent up nominations to the Supreme Court. On seven of those occasions the Senate has seen fit in its wisdom to confirm the nominations; however, the Senate, in its wisdom, refused to confirm such nominations in the other instances.

My argument and my position is purely addressed to the Senate and its responsibility and what is in the public interest.

In view of all the circumstances which surround these nominations: the appearance of a maneuver to create a vacancy, the appearance of some connivance to keep the public from having a say in who will be the next Chief of the United States, and then add to that both nominations are subject legitimately to the question of "cronyism," I am convinced that the public interest requires that the Senate refuse to confirm.

Mr. GORE. I have listened with interest to the able Senator's explanation of the term he used, "lame duck," and I should like to inquire whether he used the term "outgoing President" in the same light?

Mr. GRIFFIN. No, I did not—not necessarily.

Mr. GORE. Would the Senator explain what he means by that term?

Mr. GRIFFIN. I attach no special significance, other than the meaning that is on its face. It seems to me that President Johnson has announced he is not running for reelection and he is a President about to go out of office. That is all.

Mr. GORE. Would it alter the able Senator's position if the President should reassess the situation and announce that, after all, he would be a candidate for reelection?

Mr. GRIFFIN. I would say to the Senator from Tennessee that it would change the set of circumstances which I have described. However, I think the other circumstances provide reasons so strong that the junior Senator from Michigan would still be persuaded to vote the same way, but I do acknowledge that it would be a different set of circumstances.

Mr. MURPHY. Mr. President, will the Senator from Michigan yield right there for a question?

Mr. GORE. If I may continue first. With respect to the Senator's meaning of the term "lame duck" and the term "outgoing President," would not any President serving his second term be an outgoing President because of the recent constitutional amendment?

Mr. GRIFFIN. If any other President serving a second term were, in his final year of office, to submit nominations under the circumstances surrounding the pending nominations, or under similar circumstances, he would be in the same kind of position that President Johnson is in, yes.

Mr. GORE. Then the Senator, it seems to me, is taking the position, or has taken the position, that he does not question the President's constitutional right to

*This list does not include Melville W. Fuller who was nominated April 30, 1888 and confirmed July 20, 1888. Although Grover Cleveland made this appointment before losing the election of 1888, his last term of office was from 1893–1897.

make this nomination. Does the Senator question the President's constitutional responsibility so to do?

Mr. GRIFFIN. No, the Senator does not.

Mr. GORE. Does the Senator question the President's right—political, moral, and legal—so to do?

Mr. GRIFFIN. I will say to the Senator from Tennessee that if it should be the fact that the President and the Chief Justice, as charged or intimated in the press, have some kind of an arrangement which is designed for the purpose of depriving the people and the next President of a voice in the leadership and the policies of the Supreme Court, I do not think he has a right. I would say that, in such an event, he would have exceeded such rights and powers as he has.

Mr. GORE. I do not refer to newspaper articles or innuendos. I refer to the Constitution; the responsibility of the President.

Mr. GRIFFIN. If there were a vacancy because of a death or if there were a resignation or retirement effective on a date certain, the responsibility of the President would be much clearer than in this situation.

Mr. GORE. Will the Senator yield further?

Mr. GRIFFIN. Yes.

Mr. GORE. Now that the Senator has said that he does not question the President's constitutional power or his constitutional responsibility to make this appointment, nevertheless, for some reason, he questions it because it is made in June, by a President who has said he will not be a candidate for reelection. There are 7 months between June and January. I wonder if the Senator would indicate what other functions of the office of President would appear proper——

Mr. GRIFFIN. May I say——

Mr. GORE. May I complete my question? What other functions of the Presidency should President Johnson fail to exercise? Should he postpone trying to reach peace in Vietnam because this is a function so important that it should be reserved for the next President, and thus continue the war until January? What other functions, under the constitutional responsibility and the constitutional duty and the constitutional right, which the Senator has indicated he believes are vested in the President, than the nomination by the President to the Supreme Court should he fail to exercise?

Mr. GRIFFIN. May I respond by saying the point the Senator makes is beside the point. I am not addressing myself to what the President can or cannot do, or to what he should or should not do. My argument is completely and solely addressed to the Senate; what the Senate's responsibilities are; what we have a right and duty to do; and what I think we should do.

Now I yield to the junior Senator from Tennessee.

Mr. BAKER. I thank the Senator.

The distinguished senior Senator from Tennessee and the junior Senator from Tennessee have a relation to the nomination of Justice Fortas to be Chief Justice of the United States which is unique, since Justice Fortas is a Tennessean. It has been with great regret that I have risen previously on the floor of this body to oppose that nomination, for I have no disrespect for and I have no real question about the legal competence of Justice Fortas to serve this country in virtually any capacity.

I say—and this is in part a reply to the queries put by the senior Senator from Tennessee—that, in my judgment, no one really doubts the constitutional authority of this or any President to make this nomination to the office of Chief Justice of the United States. The President has the unquestioned authority to do it in the last minute of his term.

On the other hand, the Senate of the United States has the unquestioned authority to advise and consent on the propriety or even the desirability of that appointment even until the last minute of this session of the 90th Congress.

The point I make is this. There are a thousand things the President could do between now and January that I fervently hope he does not do. To use my colleague's example, he could unilaterally escalate the war in Vietnam in massive proportions. I prayerfully hope he does not. He could go a long way to proceed to unilaterally disarm this Nation. I prayerfully hope he does not.

The question is not the legalism, "Can the President do these things?" It is a question of the respective judgments of the President of the United States and the Senate of the United States, as to whether it is the best thing to do under the circumstances.

My distinguished colleague, Mr. GORE, and I share the honor of representing the same people, the people of a great State. We share the experience of having traveled its length and breadth and listened intently, I think, to the expression of opinions, desires, and dissent of the people of that great State. In the course of my travels across the State and other parts of this Nation, I have heard, not once, but many times, the frustrations over many of the decisions, policies, and philosophy of the Supreme Court. This stems in large measure from the fact that the people say, "There is nothing we can do about it. We cannot vote for them. We cannot vote against them, as we can our Congressmen and Senators and the President of the United States." The people cannot do one single thing about one-third of the coordinate governing authority prescribed by the Constitution of the United States, except by indirection as the Constitution prescribes, to make sure that the popularly elected President and the popularly elected Senate of the United States set out and determine the attitudes, the viewpoints, he demands, and the dissent of the people of this Nation, in the course of the exercise of their constitutional authority to make this and other appointments.

To continue with the example, in the conversation I had with one person, he went on to say, in his colloquialism, "I can't vote for or against them. The only way I can get to them is in the November election for the President and the Senate."

Those who would say the Constitution of the United States creates a sterile, isolated, academic, judiciary branch of Government, unresponsive to the sentiment of the people of this Nation, are wrong. All three branches of this Government are, in one way or another, responsive to the will of the people. In the judicial branch, properly, it is a slower response. Fortunately, it is less direct, and thus less affected by the undulations of popular political sentiment. The Supreme Court is insulated, but not isolated by the requirements that the President shall appoint for life tenure, and that the Senate shall advise and consent as equal copartners in the process.

I suggest, then, that the question at hand is not the legalism of the authority of the President to appoint; we are not here as legal technicians, as Justice Hand once said, "shoveling smoke." We are here to exercise our very best judgment on whether this is a good idea or not, at this time and place.

In view of the fact that, unquestionably, the Supreme Court of the United States suffers from a lack of public confidence and esteem in the minds of so many, in view of the fact that the Court is one of the three coordinate branches of Government in which the confidence of the people must be restored if we are to preserve this Republic, it seems to me that, not legally, but from the standpoint of desirability, this is too good an opportunity for the Republic to miss. We must let the appointment of the next Chief Justice of the United States and one or more Associate Justices respond to the mandate of the people in November, with the confirmation of the Senate of the 91st Congress on the recommendation of the next President. We can in this way implement the intricacies of the constitutional design for the public expression of demands and dissent in connection with the appointments of a Chief Justice of the United States and Associate Justices of the Supreme Court.

Consonant with this logic, I am prepared to say that in January 1969, if the new President of the United States chooses to send these nominations to the Senate, after the voice of the people has been heard in November 1968, I very much doubt whether the junior Senator from Tennessee will object. But I do object in July 1968, because I feel that this is a remarkable opportunity to exercise not a legal right, but good-conscience judgment on what should and what should not be done in this time of turbulence, in this time when the Court has fallen to low esteem, and in this time when we must restore it to its former high esteem.

I conclude by saying that these remarks are made against the background of my record in the Senate of not being a baiter of the Supreme Court. I have fought vigorously on the floor of the Senate to uphold the decisions of the Supreme Court in matters of congressional redistricting, of civil rights, and others. I am proud of that. I am proud of the Court as an institution. I am eager to restore the confidence of the people in that institution. I believe that this can best be done by deferring the

appointment of a Chief Justice until a new President takes office.

Mr. GRIFFIN. I thank the junior Senator from Tennessee for his brilliant and eloquent contribution to the debate.

I now yield to the Senator from Iowa.

Mr. MILLER. I thank the Senator from Michigan. I, too, should like to commend him for his scholarly and temperate statement, and to make a comment which may possibly satisfy the questions of the senior Senator from Tennessee [Mr. GORE].

The Senator from Michigan [Mr. GRIFFIN] mentioned the problem, or a possible problem, of connivance between the retiring Chief Justice and the President. This, of course, would be something that we would all deplore. There is no hard evidence on that point. However, I invite the attention of Senators to an article published in the Chicago Tribune of June 29. The article was written by Willard Edwards, the able Washington correspondent of the Chicago Tribune, and gives his judgment of the background of the present situation. I would have to say that a reading of the article would spell out only one word, and that would be "connivance," no matter how high the places in which it took place.

Mr. President, 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:

CAPITOL VIEWS

(By Willard Edwards)

WASHINGTON, June 28.—Chief Justice Earl Warren's decision to resign his post was precipitated last June 5 when he picked up his morning newspaper and learned that California Republicans had put an end to the political career of his protege, Sen. Thomas Kuchel.

Kuchel's unexpected defeat in the California primary aroused both anger and apprehension in the chief justice. His sense of outrage was compounded by the identity of the winner—State Superintendent of Schools Max Rafferty—a conservative who had vigorously criticized "the Warren court."

As the story is told by a Democratic leader on intimate terms with President Johnson, Warren promptly confided to the President his fears that a conservative tide was rising in the nation that would sweep into office next January a Republican President, most probably Richard M. Nixon, whom Warren personally detests.

With Warren, 77, and three other elderly justices as prospective retirees within a few months or years, such a Chief Executive would have power to select replacements who could alter what liberals describe as the "activist" role of the high court. Opponents describe it as an invasion of the legislative field.

With time running out to save the court from this obnoxious development, the chief justice was prepared, he informed the President, to resign, permitting Johnson to name his successor in the few months of his term.

He might even be able, he hinted, to prevail upon one or two of his brethren to join him in this sacrificial act.

APPROVES NAMING OF FORTAS

The President wasted little time trying to persuade Warren to remain. The two men discussed possible nominees. When Johnson suggested the elevation of Associate Justice Abe Fortas, Warren voiced his warm approval.

A tentative bargain was also reached—to "take care of" lame duck Kuchel with an appointment to the Circuit Court of Appeals. A new law has provided the President with the authority to fill a number of judicial vacancies.

The Senate judiciary committee, acquainted with this proposal, studied Kuchel's record and found that he has had so little legal experience that he lacks a rating in the official California listing of lawyers from that state. The Senate, however, routinely approves nominations for colleagues in distress.

Warren's official letter of resignation and an accompanying note of explanation were sent to the White House June 13, one week after the President and the chief justice had conferred. Not until Sunday, June 23, however, did the President, in a series of telephone calls to Capitol hill leaders, confirm its receipt and his intention to nominate Fortas and another old friend. Judge Homer Thornberry of Texas. They warned him that these appointments would arouse criticism but promised to do their utmost in securing the Senate's confirmation in the five weeks remaining before congressional adjournment.

FAITH IN POLLS DESTROYED

The Capitol Hill informant discounted Warren's contention that he was quitting solely because of his advancing years. The chief justice, healthy and happy with his prestige, would have remained, he said, if he had believed that a liberal Democrat like Vice President Humphrey would be elected in November or a liberal Republican like Gov. Nelson A. Rockefeller. He had taken comfort from polls indicating that Nixon would be defeated by Humphrey.

But Rafferty's upset of Kuchel destroyed his faith in polls. They had shown Kuchel, a previous winner in three relection campaigns, with a long lead over Rafferty.

Warren enjoyed almost a father-son relationship to Kuchel. As governor of California, Warren had plucked Kuchel from obscurity to make him state controller and later had sent him to Washington to fill a Senate vacancy. Kuchel responded by loyal obeisance to the Warren brand of Republicanism which is virtually indistinguishable from the philosophy of liberal Democrats.

"He took Kuchel's defeat as a personal affront, as the President got the message," the congressional source said. "It was clear that he wanted revenge on both California Republicans and the party as a whole. He could not tolerate the prospect of Nixon as President.

"President Johnson did not agree with these gloomy views of a Democratic defeat. But he could not reject this marvelous farewell gift in the closing months of his Administration."

Mr. CURTIS. Mr. President, will the Senator from Iowa yield?

Mr. MILLER. The Senator from Michigan has the floor, and he has yielded to me. I should like to continue with my remarks.

There is also the matter which the Senator from Michigan mentioned, which some persons have referred to as cronyism. There is no question about the President's right or power to appoint, barring connivance. If there was connivance, I should say that would cancel his right or responsibility. But it would seem to me that for the well-being of the country, and the well-being of the Supreme Court, any President should bend over backward to avoid any argument of cronyism or any other undesirable argument concerning appointment to the Supreme Court.

The President could have avoided this unfortunate situation if he had selected an experienced, distinguished jurist from one of the circuit courts of appeals, or if he had asked the American Bar Association to submit to him a panel of, say, 10 distinguished lawyers or jurists from which to fill these positions. My guess would be that if he had done so, neither of the two names which have been sent to the Senate would be on that list, although I suggest that the name of former Justice Goldberg would be on such a list.

The President's failure to do this—either to ask the American Bar Association for its recommendations, or to select experienced, distinguished jurists, having 10 or 15 years of experience on a court of appeals—has laid the foundation for this unfortunate but, I think, rather accurate criticism of cronyism.

The senior Senator from Tennessee asked whether there was a responsibility on the part of the President to make such an appointment. I suggest that that responsibility would be vitiated by any connivance along the lines referred to in the article which I earlier placed in the RECORD.

Finally, I suggest to the senior Senator from Tennessee that, while the right of the President may be clear in his mind, there is one right that is above the President's, one right that is above the right of Congress, and that is the right of the people of the country. That fundamentally, is the position of the Senator from Michigan [Mr. GRIFFIN] and the position of the Senator from Iowa. We feel that that right is above all others. What we seek to do is to persuade the Senate that its judgment should be, in the public interest, to preserve that right of the people to reflect, through their mandate in the presidential election in only a few short months, the direction they wish the country to take through the election of a new President. Then, hopefully, the President will make appointments, appointments which may last for 20 or 25 years, because of the life tenure in a coequal branch of the Government.

Unless Senators can be persuaded to exercise their power to vote against the confirmation of these nominations, the people of the United States will be deprived of that right.

I invite the attention of the senior Senator from Tennessee to the fact that this is not the first time since he became a Member of the Senate that a matter similar to this one came before the Senate. On August 29, 1960, a resolution was adopted by the Senate by a yea-and-nay vote of 48 to 37. It is significant that the present President and the present Vice President of the United States, who were Members of the Senate at that time, voted "yea" on the resolution.

In deference to the consistency of the senior Senator from Tennessee, I should say that he was one of only four Democrats who voted "nay," and for this I think he deserves commendation.

The resolution reads as follows:

Resolved, That it is the sense of the Senate that the making of recess appointments to the Supreme Court of the United States may not be wholly consistent with the best interests of the Supreme Court, the nominee who may be involved, the litigants before

the court, nor, indeed, the people of the United States; and that such appointments therefore should not be made except in unusual circumstances and for the purpose of preventing or ending a demonstrable breakdown of the administration of the court's business.

Mr. President, I certainly understand that there is a technical difference between a recess appointment and an appointment confirmed by the Senate a day or two or, perhaps, a week or two before Congress adjourns. However, at this late date, in the last year of an outgoing President, I think the technical difference is without a basic, substantial distinction as far as the rights of the people and the prestige of the Supreme Court are concerned.

Mr. President, I ask unanimous consent that an extract from the CONGRESSIONAL RECORD of August 29, 1960, be printed at this point in the RECORD.

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

The PRESIDING OFFICER. The question now is on agreeing to the resolution, as amended. On this question, the yeas and nays have been ordered; and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MANSFIELD. I announce that the Senator from Virginia [Mr. BYRD], the Senator from New Mexico [Mr. CHAVEZ], the Senator from Illinois [Mr. DOUGLAS], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Oklahoma [Mr. KERR], the Senator from Oregon [Mr. LUSK], the Senator from Montana [Mr. MURRAY], the Senator from Wyoming [Mr. O'MAHONEY], and the Senator from Florida [Mr. SMATHERS], are absent on official business.

I further announce that the Senator from Missouri [Mr. HENNINGS] is absent because of illness.

I further announce that, if present and voting, the Senator from New Mexico [Mr. CHAVEZ], the Senator from Illinois [Mr. DOUGLAS], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from Indiana [Mr. HARTKE], the Senator from Arizona [Mr. HAYDEN], the Senator from Missouri [Mr. HENNINGS], the Senator from Minnesota [Mr. HUMPHREY], the Senator from Tennessee [Mr. KEFAUVER], the Senator from Oklahoma [Mr. KERR], the Senator from Montana [Mr. MURRAY], the Senator from Wyoming O'MAHONEY], and the Senator from Florida [Mr. SMATHERS] would each vote "yea."

Mr. KUCHEL. I announce that the Senator from Iowa [Mr. MARTIN] is absent, by leave of the Senate, on official business.

The results was announced—yeas 48, nays 37, as follows:

[No. 318]

Yeas, 48: Anderson, Bartlett, Bible, Burdick, Byrd, W. Va., Cannon, Carroll, Church, Clark, Dodd, Eastland, Ellender, Engle, Ervin, Frear, Green, Gruening, Hart, Hill, Holland, Jackson Johnson, Tex., Johnston, S.C., Jordan, Kennedy, Long, Hawaii, Long, La., McCarthy, McClellan, McGee, McNamara, Magnuson, Mansfield, Monroney, Morse, Moss, Proxmire, Randolph, Robertson, Russell, Sparkman, Stennis, Symington, Talmadge, Thurmond, Williams, N.J., Yarborough, Young, Ohio.

Nays, 37: Aiken, Allott, Beall, Bennett, Bridges, Bush, Butler, Capehart, Carlson, Case, N.J., Case, S. Dak., Cooper, Cotton, Curtis, Dirksen, Dworshak, Fong, Goldwater, Gore, Hickenlooper, Hruska, Javits, Keating, Kuchel, Lausche, Morton, Mundt, Muskie, Pastore, Prouty, Saltonstall, Schoeppel, Scott, Smith, Wiley, Williams, Del., Young, N. Dak.

Not voting, 15: Byrd, Va., Chavez, Douglas, Fulbright, Hartke, Hayden, Hennings, Humphrey, Kefauver, Kerr, Lusk, Martin, Murray, O'Mahoney, Smathers.

So the resolution (S. Res. 334) was agreed to, as follows:

"*Resolved*, That it is the sense of the Senate that the making of recess appointments to the Supreme Court of the United States may not be wholly consistent with the best interest of the Supreme Court, the nominee who may be involved, the litigants before the Court, nor indeed the people of the United States, and that such appointments, therefore, should not be made except under unusual circumstances and for the purpose of preventing or ending a demonstrable breakdown in the administration of the Court's business."

Mr. HART. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. JOHNSTON of South Carolina. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRIFFIN. Mr. President, I yield to the Senator from California.

Mr. MURPHY. Mr. President, I am pleased to associate myself with the remarks of my distinguished colleague, the Senator from Michigan.

I compliment the Senator on what has been one of the finest presentations I have heard affirming the importance of the voice of the people in the perpetuation of this democracy.

I compliment and congratulate the Senator also for carefully delineating the position of those of us who oppose the nominations. There is no question of the President's power and right to make the appointments, but there is a question as to the propriety of his action in doing so at this time.

Mr. President, the people of this Nation are restless. Since I have been a Member of this body, I have traveled in 48 States and I have sensed it.

I can say, without equivocation, that this turbulence, this sense of unsureness, has been caused by some of the Court's recent decisions.

I think it is most commendable that my colleague has pointed out clearly that our opposition is not a matter of personalities. Nor is it a matter of politics. More accurately it is a question of whether the President, under whose leadership this mental quandry of the people arose and under whose policies the people too often question, should appoint a new Supreme Court Justice and a new Chief Justice before the people of this great Nation have the opportunity at the polls in November to determine whether they want to change the course which we have been taking.

What is in the best interest of the people of this great Nation? This Government does not belong to Members of the Senate or House of Representatives. We are sent here as representatives to do to the best of our ability and judgment what the people of this great Nation want done in their name. That is why I will oppose confirmation of the nominations. I simply do not believe the people would want confirmation before they have had the opportunity to speak in November.

The presentation made by the distinguished Senator from Michigan is one of the most statesmanlike dissertations that it has been my privilege to hear. I only hope that those members of the press and broadcast media who are present today will transmit this statement to the people of our great Nation. It is certainly worthy of their consideration.

I also congratulate my distinguished colleague from Tennessee for adding to the dialog in clear, simple, and concise terms—saying, for one thing, that we do not question the power or the constitutional right of the President to make these appointments, but that we do question the commonsense and the judgment involved.

Those of us who will oppose these appointments on this basis hope sincerely that there might be a reconsideration and that the voice of the people be made paramount. This was the basic tenet upon which our Government was founded. That is the way it should be today.

Mr. GRIFFIN. Mr. President, I thank my colleague, the Senator from California, very much for his generous comments and the contribution he has made.

Mr. President, I yield to the Senator from Nebraska.

Mr. CURTIS. Mr. President, I thank the distinguished Senator.

I rise primarily to congratulate the distinguished Senator from Michigan on his statement and the clearness with which he has portrayed the responsibility that rests in us. That is the extent of our duty to do what we have to do in this Chamber. We can be guided by no other principle than what is best in the interest of the country.

We have no reason or compulsion to be for a nomination or to oppose a nomination merely because it is made. The power to confirm was vested in the Senate as a way in which the Senate would exercise authority. And that authority should be exercised on the basis of whether confirmation is good for the country.

This problem arises at a rather unusual time—after the processes are already in motion in this country to hold an election. The election is about here. The candidates are carrying their messages to the people at this time and have been doing so for weeks.

There apparently has been some communication between the President and the Chief Justice. And out of that communication, we have received information concerning what has been referred to as a retirement. However, to say the least, it is ambiguous and susceptible of questionable interpretation.

To concur in this matter means that we must act quickly when we are on the verge of an election.

If there is one principle of government that is submerged in all branches of the Government, it is that acts of the Government should be responsive to the wishes of the people.

We have had decisions of the Supreme Court. I recall one that has been referred to as the one-man, one-vote principle.

I submit that 60 million or 70 million people are about to vote. The Senate

should consider whether action should be taken by the Senate—not questioning what the President has done. Our job is to decide whether the Senate should act hastily as the people are about to vote and decide whether their votes—on a matter indirectly affecting the judiciary—are to be counted or cast aside.

I thank the distinguished Senator.

Mr. GRIFFIN. Mr. President, I thank the Senator from Nebraska for his contribution.

Mr. President, I yield to the Senator from Delaware.

Mr. WILLIAMS of Delaware. Mr. President, I associate myself with my colleague from Michigan on his statement made here this afternoon.

He has pointed out that our Government—which we think is one of the best forms of government—is founded on the principle that we have three separate branches of Government—legislative, executive, and judicial.

I think, as the junior Senator from Tennessee mentioned a moment ago, it is very proper that this confirmation be held over until the appointment can be sent down by a President who will be selected by the electorate this November. It then can be considered and confirmed by a Senate one-third of whose Members will likewise have faced the same electorate.

I believe it is proper that this matter should wait until such time as the election is over and the newly elected and reelected sworn in.

A second point is the question as to whether a vacancy actually exists. We know of the questionable circumstances concerning the conditional resignation of the Chief Justice, and this question comes to my mind in connection with both nominations that are before the committee at this time: Suppose, for example, the committee approves both nominations and sends them to the Senate. Suppose the Senate decides to reject the nomination of Mr. Fortas to be Chief Justice but decides to confirm the nomination of Mr. Thornberry. What kind of situation would we have? We would have 10 members of the Court, because unless Mr. Fortas is confirmed there is no Associate Justice vacancy. I believe that, in itself, shows the fallacy of the argument that there are bona fide vacancies on the Court at this time.

I realize that we have many times confirmed members of the Court subject to a resignation which had been submitted to be effective as of a given date. But this is the first time I have seen the Senate asked to consider the confirmation of a nomination for a vacancy which is conditional only, as I understand it, upon the Senate's approving the nominee who is the choice of the present President. My understanding is that unless Mr. Fortas is confirmed the Chief Justice will continue to serve indefinitely. There is no vacancy until a man makes a bona fide resignation effective as of a given date.

Mr. GRIFFIN. I thank the distinguished Senator.

Mr. President, I yield the floor.

Mr. GORE. Mr. President, we have listened to what appears to me to be a very strained, strange logic. It has been freely acknowledged and agreed that the President of the United States has the constitutional and the legal right, responsibility, and duty to make the nominations that have been submitted to the Senate. It also has been said during the course of the debate, by my distinguished junior colleague from Tennessee, for whom I have a warm personal affection and with whom I find myself in disagreement on this nomination with regret, that he does not question the capacity, the ability, the merit, or the fitness of Justice Fortas to hold any position of trust in the United States.

Indeed, no speaker in the Senate during this day has questioned the fitness, the character, the ability, the professional attainment, or the quality of service rendered by Justice Fortas.

Now, what does that add up to, Mr. President? It adds up to the reluctance to agree to the confirmation of the nomination of Justice Fortas on the ground that it is a function that should be reserved for the next President. Well, now, that is a strange and strained doctrine. It is justified, or sought to be justified, on the ground that the democratic process should operate, that the appointment should be made by a man who has been popularly elected President of the United States.

I must recall that President Johnson was elected by the people of the United States, I believe the record will show, by the largest majority in the history of the country. He is a popularly chosen President. It is said that this nomination should be made by a popularly elected President and confirmed by a popularly elected Senate. Well, when was there a President in all our history who received a greater popular majority? There is none. What Senator will say that he is not in the Senate as a subject of a popular election?

But it is said that because this nomination was made in June, a President whose present term of office will expire in January should not perform the constitutional duty and responsibility devolving upon him as the principal officer of this Government, chosen by the American people in a popular election, by the largest majority in the history of the country. What kind of logic is this? It is not logic; it is illogic. It is an illogical and groundless objection to a lawful, orderly function of this Government.

What more important function does a President have than to nominate the Chief Justice of the United States? I have heard the opinion expressed that, in the long run, a Chief Justice may be more important to the United States than a President. I am not prepared to take that position, but I do say that it is surely the second most important position in the United States. And the Constitution vests in the President not only the authority but also the responsibility of nominating to the Senate men to fill such vacancies as may occur with the advice and consent of the Senate.

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

Mr. GORE. I yield.

Mr. MONRONEY. Would it not seem a travesty on presidential powers if the President of the United States, having decided not to run and still having some 7 months of his term remaining, would be considered to lack the power to nominate such a man, subject to confirmation by the U.S. Senate, and it would still be possible to entrust him, as we have done and will continue to do, with the negotiation of such vital treaties as the nonproliferation of atomic weapons and other matters of vital importance?

If a man is going to be put on the bench, so to speak—to use a football term—in the last 7 months of his term for one particular purpose, because someone would like to reserve the filling of a high judicial appointment, because his term is only 7 months from expiration, then should not all Presidential powers be so restricted? We would then have in our country a period of inactivity, of suspended animation, of a lack of executive determination in the various branches of our Government. The Government machine could not possibly work. The vast apparatus of Government could not possibly run without the fulcrum of the Presidency, which is the basis of the source of all Executive power and includes the selection of those who are appointed to the Federal district courts, the Federal circuit courts, the Federal Supreme Court, and the various commissions.

Should we leave those positions vacant? Should we deny filling the position of Administrator of the Federal Aviation Administration because the term of the Presidency is to expire on January 20 by decision of the President himself and not the adverse decision of the people of this country?

It seems to me that if this kind of pattern were carried to its logical conclusion, as the Senator from Michigan has stated, we would have a hiatus of 7 months. Perhaps there might be a time when the President might announce at the beginning of his second term, and call attention to the law, that he is not going to be able to succeed himself. Therefore, should he be considered unworthy to fill positions that might continue for years or for a lifetime.

Mr. President, this opposition does not make rhyme or reason to me when a man's integrity is not in question, when his ability is not in question, so long as the appointment process is legal, and no one has denied that. We are the judges of the qualifications of these men to carry this great office, and, thus, we are entrusted with the power of confirmation. We judge them on ability, record, and service in Government. If they meet that test, we should not have any political right, because they are of another political complexion, to try to stymie or prevent filling these vital positions.

I thank the distinguished senior Senator from Tennessee who has brought out vital points connected with the confirmation.

Mr. GORE. I thank the distinguished Senator from Oklahoma for his eloquent statement and sound position.

The Senator raised the point as to what Presidential powers should not be exercised. The people elected Lyndon Baines Johnson as President, not for 3½

years, but for a constitutional term. Every power vested in him, every responsibility resting with him, every duty placed upon him on his first day in office rests with him to the last day of his term.

If we adopt the theory that an outgoing President should not exercise the full power and responsibility of the office of President, then what about outgoing Senators? There are a number of Senators who have indicated they will not seek reelection. I would refer to the able senior Senator from Iowa [Mr. HICKENLOOPER] and the distinguished senior Senator from Alabama [Mr. HILL]. I heard the senior Senator from Iowa this morning asking very able questions with respect to the ratification of the pending Treaty on Nonproliferation of Nuclear Weapons. Shall we say that because the Senator from Iowa is an "outgoing" Senator he should not exercise the responsibility of a Senator on a matter so important as a nuclear nonproliferation treaty? Where would we stop? Mr. President, I say this is not logical. This is illogical.

Mr. President, I wish to say something about Justice Fortas. I had not intended to refer to the fact that he was a Tennessean, but inasmuch as my able and distinguished colleague has brought that matter into debate, let me say to the Senate that I am proud of Justice Fortas. I am proud that the record he has written typifies what can happen in America. His father came to this country penniless. He began his work in this country in a lowly state of manual labor, and by his diligence, by his work, by his devotion to duty, by the law-abiding respect in which he was held, the Fortas family entered into the middle class of America.

But still there was not money in the family to give the children all the education and the benefits which are desired by any parent. However, young Abe Fortas got an education anyway, working his way through school, graduating with honors. As soon as he was graduated from Yale University Law School his talents were so recognized that he was made a member of the Yale University Law School faculty.

He came into Government service at a lowly echelon, but not for long did he remain there. His talents, his abilities, and his integrity were recognized. He gained promotion after promotion. But eventually, as has happened to the loss of the country in so many instances, able young men in Government seek to better their fortunes, and so did young Abe Fortas, then Under Secretary of Interior.

Was he the ill-equipped young man who could not make it on his own? Ah, Mr. President, every Member of the Senate knows that he became recognized in the private practice of law as one of the eminent barristers in the United States.

Oh, it is said that he has been a friend of President Johnson, and that he would not be a member of the Supreme Court except for that friendship. I say that, too, but I say it from a different point of view because I know personally of some of the circumstances. He did not wish to be appointed a justice of the Supreme Court. Mrs. Fortas did not wish him to accept it, if I may be so personal as to say so.

Together they had built a law practice that was so far more remunerative than service in the Government and they had such a happy family life and success in their mutually professional career that neither wished it to be disturbed.

I happen to know what the President said to lawyer Abe Fortas, who was resisting the appointment to the Supreme Court. The President said, "Abe, we are drafting boys to go to Vietnam. I call upon you to accept this position and make whatever sacrifice it entails." Mr. President, you know the answer. This young man was confirmed by the Senate. By what vote? He was confirmed by a unanimous vote.

(At this point, Mr. MCGEE assumed the chair.)

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

Mr. GORE. Have I erred? I yield.

Mr. THURMOND. I would advise the distinguished Senator from Tennessee to check the record, and he will see that it was not a unanimous vote.

Mr. GORE. I thought it was. Would the Senate give the vote?

Mr. THURMOND. There were at least three votes against him. I was one, the distinguished Senator from Delaware was another, and the distinguished Senator from Nebraska [Mr. CURTIS] was another.

Mr. GORE. I thank the Senator. I thought the vote was unanimous. It was so nearly unanimous it led me to that recollection. I thank the Senator.

Mr. THURMOND. There were very few Senators in the Chamber at that time. If there had been more, there probably would have been more recorded against it. [Laughter.]

Mr. GORE. Let the RECORD stand that there were three votes against his confirmation.

Mr. President, what of the character of his service? I do not wish to review the written opinions with which the Justice associated himself. If in the course of debate it becomes necessary so to do, I shall be glad to do so. Suffice it to say, insofar as debate today is concerned, no one has questioned his professional ability, or his integrity, no one has questioned his character or the service he has rendered as a Justice of the Supreme Court. Indeed, the able junior Senator from Tennessee has said that he would not question his merit for any position of trust in the United States. I believe he went so far as to say that if he were to be nominated by the next President, he might well support him. I may not be quoting the able Senator exactly, but I am trying to be as accurate as possible.

So, what does this add up to? It adds up to the fact that Lyndon Johnson, President of the United States, chosen by the American people in a free election, should not, in June, make a nomination to fill a vacancy on the U.S. Supreme Court because he has indicated he will not seek reelection and just, perchance, because there might be a Republican President elected in November.

I do not believe that kind of performance is helping to bring that event about, because the American people will not look favorably upon that kind of performance.

The Senator from Michigan said that this was not politics in its purest and finest sense.

Well, I will agree with him that it is not politics in its finest sense. I am not so sure, though, that it is not politics, pure and simple. If it is not that, what is it?

Mr. GRIFFIN. Mr. President, will the Senator yield me 1 minute right there?

Mr. GORE. I am happy to do so.

Mr. GRIFFIN. I think perhaps the Senator misunderstood me. I did say that it was politics in its purest and finest sense, but that it was nonpartisan politics in its purest and finest sense.

I want to be sure that the Senator understands what I said.

Mr. GORE. I appreciate the correction of the able Senator from Michigan.

Mr. GRIFFIN. Even though he does not agree with me, I want him to understand what I said.

Mr. GORE. What did the Senator mean? I would be interested in what the Senator really means. Would the Senator be willing to say exactly what he does mean by that?

Mr. GRIFFIN. I believe the point of view which was very eloquently expressed by the junior Senator from Tennessee [Mr. BAKER] and also by the Senator from California, when they stressed the importance of the will of the people. As I indicated in my remarks, I have no way of knowing who will be nominated by either party, let alone who will be elected President of the United States next November.

It is not a question of partisan politics as such. If there are those who approach it from that point of view, I only add that it is a much bigger issue than partisan politics. We are talking here about the basic, fundamental right of the American people. We are concerned about what has all the appearances of a rather cynical manipulation to thwart the efforts of the people to have a voice in the future and the leadership of the Supreme Court.

Mr. GORE. I thank the able Senator.

Mr. President, members of the U.S. Supreme Court are not elected by popular franchise. Members of the U.S. Supreme Court, under the Constitution, are chosen by this method: The President of the United States nominates and then the nominees are subject to the advice and consent of the Senate. So, what right is being denied to the American people? If the Senate confirms this nomination, what right will have been filched from the American people by President Johnson because of his nomination of Justice Fortas for a vacancy as Chief Justice?

I say, he would have been derelict in his duty had he failed to submit a nomination to the Senate. He is the elected President of the United States, clothed with all the functions and responsibilities of the Presidency, and is dutybound to perform the functions of this, our highest office.

One other point to which I wish to make reference—and I shall do so briefly—it is said that this nomination should be rejected. I believe the senior

Senator from Delaware said that it should be rejected because of restlessness in the country.

Is that not a strange reason to reject the nomination of a Chief Justice?

Like my colleague from Tennessee [Mr. BAKER], with whom I voted identically, I believe, on amendments to the crime bill, I have not been happy with all the decisions of the Supreme Court. But I say to you, Mr. President, that playing partisan politics with the U.S. Supreme Court will not add to the confidence, the probity, and the esteem of that Court.

Mr. President, I have confidence in Justice Fortas. I believe that his appointment and confirmation as Chief Justice will add to the confidence and esteem in which the Highest Court will be held by the American people.

Here is an eminent lawyer, an able jurist, and a patriot, who has made great sacrifices financially to accept public service—one of the ablest and most scholarly men ever to grace the U.S. Supreme Court.

I am proud of this nomination. I have not always agreed with President Johnson, let me repeat but when he is right I am going to support him. This is his rightful duty, his lawful duty, which he has performed.

It is now the responsibility of the Senate to exercise its lawful duty and responsibility.

That is not to say that the Senate should confirm the nomination. Not at all. It should consider it. It should take action upon it and work its will.

I believe that when that is done, this man, whose merits are not brought into question, will be confirmed again, as he has been previously.

MILITARY CONSTRUCTION AUTHORIZATION, FISCAL YEAR 1969—CONFERENCE REPORT

Mr. JACKSON. 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. 16703) to authorize certain construction at military installations, and for other purposes. I ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report. (For conference report, see House proceedings of today.)

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. JACKSON. Mr. President, the report was signed by all the conferees on the part of the House of Representatives and the Senate and has now been agreed to by the House.

The bill as agreed to in conference provides a total new authority of $1,782,844,000 and an increase in prior years' authority of $17,375,000 for a total authorization of $1,800,219,000. The amount of new authority granted represents a reduction of $6,874,000 in the amount previously authorized by the Senate and a reduction of $35,649,000 in the amount authorized by the House. The action of the conferees resulted in a decrease in the overall departmental request of $95,780,000, which I believe is a substantial reduction considering the austerity of this year's program.

As an indication that the Senate position prevailed in most instances, there were some 102 amendments in dispute and the Senate position prevailed in 75 instances. The end result, I believe, is an improvement upon the product of either House.

Most of the points in dispute related to making a determination of priorities and only those projects were deferred where it was apparent a year's delay would not adversely affect the overall program of the Department of Defense.

There are two matters of some interest which I should like to mention. First is the requirements for Southeast Asia as contained in the bill. This year the Congress was requested to approve a total new construction authority for the three military departments in Southeast Asia of $225,375,000. During the consideration of this request by the House, it was reduced by $18,271,000, primarily for roads and military assistance projects. Based upon a request by the Department, the Senate restored $8,021,000 of the House reduction. Subsequent thereto, however, the Congress approved the supplemental appropriation bill for fiscal year 1968, which contained $140 million for Southeast Asia construction requirements. This, together with the amount of unobligated carryover funds and the $201.7 million approved in the House-passed bill, would seem to be ample for the construction needs of Southeast Asia during this fiscal year. Accordingly, the Senate receded to the House position. This primarily accounts for the overall reduction in the bill of the amount previously approved by the Senate.

The second matter I wish to mention relates to the provisions made for the Reserve Forces. As I pointed out when this measure was passed on the floor of the Senate last month, no new authority was requested this year for the Army National Guard or the Army Reserve because prior years' authorities, still unused and partly unfunded, are adequate to cover the scope of the programs now envisioned. Nevertheless, the House of Representatives in their consideration of the bill saw fit to add above the budget $10.6 million for the Army National Guard and $7.9 million for the Army Reserve, and reverted to the detailing of projects on a line item basis. This procedure was tried from 1959 to 1962, but was abandoned since it proved to be unworkable. As you recall, Mr. President, the Senate in considering the bill did not include the additional funds provided by the House, nor did it approve the line item basis of authorization. I am pleased to inform you that the Senate position prevailed in conference. The Secretary of Defense has advised in writing, however, that if sufficient funds are provided, those projects listed in the House-passed bill and again in the report of the managers will be considered as the first priority for construction within those respective component programs following the projects already planned for execution from prior years' authorization and funding.

This concludes my statement.

Mr. President, I move the adoption of the conference report on the military construction authorization bill for fiscal year 1969.

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

Mr. JACKSON. I yield.

Mr. THURMOND. Mr. President, in my judgment this is an excellent bill. It was concurred in by every member of the conference committee. We hope the conference report will be promptly adopted by the Senate.

I want to say further that the distinguished Senator from Washington State, as chairman of the subcommittee, not only did an outstanding job, but also during the conference he handled the matter in a most able manner, pleasing to all of the conferees.

Mr. JACKSON. Mr. President, I wish to express my appreciation to the able Senator from South Carolina for his fine support in our efforts to get the bill out of the Senate committee and through the Senate, and in the adoption of the conference report by the conferees.

I move the adoption of the conference report.

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

The report was agreed to.

AUTO THEFT PREVENTION ACT

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business.

The Senate resumed the consideration of the bill (H.R. 14935) to amend title 39 United States Code to regulate the mailing of master keys for motor vehicles ignition switches and for other purposes.

ORDER OF BUSINESS

Mr. MONRONEY. Mr. President, I desire to yield first to my distinguished colleague the senior Senator from New Hampshire [Mr. COTTON], who has filed notice of a motion for reconsideration of the action the Senate earlier took with respect to S. 3566, the supplemental air transportation bill.

I am happy to yield to the distinguished Senator from New Hampshire for that purpose.

Mr. COTTON. I thank the Senator from Oklahoma.

MOTION TO RECONSIDER PASSAGE OF S. 3566, AMENDMENT OF FEDERAL AVIATION ACT

Mr. COTTON. Mr. President, my purpose in filing the motion was to permit the clearing up of some legislative history in connection with the bill before it is passed. Therefore, I would like the opinion of the Senator from Oklahoma, author of the bill, on two points.

I understand that the bill is intended to permit the supplemental air carriers

Any of these plans would increase purchasing power and would add to the demands in our economy and thus accentuate inflationary pressures unless we raise taxes or cut other spending to pay for them. Moreover, they would result in at least some people rejecting the jobs at the lowest end of the spectrum unless the pay for doing them were sharply increased; window cleaning, laundry work, garbage collection.

As a result, these unpleasant but necessary services would become much more costly since we would have to pay much higher wages to induce people to perform them. Thus, any of these schemes would add significantly to cost-push inflation in our economy. Guaranteed jobs would be less inflationary than guaranteed income. Work adds to the national economic product. Even then, considerable inflationary impact is bound to occur.

I enthusiastically favor expanded programs for jobs for the poor. But I do not think this Nation is facing up to the issues involved. If we add to the budget for necessary employment and income programs, and we certainly should, then we must face the need for cutting back elsewhere.

Where can we cut back? For starters:

Public works, troop commitments in Germany, and undertakings like the SST, among others. Our military budget is running at about $82 billion a year, about $30 billion of which is for the Vietnam war.

Congressional Quarterly, an objective, highly competent publication, has recently written that a whopping $10.8 billion can be cut from our 1969 defense appropriation without diminishing our combat readiness at all. The article gave Pentagon officers as among its sources.

Won't the end of the Vietnam war solve this? The answer: No.

The end of the Vietnam war will end one million jobs directly, another two million indirectly. That would leave us farther than ever from the mark.

We can't turn around and pour the $30 billion we now spend on the Vietnam war into the antipoverty war without creating the same economic problem that required us just this summer to hike taxes and cut spending to stop inflation, and in doing so reduce jobs, income, consumption.

A rational construction and enforcement of spending priorities would go a long way to permitting us to ease the plight of the poor without further inflating our economy. But it would not do the whole job. We have to face the fact that our economy is not equipped to deal with the wage-price spiral, a problem that has plagued all of the free economies of the world.

Here is where we need some new trailblazing breakthroughs in economic thinking. Never in the history of this country has it been possible to get unemployment down to a level that today would still leave more than 2½ million persons out of work without serious inflationary pressure.

Unless we can solve this tough one, our poor are going to continue to be our price stabilizers—via unemployment—and income or job guarantees worthy of the name just won't make it.

FOREST SERVICE EFFORTS IN EMERGENCY WATERSHED WORK

Mr. KUCHEL. Mr. President, one of the results of forest fires, such as those recently experienced in California, is the destruction of the protective vegetative cover on a watershed. This loss of cover results in great potential flood damage since water is not retained by bare, fire-scarred hillsides.

During fiscal year 1968, the U.S. Department of Agriculture's Forest Service, in cooperation with other Federal, State, and local agencies, has taken emergency restorative measures on more than 62,400 acres of land on three burned areas in California. Emergency measures included aerial grass seeding of burned areas to establish a protective plant cover, channel clearing and stabilization measures, and emergency treatment of roads and fuel-breaks to prevent erosion. This expenditure of $42,200 of flood prevention emergency funds helped prevent millions of dollars of downstream damages, as well as potential loss of life.

Three wildfires in California received emergency flood prevention assistance during fiscal 1968. These were the Paseo Grande fire in Orange and Riverside Counties; the Reche Canyon fire in San Bernardino County; and the Timber fire in Ventura County. The Paseo Grande fire was a good illustration of the potential dangers loss of cover can cause.

The Paseo Grande fire was the greatest natural disaster in Orange County history. The burn total 48,639 acres, including 4,565 acres of the Cleveland National Forest and 44,074 acres of private land. The fire destroyed the protective cover of vegetation on valuable watershed lands in and adjacent to the Santa Ana Mountains. In addition, it destroyed improvements valued at $3.2 million and cost a half-million dollars to control.

The burn left steep slopes and highly erosive soils in a 76 square mile area which threatened to generate 2.5 million cubic yards of debris during the winter of 1967–68. This immediate threat of floods, sediment deposits to downstream areas, pollution of water supplies, and impairment of water distribution systems by sediment, ashes, and debris required rapid emergency land treatment. Within the immediate area below the burn even moderate flood damage could have reached $10 million.

It can be seen that the potential flood and debris flows from these burns seriously threatened downstream life and property. The property susceptible to damage from the burns included highly productive citrus groves, extensive residential property, railroad trackage, highways, power and telephone lines, agricultural product processing plants, very productive farmland, farm improvements and livestock. The cost of debris removal alone could have exceeded $250,000.

To the credit of all involved, the speedy cooperation of such agencies as the Forest Service, the Soil Conservation Service, the California Division of Forestry, and the local county governments, districts, and agencies allowed emergency restorative work to be accomplished before the winter rains began.

Mr. President, I salute these fine organizations for their performance in these instances of need and thank them for their continuing efforts on behalf of all the people of my State.

ABA COMMITTEE ENDORSES FORTAS AND THORNBERRY

Mr. INOUYE. Mr. President, the American Bar Association's prestigious Standing Committee on Federal Judiciary has supported the nominations of Justice Abe Fortas as Chief Justice of the United States and Circuit Judge Homer Thornberry as an Associate Justice of the Supreme Court.

Indeed, the committee has found that both nominees are "highly qualified from the standpoint of professional qualifications."

This is a most significant endorsement, since the committee is composed of 12 members, one from each Federal judicial circuit, one from the District of Columbia and one appointed at large. In making these appointments, great care is taken to select highly prominent members of the bar with broad experience and an extensive background in courtroom work.

The members of this distinguished committee are: Albert E. Jenner, Jr., Chicago, Ill.; Sumner Babcock, Boston, Mass.; Cloyd LaPorte, New York, N.Y.; Robert L. Trescher, Philadelphia, Pa.; Robert T. Barton, Jr., Richmond, Va.; John W. Ball, Jacksonville, Fla.; Harry G. Gault, Flint, Mich.; Barnabas F. Sears, Chicago, Ill.; Roy E. Willy, Sioux Falls, S. Dak.; Glenn R. Jack, Oregon City, Oreg.; Gerald B. Klein, Tulsa, Okla.; and Robert Ash, Washington, D.C.

The chairman of the committee is the distinguished Albert E. Jenner, Jr., of Illinois. Mr. Jenner is past president of the American College of Trial Lawyers, the American Judicature Society, and the National Conference of Bar Association Presidents. More recently, he was appointed by President Johnson to serve as senior trial counsel to the Warren Commission and is now serving as a member of the President's Commission on Violence.

With respect to Supreme Court appointments, the committee's investigation is highly concentrated. After the nominees' files have been analyzed, the entire committee confers on a conference telephone call to discuss the merits of the appointment and the report to be delivered to the Attorney General. The procedure helps insure a full exchange of views in an atmosphere of confidentiality and candor.

This procedure was followed with respect to the President's nomination of Justice Fortas and Judge Thornberry. The review was somewhat simplified, of course, by the fact that the committee had previously passed upon the qualifications of both nominees. Both men had previously been found qualified for appointments in the Federal judiciary by the committee.

This committee's support for both appointments is doubly persuasive since we know from experience that the committee does not hesitate to oppose nominees it considers unqualified to serve in the Federal judiciary.

The action taken by this distinguished committee documents, dispassionately and without coloration, the essential requirement of any judicial appointment—professional competence. I accept the judgment of the committee and urge Senators to do likewise.

NOMINATIONS TO THE SUPREME COURT

Mr. MORSE. Mr. President, the soundest reply I have yet seen to the

objections raised to the nominations to the Supreme Court appears in the July 8 issue of the Register-Guard of Eugene, Oreg.

The Register-Guard is not in the corner, editorially speaking, of the present administration, having endorsed a Republican candidate for the presidential election.

But in passing judgment upon the nominations of Abe Fortas and Homer Thornberry, the editorial writers have thoroughly demolished the case made to date against these nominations.

I ask unanimous consent that this fine editorial, entitled "Sheer, Raw Politics the Only Reason," be printed in the RECORD.

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

SHEER, RAW POLITICS THE ONLY REASON

Critics of President Johnson's Supreme Court appointments fault them for the worst of all possible reasons, lack of judicial experience. Homer Thornberry, nominated to succeed Abe Fortas as an associate justice, has been a federal judge since 1963. And Justice Fortas, for all that he had no judicial experience before he was appointed to the court in 1965, has now had three years experience. That's more than many have had.

One Oregon newspaper stated baldly that "the founding fathers intended that the Supreme Court be made up of men with prior judicial experience, selected by the president because of this experience." Nothing in the Constitution bears that out. The founding fathers were extremely vague about what this high court was supposed to do. The nation was old enough to join the Boy Scouts before one chief justice, John Marshall, began to pump blood into the court.

Presidents have picked good judges from many segments of the legal profession. The Constitution does not require that a Supreme Court justice even be a lawyer, but it is unthinkabls that a President would appoint a man without a legal background.

Some of the best judges, true enough, have come from other federal benches or from state courts. Among them have been Oliver Wendell Holmes and Benjamin Cardozo. President Eisenhower found four of his five appointees—Stewart, Whittaker, Brennan and Harlan—on lower federal courts.

But President Eisenhower's other appointee, and his first, was without judicial experience. He was Earl Warren, whose background was essentially political. That background he shares with three Truman appointees—Clark, Vinson and Burton—and with such other luminaries on the court as Goldberg, Black, and Byrnes.

President Roosevelt turned to the classroom to elevate Professors Frankfurter and Douglas. Some appointees have been personal cronies—Byron White, a friend of the Kennedys, and Abe Fortas and Homer Thornberry, friends of President Johnson.

In the past 31 years, 23 men have been named to the court. Sixteen had no prior judicial experience. Among the great judges without judicial experience are the first chief justice, John Jay, the great John Marshall, Joseph Storey and, of course, Justices Warren and Fortas. Felix Frankfurter, who had no prior judicial experience, once commented that "the correlation between prior judicial experience and fitness for the Supreme Court is zero."

Neither the charge of personal friendship nor the ridiculous charge of "prior experience" should bar Senate confirmation of the Justice Fortas and Judge Thornberry. Nor does the "lame duck" argument hold up. President Eisenhower, a lame duck the moment he began his second term, appointed Justices Whittaker and Stewart in his last term of office. The only reason for refusing confirmation of the two now under consideration is sheer, raw politics. And if confirmation fails it will be for that reason alone.

RESOLUTION RECOGNIZING POLICE EFFORTS

Mr. HARTKE. Mr. President, I have received an official resolution of the American Federation of Police concerning national recognition of police efforts in combating crime in America. In recent weeks we have seen some of the outstanding achievements which these men perform, but I believe it is important that our citizens acquire an even greater awareness of the too-often unheralded efforts of so many of our law enforcement agents. 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:

OFFICIAL RESOLUTION OF THE AMERICAN FEDERATION OF POLICE

Whereas, the American Federation of Police proposes to the President of the United States and to the Congress of the United States that either by public law or by executive order that a medal be struck to honor the heroism and valor of law enforcement officers nationwide, and

Whereas, any law enforcement officer who either sacrifices his life for the preservation of law and order or who greatly endangers his life to defend that of a citizen or comrade in the line of duty, or who by a great act of courage distinguishes himself, that this officer be bestowed this medal at ceremonies to be held each year at the Nation's Capitol, and

Whereas, any other officer who may be injured in the line of duty or may distinguish himself while in the performance of his duties shall also be eligible for a special Congressional or Presidential citation to be awarded each year during National Police Week, and

Whereas, such awards will underline the major contribution made by police officers in keeping our Nation a strong republic that they will contribute to the morale of the police officer, the pride of his own family and direct to the public the major role and service of the professional police officer, and

Whereas, these awards should be judged on the merit of each act that a permanent committee should be appointed representing members of the Congress and members from such other organizations as may be determined by the Congress such as police chiefs, sheriffs, Federal police associations and the American Federation of Police, and the Department of Justice.

Therefore, be it resolved, that the Secretary of the American Federation of Police shall send copies of this proposal to the President of the United States, the Vice President of the United States, Senators and to such other organizations as may be in the interests of the award proposal.

Signed and sealed this 6th day of June, 1968 at Miami, Florida by action of the board of directors.

GERALD S. ARENBERG, *Chairman.*

Attest:

D. B. BRODE IV, *Secretary.*

TELEVISION INTERVIEW OF SENATOR BYRD OF WEST VIRGINIA

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD a transcript of questions asked of me during a television interview on July 10 and my answers thereto.

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

TEXT OF SENATOR BYRD'S TELEVISION INTERVIEW ON GUN CONTROL REGISTRATION, POOR PEOPLE'S TRANSPORTATION COSTS, AND POLITICAL POLLS, JULY 10, 1968.

Question: Senator Byrd, the House of Representatives appears to have sidetracked federal registration of guns. What is your position on this question?

Answer: Well, I do not favor federal legislation requiring the registration and licensing of firearms. However, I do favor federal legislation banning over-the-counter sales of firearms to juveniles and to non-residents and to mental incompetents and I also favor federal legislation banning mail order sales of guns. I think this kind of legislation could go a long way toward preventing traffic in guns to criminals, juveniles, and lunatics.

But I cannot agree with those persons who attempt to brush off the issue by saying that registering a gun is as harmless as registering an automobile or a dog or getting a marriage license. In my judgment, federal legislation requiring the registration and licensing of guns smacks of the police state, whereas registering a dog or an automobile of getting a marriage license is purely a matter of concern to the state and locality.

I believe that any federal law that would require gun registration and licensing places an undue burden on the law-abiding citizen who wants to keep a gun around his house because he is a gun collector or for hunting purposes or to protect himself and his family against marauders and hoodiums. Why place the burden on this law-abiding citizen who is not a threat to the community and who would not commit armed robbery or murder and at the same time have a law which would not reach the criminal? Any individual who has no respect for the laws of the land to begin with is certainly not going to respect and obey a law which says he has to register his gun. Now, if a state wishes to pass legislation requiring gun registration this is a matter for the legislature. But I think this would be going too far for the federal government to pass such a law.

Question: Senator, you threatened to hold up the District of Columbia budget because the District government paid the way home for some of the demonstrators in the Poor People's Campaign. Anonymous private sources have now reimbursed the District. What is your feeling about this matter?

Answer: Well, I think it is simply preposterous for the District government through its welfare department to offer to pay the transportation costs of getting people back to their homes.

The District government has now assured me that the monies have now been reimbursed to the welfare department through private donors. But I think there is a great principle involved here. The District government was put to great costs by the so-called Poor People's Campaign, and I do not believe that it should have to bear the additional burden of getting these people back to their homes. If the District government had been permitted to get by with paying the transportation bill of these demonstrators in this instance it would have established a very bad precedent, and I think that it would pave the way for an invitation, an open invitation, to demonstrators in the future to come to Washington with the idea that the Government would pick up the tab for their return trip.

Now, I believe that the taxpayers of the country should not have to bear the burden. The Southern Christian Leadership Conference brought these people to Washington to camp out on federal property and to harrass government agencies and government offi-

are we ready for the transaction of routine morning business?

Mr. MANSFIELD. Yes.

Mr. MORSE. I should like to proceed with some morning business. I have several items. If any other Senator would like to proceed first, it is all right with me.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

THERE IS ONLY ONE ISSUE IN THE SUPREME COURT NOMINATIONS

Mr. MORSE. Mr. President, I have a copy of a telegram which was sent to the chairman of the Senate Judiciary Committee. The telegram discusses President Johnson's nominations of Justice Abe Fortas as Chief Justice of the United States and Judge Homer Thornberry as Associate Justice of the Supreme Court. The telegram is signed by 480 deans and professors at 68 of the finest law schools in the Nation, and has been released to the public by the signers.

As former dean of law at the University of Oregon, I know many of the deans and professors who signed this telegram. I completely agree with their legal observations.

Because of the controversy and great public interest surrounding the two Supreme Court nominations, I should like to read the contents of this statement from the cream of America's academic legal community:

As professors of law, we wish to express our grave concern over the opinion expressed in some quarters that, in view of the fact that President Johnson is not a candidate for reelection, his recent nominations of Justice Abe Fortas as Chief Justice of the United States and Judge Homer Thornberry as associate justice of the Supreme Court should not be entertained by the Senate.

We find no warrant in constitutional law for the proposition that the concurrent authority and obligation of the President and Senate with respect to the appointment of high federal officials are in any degree, attenuated by a presidential decision not to seek a further term. Indeed, in our judgment the proposition contended for would subvert the basic constitutional plan, for it would substantially erode authority explicitly vested by the constitution in the President and in the Senate. The constitution contemplates, and the people in electing a president and Senators expect, that the highest executive and legislative officials of the land will exercise their full authority to govern throughout their terms of office.

Acquiescence in the view that a President whose term is expiring should under no circumstances exercise his power to nominate would have deprived our Nation of the incomparable judicial service of John Marshall. And this example precisely demonstrates that impairment of the appointive power would be most fraught with hazard when the post to be filled is a judicial one. To lay it down as a general rule that in his last year in office a President should leave judicial posts vacant so that they can be filled by the next administration would frequently disrupt the orderly conduct of judicial business. In addition such a general rule would have even more serious repercussions. It would imply acceptance of the premise that judges are accountable to the President who nominates and the Senators who advise and consent. Our entire constitutional structure is reared upon exactly the opposite premise. A judicial nominee is to be judged by the Senate on his merits. If confirmed and commissioned, he sits as a judge during good behavior, and he owes official allegiance not to other Government officers but to the Constitution and laws of the United States.

Moreover, we submit that any use of the technique of filibuster to frustrate the appointive power would be a further, and equally unworthy, assault upon the integrity of the Presidency, the judiciary, and the Senate. We hope and trust that the Senate, prompted by the Judiciary committee, will forthwith address itself to the only issues properly before it—the fitness of these nominees for the posts in question.

We respectfully request that this telegram be made a part of the Judiciary Committee's record with respect to the nominations of Justice Fortas and Judge Thornberry.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point the list of names of the law school deans and professors who signed the telegram.

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

Albany Law School, Union University: Samuel M. Hesson, Dean; William Samore.

University of Arizona College of Law: Charles E. Ares, Dean; Robert Emmet Clark; John J. Irwin, Jr.; Winton D. Woods, Jr.

University of Arkansas School of Law: Ralph C. Barnhart, Dean; Albert M. Witte; Robert Ross Wright, III.

Boston College Law School: Peter Donovan; Robert F. Drinan, Dean; Mary Glendon; James L. Houghterling, Jr.; Richard G. Huber; Sanford Katz; Francis J. Larkin; Joseph F. McCarthy; Francis J. Nicholson, S.J.; Mario E. Occhialino; John D. O'Reilly, Jr.; Emil Slizewski; James W. Smith; Richard S. Sullivan; William P. Willier.

University of California (Berkeley): Babetts B. Barton; Richard M. Buxbaum; Jesse H. Choper; Edward C. Halbach, Jr., Dean; J. Michael Heyman; Richard W. Jennings; Sanford H. Kadish; Adrian A. Kragen; John K. McNulty; Sho Sato; David E. Seller; Arthur H. Sherry; Preble Stolz; Lawrence M. Stone; Lawrence A. Sullivan; Jan Vetter.

University of California (Los Angeles): Norman Abrams; Michael A. Asimow; Harold W. Horowitz; Leon Letwin; Richard C. Maxwell, Dean; David Mellinkoff; Herbert Morris; Paul O. Proehl; Arthur I. Rosett; Richard A. Wasserstrom.

Salmon P. Chase: Jack W. Grosse; Nicholas C. Revelos; Eugene W. Youngs, Dean.

University of Chicago: David P. Currie; Kenneth Culp Davis; Bernard D. Meltzer; Norval Morris; Phil C. Neal, Dean; Dallin H. Oaks.

University of Cincinnati: Kenneth L. Aplin; Roscoe L. Barrow; Robert Nevin Cook; Stanley E. Harper, Jr.; Wilbur R. Lester; John J. Murphy; Victor E. Schwartz; Claude R. Sowle, Dean.

Cleveland-Marshall Law School: Hyman Cohen; Howard L. Oleck, Dean; Kevin Sheard.

Columbia University: Walter Gellhorn; William C. Warren, Dean.

University of Connecticut: Thomas L. Archibald; Joseph A. LaPlante; Philip Shuchman; Robert E. Walsh; Donald T. Weckstein.

Cornell Law School: Harry Bitner; William Tucker, Dean; Harrop A. Freeman; Kurt L. Hanslowe; John W. MacDonald; Walter E. Oberer.

DePaul University: Philip Romiti, Dean.

Drake University: M. Gene Blackburn; George Gordin, Jr.; Edward R. Hayes; Kamilla Mazanec; Denton R. Moore; Craig T. Sawyer; John D. Scarlett, Dean.

Duke University: George C. Christie; Ernest A. E. Gellhorn; Clark C. Havighurst; John D. Johnston, Jr.; F. Hodge O'Neal, Dean; Melvin Gerald Shimm; John W. Strong.

University of Florida: K. L. Black; Charles Dent Bostick; Dexter Delony; John M. Flackett; James J. Freeland; Mandell Glicksberg; Elmer Leroy Hunt; Ernest M. Jones; Leslie Harold Levinson; Frank E. Maloney, Dean; Leonard Stewart Powers; Walter Probert; Joel Rabinovitz; Richard B. Stephens; Duane D. Wall; Wayne Walker.

Georgetown University: Addison M. Bowman; Edwin J. Bradley; Paul R. Dean, Dean; Raymond E. Gallagher; Sidney B. Jacoby; Edwin P. McManus; Robert S. Schoshinski; Jonathan Sobeloff.

University of Georgia: James Ralph Beaird; Lindsey Cowen, Dean; James W. Curtis; D. Meade Field; David C. Landgraf; Robert N. Leavell; John F. T. Murray; John Daniel Reaves; John Barton Rees; Charles L. Saunders, Jr.; R. Perry Sentell, Jr.; Hunter E. Taylor, Jr.

Harvard University: Derek C. Bok, Dean.

University of Illinois: Edward J. Kionka; Wayne R. Lafave; Prentice H. Marshall; John Harrison McCord; Herbert Semmel; Victor J. Stone; J. Nelson Young.

Indiana University (Bloomington): Edwin H. Greenebaum; William Burnett Harvey, Dean; Dan Hopson; Val Nolan, Jr.; William W. Oliver; F. Thomas Schornhorst; Dan Tarlock; Philip C. Thorpe.

University of Iowa: Eric E. Bergsten; Arthur E. Bonfield; William G. Buss; Ronald L. Carlson; Richard F. Dole, Jr.; Dorsey D. Ellis, Jr.; Samuel M. Fahr; Gary S. Goodpaster; N. William Hines; James E. Meeks; Paul M. Neuhauser; David H. Vernon, Dean; Allan D. Vestal; Alan Widiss.

University of Kansas: Harvey Berenson; Lawrence E. Blades; Robert C. Casad; Finn Henriksen; William Arthur Kelly; Walker D. Miller; Benjamin G. Morris; Charles H. Oldfather; Arthur H. Travers, Jr.; Lawrence R. Velvel; Paul E. Wilson.

Louisiana State University: Melvin G. Dakin; Milton M. Harrison; Paul M. Hebert, Dean; Robert A. Pascal; A. N. Yiannopoulos.

University of Louisville: William E. Biggs; James R. Merritt, Dean; Ralph S. Petrilli; A. C. Russell; W. Scott Thomson; Marlin M. Volz.

Loyola University School of Law (Chicago): William L. Lamey, Dean; Robert G. Spector.

Mercer University: Francisco L. Figueroa; Philip Mullock; James C. Quarles, Dean; James C. Rehberg; Willis B. Sparks, III.

University of Michigan: Layman E. Allen; William M. Bishop, Jr.; Olin L. Browder, Jr.; Luke K. Cooperrider; Roger A. Cunningham; Charles Donahue, Jr.; Carl S. Hawkins; Jerold H. Israel; John H. Jackson; Joseph R. Julin; Douglas A. Kahn; Yale Kamisaw; Paul G. Kauper; Thomas E. Kauper; Frank Robert Kennedy; Robert L. Knauss; William J. Pierce; Terrance Sandalow; Joseph L. Sax; Stanley Siegel; L. Hart Wright.

University of Mississippi: John S. Bradley, Jr.; Gerard Magavero; Luther L. McDougal III; Joshua M. Morse III, Dean; William W. Van Alstyne; Parham H. Williams, Jr.

University of New Mexico: Willis H. Ellis; Frederick M. Hart; Jerome Hoffman; Hugh B. Muir; Albert E. Utton; Robert Willis Walker; Henry Weihofen.

State University of New York (Buffalo): Thomas Buergenthal.

New York University: Robert B. McKay, Dean.

University of North Carolina: Robert G. Byrd; Dan B. Dobbs; Martin B. Louis; Robert A. Melott; Mary W. Oliver; James Dickson Phillips, Dean; Melvin C. Poland; John Winfield Scott, Jr.; Richard M. Smith; Frank R. Strong; Dale A. Whitman.

Northwestern University: Thomas Bovaldi; William C. Chamberlin; Robert Childres; John P. Heinz; Vance N. Kirby; Brunson McChesney; Alexander McKam; Nathaniel L. Nathanson; John C. O'Byrne; James A. Rahl; William Roalfe; Kurt Schwerin; Francis O. Spalding.

Notre Dame Law School: Joseph O'Meara, Emeritus, Dean; Robert E. Rodes, Jr.

Ohio Northern University: Daniel S. Guy; Eugene N. Hansen, Dean; David Jackson Patterson, George D. Vaubel.

Ohio State University: James W. Carpenter, Richard E. Day, Howard Fink, Lawrence Herman, Leo J. Rasking, Alan Schwarz, Peter Simmons, Roland Stanger.

University of Oregon: Eugene F. Scoles.

University of Pennsylvania: Jefferson B. Fordham, Dean.

Rutgers. The State University (Camden): Russell W. Fairbanks, Dean.

Rutgers. The State University (Newark): Willard Heckel, Dean.

St. Louis University: Charles B. Blackmar; Richard Jefferson Childress; Vincent C. Immel, Dean; Donald B. King; Howard S. Levie; J. Norman McDonough; Sanford E. Sarasohn; Dennis J. Tuchler; Harvey L. Zuckman.

University of Santa Clara: Graham Douthwaite; Dale F. Fuller; Leo A. Huard, Dean; George A. Strong.

University of Southern California (Los Angeles): George Lefcoe; Dorothy W. Nelson, Dean.

Southern Methodist University: Charles O'Neill Galvin, Dean.

South Texas College of Law: Garland R. Walker, Dean.

Stanford University: Bayless A. Manning, Dean; Joseph T. Sneed.

University of Texas: Vincent A. Blasi; Edward R. Cohen; Fred Cohen; Carl H. Fulda; T. J. Gibson; Stanley M. Johanson; W. Page Keeton, Dean; James L. Kelley; J. Leon Lebowitz; Robert E. Mathews; Michael P. Rosenthal; Millard H. Ruud; George Schatzki; Marshall S. Shapo; Ernest E. Smith; James M. Treece; Russell J. Weintraub; Marion Kenneth Woodward; Harry K. Wright.

Texas Southern University: Earl L. Carl; Eugene M. Harrington; Roberson L. King; Kenneth S. Tollett, Dean.

University of Toledo: Samuel A. Bleicher; Charles W. Fornoff; Karl Krastin, Dean; Vincent M. Nathan; Gerald F. Petruccelli; John W. Stoepler.

University of Utah: Jerry R. Andersen; Ronald N. Boyce; Edwin Brown Firmage; John J. Flynn; Lionel H. Frankel; George G. Grossman; Harry Groves; Robert L. Schmid; I. Daniel Stewart; Robert W. Swenson; Samuel D. Thurman, Dean; Richard D. Young.

Vanderbilt University: Elliott E. Cheatham; Paul J. Hartman; L. Ray Patterson; Paul H. Sanders; T. A. Smedley; John W. Wade, Dean.

Villanova University: Gerald Abraham; George Daniel Bruch; J. Willard O'Brien; Harold Gill Reuschlein, Dean.

University of Virginia: Hardy C. Dillard, Dean; Ernest L. Folk III; Marion K. Kellogg; Peter W. Low; Peter C. Manson; J. C. McCoid II; Carl McFarland; Emerson G. Spies; Mason Willrich; Charles K. Woltz; Calvin Woodard.

University of Washington: William R. Andersen; James E. Beaver; William Burke; Charles E. Corker; Harry M. Cross; Robert L. Fletcher; Roland L. Hjorth; Robert S. Hunt; John Huston; John M. Junker; Richard O. Kummert; Luvern V. Rieke.

Washington University (St. Louis): Gary I. Boren; Gray L. Dorsey; William C. Jones; Arthur Allen Leff; Warren Lehman; Hiram H. Lesar, Dean; Frank William Miller; R. Dale Swihart.

Wayne State University: Charles W. Joiner, Dean.

Case Western Reserve University: Ronald J. Coffey; Maurice S. Culp; Lewis R. Katz; Earl M. Leiken; Richard Lewis Robbins; Hugh A. Ross; Oliver Schroeder, Jr.

College of William and Mary: Joseph Curtis, Dean; Arthur Warren Phelps; William F. Swindler.

University of Wisconsin: Gordon Brewster Baldwin; Abner Brodie; Alexander Brooks; John E Conway; George Currie; August G. Eckhardt; Nathan P. Feinsinger; G. W. Foster; Orrin L. Helstad; James Willard Hurst; Wilbur G. Katz; Edward L. Kimball; Spencer Kimball, Dean; Stewart Macaulay; Samuel Mermin; Walter B. Raushenbush; Frank J. Remington; Robert H. Skilton; John C. Stedman; George H. Young; Zigurds L. Zile.

Yale Law School: Joseph W. Bishop, Jr.; Boris I. Bittker; Ralph S. Brown, Jr.; Guido Calabresi; Elias Clark; Thomas I. Emerson; Abraham S. Goldstein; Joseph Goldstein; Leon Lipson; Myres Smith McDougal; Louis H. Pollak, Dean; Henry V. Poor.

LATE ARRIVALS

Louisiana State University: George W. Hardy, III; Francis C. Sullivan.

Albany Law School: Bernard Evans Harvith.

New York University: Edward J. Bender; Ralph Frederic Bischoff; Miguel De Capriles; James S. Eustice; M. Carr Ferguson, Jr.; George Frampton; James Gambrell; Albert H. Garretson; Hyman Gross; Joseph W. Hawley; George D. Hornstein; Graham Hughes; Howard I. Kalodner; Lawrence P. King; Charles Lincoln Knapp; Homer Kripke; Andreas F. Lowenfeld; Robert Lefiar; Guy B. Maxfield; Robert B. McKay; Elmer Mayse Million; John L. Peschel; Robert Pitofsky; Norman Redlich; Michael A. Schwind; John Yeatman Taggart; Gerald L. Wallace; Peter A. Winograd; Irving Younger; Judith Younger.

Boston University: Dennis S. Aronowitz; Hugh J. Crossland; Neil S. Hecht; Robert B. Kent; Daniel G. MacLeod; Banks McDowell; Henry P. Monaghan; William Schwartz; Paul M. Siskind, Dean; Austin T. Stickells; Paul A. Wallace, Jr.

University of Illinois: Rubin G. Cohn; Roger W. Findley; Stephen B. Goldberg; Peter B. Maggs.

Loyola University (New Orleans): Marcel Garsaud, Jr.; Louis J. Niegel, S.J.; Howard W. L'Enfant, Jr.; John J. McAulay; Patrick A. Mitchell; A. E. Papale, Dean; William Edward Thoms, II.

Boston College: Harold G. Wren.

University of Missouri (Columbia): Joe E. Covington, Dean; Edward H. Hunvald, Jr.; Theodore E. Lauer; Henry T. Lowe; William P. Murphy; James E. Westbrook.

Stanford University: Douglas R. Ayer; John Henry Merryman.

Mr. MORSE. Mr. President, there stands in contrast to the wire from the law professors the material being circulated in opposition to the Fortas nomination by the Liberty Lobby here in Washington, D.C.

Members of Congress who are receiving letters from home will be interested, as I was, in how many of those opposing the confirmation of Abe Fortas cite the information carried in this "Liberty Letter," sometimes word for word.

So that it will be available for readers of the CONGRESSIONAL RECORD, I ask unanimous consent that it be printed at this point in the RECORD.

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

[Emergency Liberty Letter No. 21, July 6, 1968]

REIGN OF CORRUPTION, CRIME, AND COMMUNISM THREATENS

Abe Fortas Must Not Be Confirmed by the Senate! America cannot stand another Earl Warren as Chief Justice.

The Truth is, Abe Fortas, President Johnson's selection to be Warren's replacement, has a record of affiliation with known revolutionaries and revolutionary groups. You cannot deny—no one can—that the cold, hard facts are shocking almost beyond belief!

Let's go back to the appointment of Earl Warren in 1953. No one has done more to distort the Constitution . . . weaken law and order . . . destroy traditional moral standards than Earl Warren. This has been documented beyond possible doubt. He served his purpose well. Earl Warren—personal friend of Nikita Khrushchev—has done a fantastic job softening up America for the planned takeover.

So now Abe Fortas has been nominated to replace Warren. The American people owe it to themselves, their children and Nation to investigate Fortas closer than they investigated Earl Warren. They must understand the background, philosophy and character of the man who may soon become America's third highest-standing official.

In the enclosed Fact Sheet on Fortas, Liberty Lobby has compiled some of his public record. Look over this documentation. You will then understand the logic of his appointment. You will perceive why Fortas is so well-qualified to guide this once-free and independent Nation down the final pathway to the Communist tyranny that awaits. If you or anyone else can refute the plain facts, you are invited to try!

Abe Fortas is not a juvenile delinquent who has dabbled in Communist causes for thrills. He is a 58-year-old, convinced revolutionary, in deadly earnest. If it cannot be proven that he has spent thirty years of his life under Communist Party discipline, neither can it be shown where he has significantly deviated from the Party Line. His undeniable record of service to the CP is so clear and overwhelming that it should send a chill of apprehension down the backbone of any American who understands the immense power that will be given to this man if confirmed by the Senate.

Five years ago, no President would have dared to appoint such an avowed Leftist to such an important job. The very fact that Fortas can be given serious consideration for the Chief Justiceship is alarming in itself. It can only mean that America's time is growing short . . . that the time of crisis is so near that it is necessary for the Revolution to take the risk of revealing itself in order to insure its success.

Under Fortas' control, the Supreme Court will smash every effort by the people to restore law and order and crack down on crime, communism and corruption. Under Fortas' control, the pornographic industry will go on attacking the morals of American youth, while the narcotics industry continues assaulting their bodies and minds. Under Fortas' control, it will be "business as usual" for the communists and the underworld and the big contractors who are cleaning up on cost-plus at the taxpayers' expense—especially those who are wise enough to be clients of Arnold and Porter, his wife's prosperous law firm.

This is an Emergency more intense than at any time in the past when Liberty Lobby has been forced to spend the amount of money necessary to send an alert to all subscribers. This is an Emergency which demands the greatest and most prompt exertion from every patriotic American. Will you stand and fight now while you still have a chance?

WHAT YOU MUST DO . . . PLEASE

(1) Write, wire or telephone each of your two senators. Politely but emphatically tell them of the shock you feel that Abe Fortas could even be considered for the Chief Justiceship in the light of his background.

(2) Send copies of your letters and wires to the members of the Senate Judiciary Committee which will hear testimony on Fortas on July 11. (See your *Congressional Handbook* for names.)

(3) Persuade your friends, neighbors and relatives to also write, wire or call. Write your newspaper. Call a radio station. Tell your civic group or woman's club. Distribute copies of the enclosed Fact Sheet and this Letter. You *have permission to reprint either or both.*

(4) Help financially. The Fortas case comes on the heels of the Gun Emergency. Last month, Liberty Lobby spent $18,113.85 on coast-to-coast ads, fighting the anti-gun

bills. Now, Fortas. Tomorrow, will LBJ try to ram another disarmament treaty through the Senate before adjournment? And if he does; will Liberty Lobby be able to move? Or not?

Whatever happens, the financial resources of Liberty Lobby are exhausted. Money is desperately needed. Borrowed money must be repaid. Postage alone for this mailing cost $12,000—twelve thousand dollars that Liberty Lobby can not spare! Printing bills of about five thousand dollars will soon be in. You are reading a letter printed on credit and there is no money to pay for it.

While your Liberty Lobby works desperately to stem the ravages of an outgoing President and Senate, millions of Americans are enjoying themselves at the seashore or the lake or elsewhere on vacation. They don't want to get involved. But you are involved, and Liberty Lobby is involved, and America is involved, like it or not, and Money . . . Lots of money . . . is desperately needed to continue the fight through the summer!

We've fought and worked hard this year; the record bears it out. We've testified 14 times before Congressional committees, published millions of words, called on dozens of congressmen, raised thousands of dollars for tight congressional races. Frankly, we've been working too hard to try and raise money for emergencies like this.

You know that Liberty Lobby will go on fighting until the last dollar—the last of our credit—is used up. But . . . please don't let that happen. This is a time of crisis. Our need has never been so desperate . . . and *you* know that the need for Liberty Lobby has never been so desperate! Please respond with your maximum contribution . . . today!

Your influence counts . . . use it!

THE ABE FORTAS RECORD

1. Aided Alger Hiss and Harry Dexter White (both Communist spies) in drafting the Charter of the United Nations at San Francisco in 1945.

2. Organized the Warren Commission to investigate the Kennedy Assassination, following the identical plan proposed a week before by the Communist Worker including the selection of Chief Justice Earl Warren as Chairman.

3. Put the "fix" on Supreme Court Justice Black to overrule a Federal Court decision against LBJ in the stolen Texas primary election of 1948. Federal Judge T. Whitfield Davidson described this order as ". . . too hasty, and perhaps unlawful." Order halted all investigation of LBJ's 87 winning "votes" and elected him to the Senate.

4. Designed the "Durham Rule" on criminal insanity that has prevented conviction of killers and rapists, who, under the old rule of "knowing right from wrong" would otherwise be convicted.

5. Designed the "Gideon Rule" requiring the taxpayers to pay for lawyers for all defendants in state courts, whether or not justified.

6. Put the "fix" on three Washington daily newspapers to prevent publication of the news of Presidential Aide Walter Jenkins's second arrest for sex perversion.

7. Served in 1933 and 1934 in the Legal Division of the Agricultural Adjustment Administration. Besides Fortas, the Legal Division was made up of Jerome Frank, Thurman Arnold, Adlai Stevenson, Alger Hiss, Lee Pressman, John Abt, and Nathan Witt. Over half of these have since been identified as Communist spies.

8. Served as defense attorney for Bobby Baker until the Kennedy assassination, when he suddenly withdrew his services.

9. Married to tax-attorney Carolyn Agger, whose clients include some of America's biggest corporations (possibly because her partner-on-extended-leave-of-absence is none other than the Commissioner of Internal Revenue, Sheldon Cohen, who will some day benefit from the fees paid.)

10. Defended Owen Lattimore (perjurer, Communist spy) making use of testimony supplied by a witness (Dr. Bella Dodd) whom he knew to be a Communist, the equivalent of soliciting perjured testimony. Dr. Dodd later admitted the perjury.

11. Arranged the LBJ "trust fund" in such a manner as to allow the President to continue controlling the Johnson fortune even though it is "in trust."

12. Officer and National Committeeman of the International Juridical Association (Communist Party front group) together with Thurgood Marshall, Roy Wilkins, Lee Pressman, Nathan Witt, and others.

13. Affiliated with the National Lawyers Guild (subversive organization) in the 1930's.

14. Member of the Washington Committee for Democratic Action (subversive organization—Attorney General's list) in the 1940's.

15. Supporter of (he doesn't remember whether he actually joined) the Southern Conference for Human Welfare in 1947 (listed as a Communist Party front group for three years at the time).

16. Helped to write the "Gesell Report" for the Defense Department, aimed at forcing off-base racial integration in housing, social life, etc., of U.S. servicemen.

17. Member of Harry Dexter White's "policy-making" circle under Roosevelt. Other members were Benjamin Cohen of the Office of War Mobilization, Laughlin Currie, and Aubrey Williams.

18. Tried to "fix" the Washington press to prevent the publication of the story of Bobby Baker's "gift" of the famous stereo to LBJ.

19. Was highly praised by the Communist Party *Worker* (November 3, 1950) for denouncing the firing of certain State Department employees for disloyalty as "unfair and un-American." Fortas said the firings were the act of a "police state."

20. In appealing the firing of one Milton Friedman from a top-level post in the War Manpower Commission for disseminating Communist Party propaganda, Fortas pleaded before the Supreme Court to grant Communist Party propagandists "free commerce in opinion and political expression." (1944)

TESTIMONY OF ABE FORTAS

Hearings were held on August 5th, 1965, before the Committee on the Judiciary, United States Senate, on the nomination of Abe Fortas of Tennessee to be an Associate Justice of the Supreme Court of the United States.

Fortas was questioned by the Committee.

"The CHAIRMAN. What about the International Judicial Association?

"Mr. FORTAS. Mr. Chairman, to the best of my knowledge and belief I never attended a meeting of such an organization, never had any connection with it whatsoever. Now, this is an old charge that has plagued me for many years, including my previous two confirmations by the Senate when I was Under Secretary of the Interior, and the best I can reconstruct, and I want to emphasize that it is reconstruction, is that some time in the thirties and probably when I was on the Yale law faculty, because I was on the Yale law faculty and spent summers and vacation time in Washington in those years, someone may have written me and suggested that I join this. That was the day when joining was mighty easy, and we were all quick to do it, and I may have said, yes, and that is the totality of my connection with it, if any, and in all these years nobody has ever said that I attended a meeting or ever did the slightest thing in connection with that organization. My mind is blank about that.

"The CHAIRMAN. You never attended a meeting?

"Mr. FORTAS. No, sir.

"The CHAIRMAN. You were not active at all?

"Mr. FORTAS. No, sir.

"The CHAIRMAN. Did you pay any dues?

"Mr. FORTAS. No, sir, not to the best of my recollection."

Although Mr. Fortas cannot recall attending a meeting of this group, or paying dues, they thought so highly of him that they listed him as a member of their National Committee on their letterhead. The International Juridical Association enjoys the following citations: 1. Cited as a Communist front and an offshoot of the International Labor Defense. 2. Cited as an organization which actively defended Communists and consistently followed the Communist Party Line.

"The CHAIRMAN. What about the National Lawyers Guild? Were you a member of that, sir?

"Mr. FORTAS. Yes, sir, I was a member of that for a time. I left at the same time that Mr. Justice Jackson and a great many other people left that organization. I am sure you know its history. There came a time when it appeared rather clearly that a leftwing group had moved in to take control of that organization and a great many people left then, including me."

Fortas was not just a member of this group, found subversive by Congress, but also served on its Committee on Farm Problems.

"The CHAIRMAN. You were not a constant associate of Alger Hiss as has been charged?

"Mr. FORTAS. Oh, no, sir."

Notice the word constant. Alger Hiss and Fortas worked together in the 1930's and 1940's, including their work together in San Francisco and London, forming the United Nations. A little later, Mr. Hiss had some difficulties arise from his career as a Soviet Agent, and went to jail. That ended many of his constant associations.

The hearings made no mention of Fortas' association with the American Law Students Association, part of the American Youth Congress, which was cited as an affiliate of the U.S. Peace Committee, a Communist controlled peace front. Fortas appeared on their letterhead, as a member of the Faculty Advisory Board. His membership in the Washington Committee for Democratic Action, cited by the Attorney General as subversive, was not disclosed in the testimony. Although his association with Alger Hiss and legal defense of Owen Lattimore were questioned superficially, there was no mention of his close associations with Harry Dexter White, Laughlin Currie, Aubrey Williams, David K. Niles, and others of similar sympathies.

Fortas' memory of Communistic activity and associations may be short—but the record speaks for itself. The Senate of the United States should not overlook it.

Fortas has strong interests in dissent and civil disobedience. His newly published book, "Concerning Dissent and Civil Disobedience" is described as being "In the tradition of the American Revolutionary press." In it he states: "I hope I would have had the courage to disobey, although segregation ordinances *were presumably law* until they were declared unconstitutional." (Emphasis added.)

Mr. MORSE. Mr. President, there is nothing I could possibly say that would strengthen the constitutional arguments raised by the distinguished legal scholars who have signed the telegram that I have inserted in the RECORD. However, there are a few points I would like to make in order to help cast the nominations in the sharpest and clearest light for all of us to see.

First. The statement of the distinguished legal scholars refers to the constitutional responsibilities of both the President and the Senate. The President is obviously duty bound to fill vacancies on the Supreme Court. But the Senate is equally duty bound to participate in this constitutional process by working its will with respect to the nominees of the Pres-

ident. We have a constitutional duty to "advise and consent" or not to "advise and consent." And we cannot shirk that duty. Procrastination does not meet our constitutional obligations.

Second. The way the Senate acts with respect to the nominations is directly related to the broad problem of law and order in America. Let us not delude ourselves for a moment that law and order merely means the rapid apprehension of criminal suspects and the swift disposition of their cases. Respect for law and order is a plea that we hear every day in America. And respect for law and order includes confidence by the American people in the carrying out of constitutional processes—in this case, action by the Senate, one way or another, on the nominations of the President. This is perhaps only another way of saying that ours is a government of laws, not of men.

Third. Any unreasonable delay in following the constitutional process—a filibuster, for example prevents the Senate from exercising its constitutional obligation to take part in the process by which the judicial branch of Government is maintained as one of the three separate branches of our democratic republic. No one who claims adherence to the Constitution can, in good conscience, permit undue delay in allowing the Senate to work its will on these nominations.

Fourth. The law schools represented by the signatories to the telegram are located in every section of the country: for example, Harvard, University of Virginia, University of Mississippi, Notre Dame, University of North Carolina, University of Arizona, University of Utah, University of California, and my own State of Oregon. There is not a section of the country that is not present in the group of legal scholars. I am confident that on any substantive issue of the law, we would find opinions from these different scholars ranging over the entire spectrum of legal theory. But on this one point, they are clearly united.

Lest anyone forget, let me remind my colleagues of the specific point of the message from the law school deans and professors. In the telegram I read, there is not one word of praise for either Justice Fortas or Judge Thornberry. I personally happen to believe that both nominees are eminently praiseworthy and highly qualified for the positions to which they have been named. But that is not the point. The signers of the telegram are not urging the Senate to approve these two nominations. The distinguished legal scholars are simply urging, as strongly as they can, that the Senate "forthwith address itself to the only issues properly before it—the fitness of these nominees for the posts in question."

That is the real issue before the Senate. It is the issue I intend to face up to. And it is the issue I urge my colleagues to resolve.

There is something more important here than these two nominees, something more important than the President who submitted their names, and more important than the Senators on either side of this struggle. That is the integrity and viability of the Constitution of the United States. When I became a Member of this legislative body, I swore an oath to support and defend that Constitution. I intend to live up to my oath, and I believe that the Senate will fulfill its obligation under that great living document, the Constitution of the United States.

LAW, ORDER, AND THE HIGH COURT

Mr. WILLIAMS of Delaware. Mr. President, in the July 22, 1968, issue of the U.S. News & World Report there appears an address by Chief Justice John C. Bell, Jr., of the Supreme Court of Pennsylvania, entitled "Law, Order, and the High Court."

This address is particularly appropriate at this time when we are considering the confirmation of future nominees for the Supreme Court. I quote three paragraphs from it:

> The land of law and order—the land which all of us have loved in prose and poetry and in our hearts—has become a land of unrest, lawlessness, violence and disorder—a land of turmoil, of riotings, lootings, shootings, confusion and Babel. And you who remember your Genesis remember what happened to Babel.
>
> Respect for law and order—indeed, respect for any public or private authority—is rapidly vanishing. Why? There isn't just one reason. There are a multitude and a combination of reasons. Many political leaders are stirring up unrest, discontent and greed by promising every voting group heaven on earth, no matter what the cost. Many racial leaders demand—not next year, or in the foreseeable future, but right now—a blue moon for everyone with a gold ring around it. . . .
>
> Let's face it—a dozen recent, revolutionary decisons by a majority of the Supreme Court of the United States in favor of murderers, robbers, rapists, and other dangerous criminals, which astonish and dismay countless law-abiding citizens who look to our courts for protection and help, and the mollycoddling of lawbreakers and dangerous criminals by many judges—each and all of these are worrying and frightening millions of law-abiding citizens and are literally jeopardizing the future welfare of our country.

These remarks by Chief Justice Bell should be read by every Member of Congress and by every member of the Judiciary. I ask unanimous consent that the complete address be printed in the RECORD.

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

LAW, ORDER, AND THE HIGH COURT—A STATE CHIEF JUSTICE SPEAKS OUT

The land of law and order—the land which all of us have loved in prose and poetry and in our hearts—has become a land of unrest, lawlessness, violence and disorder—a land of turmoil, of riotings, lootings, shootings, confusion and Babel. And you who remember your Genesis remember what happened to Babel.

Respect for law and order—indeed, respect for any public or private authority—is rapidly vanishing. Why? There isn't just one reason. There are a multitude and a combination of reasons. Many political leaders are stirring up unrest, discontent and greed by promising every voting group heaven on earth, no matter what the cost. Many racial leaders demand—not next year, or in the foreseeable future, but right now—a blue moon for everyone with a gold ring around it.

Moreover, many racial leaders, many church leaders and many college leaders advocate mass civil disobedience and intentional violation of any and every law which a person dislikes.

We all know, and we all agree, that there is a need for many reforms, and that the poor and the unemployed must he helped. However, this does not justify the breaking of any of our laws or the resort to violence, or burnings and lootings of property or sit-ins, lie-ins, sleep-in students, or mass lie-downs in the public streets, or the blockading of buildings, or rioting mobs.

Television shows which feature gun battles—of course, unintentionally—add their bit to stimulating widespread violence. Furthermore, the blackmailing demands of those who advocate a defiance of law and order under the cloak of worthy objectives, and commit all kinds of illegal actions which they miscall civil rights, are harming, not helping, their cause.

Let's face it—a dozen recent, revolutionary decisions by a majority of the Supreme Court of the United States in favor of murderers, robbers, rapists and other dangerous criminals, which astonish and dismay countless law-abiding citizens who look to our courts for protection and help, and the mollycoddling of lawbreakers and dangerous criminals by many judges—each and all of these are worrying and frightening millions of law-abiding citizens and are literally jeopardizing the future welfare of our country.

Is this still America? Or are we following in the footsteps of ancient Rome, or are we becoming another revolutionary France?

Let's consider some of these problems one by one. In the first place, we cannot think or talk about crime and criminals without thinking about the newspapers and other news media. Our Constitution, as we all remember, guarantees the "freedom of the press," and this freedom of the press means an awful lot to our country, even though it isn't absolute and unlimited.

We all know that newspapers are written, edited and published by human beings, and therefore it is impossible for a newspaper to be always accurate or always fair or always right. Nevertheless, the newspapers and other news media are terrifically important in our lives, and particularly in showing up incompetent or crooked public officials and dangerous criminals. Indeed, it is not an exaggeration to say that they are absolutely vital and indispensable for the protection of the public against crime and criminals.

No matter what unrealistic people may say, the only way it is possible for law-abiding persons to adequately protect themselves against criminals is to be informed of a crime as soon as it happens, and all relevant details about when and where and how the crime occurred, together with pertinent data about the suspected criminal or criminals.

I repeat, this is the quickest and surest way, although, of course, not the only way our people can be alerted and protect themselves.

For these reasons, it is imperative that we must resist constantly and with all our power, every attempt to "muzzle" the press by well-meaning and unrealistic persons who mistakenly believe that this press coverage with its protective shield for the public will prevent a fair trial.

I need hardly add that if the press publicity so prejudices a community that a fair trial for the accused cannot be held therein, the courts possess, and whenever necessary exercise, the power to transfer the trial of such a case to another county in Pennsylvania.

Let's stop kidding the American people. It is too often forgotten that crime is increasing over six times more rapidly than our population. This deluge of violence, this flouting and defiance of the law and this crime wave cannot be stopped, and crime cannot be eliminated by pious platitudes and by governmental promises of millions

THE INTERNATIONAL WHEAT TRADE CONVENTION

Mr. DOMINICK. Mr. President, the International Wheat Trade Convention was approved by the Senate on June 13, 1968. I voted against it. We were assured by the administration that it was in the international interest and that the increased minimum prices for world trade in wheat and wheat products would improve the earnings of American farmers.

Immediately following the Senate action, the Secretary of Agriculture in implementing the arrangement, set minimum and maximum prices for American wheat and established an import tax which he called an inverse subsidy to take effect whenever the domestic price paid by an exporter was less than the minimums. He also announced a reduction in acreage allotments by 13 percent and diversion payments for farmers planning less than their acreage allotment.

It is now just about a month since Senate approval and administration implementation of U.S. participation under the International Wheat Trade Convention. While this is a short time to reach any firm conclusions, those of us who had reservations cannot help but be dismayed by what has taken place in that brief period.

Domestic prices have declined so far that export taxes are payable on the four kinds of wheat for which the Secretary of Agriculture announced minimum prices on June 13. The export tax due because of this decline in prices is $0.25 for Soft Red Winter wheat, $0.19 for Hard Red Winter wheat, $0.09 for West Coast White, and $0.06 for Dark Northern Spring. At a time when our trade balance is in serious trouble, rather than using our competitive advantage, we are taxing exporters to bring prices up.

The effects of the arrangement have made themselves felt clearly in marketing. Wheat shipments were 580,880 tons in the second week of June; 182,690 tons in the third week of June; and 116,000 in the last week of June. In the first week of July, according to the Southwestern Miller:

> Not a single cargo of wheat was sold via Gulf-Atlantic, except to India, and workings via Pacific were confined to Japan, the ranking buyer for dollar payment. Even parcel sales of wheat for cash payment were in exceedingly limited number.

Flour sales in the last week of June, at 245,916 hundred weights, were up somewhat over the preceding 2 weeks, but still only a fraction of the 1,099,000 consummated in the first week of June.

The budgetary cost of the acreage reduction and diversion payments proposed in connection with this program are not available, but can be expected to be substantial. The Department of Agriculture, in hearings before the Senate Agriculture and Forestry Committee in April 1968, estimated the total net price support and related expenditures for wheat and wheat products to be $539.5 million for 1968 and $470.3 million for 1969, as compared with the $47.1 million incurred in fiscal year 1967. This was before the decision to restrict acreage and use diversion payments in implementation of the International Wheat Trade Convention.

Mr. President, this is hardly a logical and a productive way to promote commercial exports to help our balance of payments, or to reduce our budgetary deficits; or for that matter, it is hardly a charitable way of helping less developed countries and the hungry people of the world.

GEN. G. P. DISOSWAY

Mr. BYRD of Virginia. Mr. President, Gen. G. P. Disosway retires from his position as commander, Tactical Air Command, Langley Air Force Base, Va., U.S. Air Force, on July 31. On that date General Disosway will close a long and distinguished career in the service of our Nation.

I deem it a privilege to introduce the highlights of the general's career into the CONGRESSIONAL RECORD. Such illustrious service deserves the appreciation of the Congress and the heartfelt thanks of this Nation.

General Disosway's 35 year military career began when he graduated from West Point in 1933 and within a year was a qualified pilot in the Army Air Corps.

In less than 9 years after leaving West Point he was a full colonel at the age of 32. His assignments have taken him across the country and back again, south of the border and to China and Europe. He has held important assignments such as director of training for the Air Force and commander of the Flying Training Air Force, now called Air Training Command. For a time he served as senior Air Force member of the Department of Defense Weapons Systems Evaluations Group.

General Disosway was named USAF Deputy Chief of Staff for Operations and headed the famed "Disosway Board," which helped to enhance air-ground joint operations, with emphasis on the flexibility of tactical airpower.

It was during this same period that General Disosway was instrumental in bringing the versatile McDonnell F-4 Phantom tactical fighter into the Air Force inventory.

In 1963, General Disosway received his fourth star and was appointed commander-in-chief, U.S. Air Forces in Europe. During the 2 years he served in this capacity he left his distinctive mark on both United States and NATO air operations in the European Theater.

In 1965, General Disosway assumed command of Tactical Air Command in a period of intense activity. Many TAC units and hundreds of personnel were being sent to Southeast Asia. Replacements had to be trained for aircrews and support activities. The lessons of this new war learned in air combat had to be examined, evaluated and applied by TAC. The command grew as weapons systems, new equipment and streamlined management techniques were introduced.

Every effort was made to give the air forces in Southeast Asia what was needed. TAC met this challenge without degrading its continuing and all-important mission to answer any other contingency that may occur anywhere in the world where U.S. interests require tactical air support.

TAC responded to these demands and responsibilities with professional know-how and calm appraisal—drawn from its commander.

Mr. President, I desire to commend this extraordinary, able, and effective officer. I regret that the Air Force and the Government are losing the services of such an outstanding man. I wish him continued success.

THE NATION WANTS ACTION ON THE SUPREME COURT APPOINTMENTS

Mr. PASTORE. Mr. President, in the matter of Presidential appointments to the Supreme Court I have already pressed the point that we of the Senate should be permitted to proceed without undue delay to our right and duty to "advise and consent."

Not only in this Senate but in the editorial columns of newspapers the country over there comes the demand that the Senate should speedily work its will on the nominations by President Johnson of Justice Abe Fortas to be Chief Justice of the United States and Justice Homer Thornberry to be Associate Justice of the Supreme Court.

Evidence comes from the Sunday, July 14, 1968, issue of my hometown newspaper, the Providence Sunday Journal—an independent newspaper.

> A shameful performance—
>
> The editorial terms the "stalling"—
>
> A shameful performance that reflects discredit on the nation's most distinguished legislative body.

I was curious to see how this editorial state of mind is reflected the country over. I have culled more than 30 editorials expressing impatience with what they call—among other names—"stalling tactics" — "phony issues" — "filibuster without merit."

It seems to me that these editorials constitute an indictment of our current behavior that we should be concerned to correct.

And—so that they may speak their own wisdom and warning—I ask unanimous consent that these editorials be printed in full text at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PASTORE. Mr. President, some of the newspapers do not commit themselves with respect to the two nominees. However, there is virtually unanimous agreement that undue delay in the constitutional process of "advise and consent" would be intolerable.

We in the Senate cannot abdicate our constitutional duty to pass on these nominations any more than President Johnson could abdicate his constitutional duty to fill Supreme Court vacancies.

It is the right of a Senator to reject if his conscience so dictates. We would not and could not deprive him of that right. But it is not reasonable that any of us should be deprived of our right—or

detoured from the opportunity to consent or not consent.

Let us give heed to a thought from the Trenton Trentonian of June 29:

To cloak such an obvious power play in phony rationale is beneath the dignity of Congress.

Let us have a mind for our dignity—and our duty.

EXHIBIT 1

[From the Providence (R.I.) Sunday Journal, July 14, 1968]

SHAMEFUL PERFORMANCE

Those members of the Senate judiciary committee who oppose the nomination of Justice Abe Fortas to be the new Chief Justice have carried their opposition to ludicrous lengths.

One whole day of testimony was consumed in a nit-picking debate over whether there is or isn't a vacancy on the court to be filled. The thrust of the argument by Sen. Sam J. Ervin, D–NC, is that no vacancy exists—and, hence, no nomination can be made now—because Chief Justice Warren hasn't yet stepped down.

The Chief Justice has announced his retirement but has agreed to stay on, at the President's request, until a successor is confirmed. This is a customary procedure. It has been followed time and again in precedent cases, as Atty. Gen. Ramsey Clark patiently explained.

Nevertheless, this is a point that lends itself to hair-splitting arguments, and Senator Ervin is not averse to splitting hairs when it suits his purpose. He was ably assisted in this performance by others on the committee, notably Senators Thurmond and Hruska, who are equally cool to the Fortas nomination.

After exhausting the possibilities in this inconsequential debate, the committee proceeded to the business of calling witnesses.

One would have thought that if the committee was truly seeking expert guidance it might have called in the spokesmen for bar associations, the deans of reputable law schools, or others qualified by experience in the field of law to pass judgment on the pending nomination.

But the committee had other notions. Among its first witnesses were W. B. Hicks Jr., a spokesman for the far-right Liberty Lobby; Kent Courtney, a New Orleans publicist and pamphleteer who for years has been promoting ultra-conservative causes; and Marx Lewis, chairman of the Council Against Communist Aggression. These gentlemen, no doubt, are pleased to have the use of the Senate committee's forum, but does anyone seriously imagine that they are qualified to throw useful light on the pending matter?

One can conclude only that the Senate committee is stalling. It has displayed not the slightest interest in examining the qualifications of the nominee, which is its immediate task. Instead, it is putting on a show, wandering off into by-paths, and using up time—presumably in the hope that if it delays long enough, the session will drag to an end before the Fortas nomination can be brought to a vote.

All in all, it is a shameful performance that reflects discredit on the nation's most distinguished legislative body.

[From the Trenton (N.J.) Trentonian, June 29, 1968]

CRONYISM: A PHONY ISSUE

It was a foregone conclusion that when President Johnson elevated Abe Fortas to chief justice of the Supreme Court and named Federal Judge Homer Thornberry as an associate justice that the old and rather tired issue of "cronyism" will be raised.

Both appointees are by all standards eminently qualified for the high court, but they also happen to be former political associates of the President. Fortas was a longtime adviser to Mr. Johnson and Judge Thornberry was the man who succeeded Johnson in the House of Representatives. The President referred to him frequently as "my congressman," an expression that some critics have taken to imply possession in the most disreputable way. But how many ordinary people refer to their congressmen in a like manner?

Senate Republicans have promised to filibuster, if necessary, to block the confirmation of Fortas and Thornberry on the assumption—or excuse—that the President is attempting to pad up the federal payroll with his old buddies.

It is a logical assumption that presidents generally name men to high office in whom they can place great trust and whose capabilities they are well aware of. President Eisenhower, you'll recall, larded up the high councils of government with his poker pals on the same assumption.

We doubt that the Republicans involved give a tinker's dam whether Fortas and Thornberry are pals of the President. What they really have in mind is to stall confirmation until a new, and hopefully conservative, president comes in next January; then they might be able to place "our man" on the bench.

Of course, this is acceptable practice. Why shouldn't the Republicans make such a move? If the shoe were on the other foot, the Democrats would be equally devious. But to cloak such an obvious power play in phony rationale is beneath the dignity of Congress.

[From the Wilmington (Del.) Journal, June 28, 1968]

ORDER ON THE COURT

The arguments seem to be that a chief justice of the United States has no right to resign near the end of a president's term and that a president with only seven months to serve has no right to appoint a man to as important a post as head of the Supreme Court.

The first is most fashionable among those who are fond of attributing ulterior motives to Chief Justice Earl Warren. The second belongs to those who resent President Johnson exercising the power of the presidency as if it were still his.

When one gets down to it, there's more sour grapes than "God Save the Republic" about both arguments. If Associate Justice Abe Fortas is qualified for a seat on the court, as the Senate agreed he was, why is he not qualified to be chief justice? As for Judge Homer Thornberry, aside from a relative national anonymity, what especially disqualifies him for appointment as associate justice?

The most obvious fault of each is that he is a friend of Lyndon Johnson. This is a special liability because of the timing of the appointments, but it is foolish to argue that the appointments should await the election of a new president so that they will be more representative of the will of the people. If such a mandate is critical to selection of Supreme Court justices then, perhaps, the entire court should resign every four years.

It is lamentable that the President's personal friendship with his two appointees may increase the disrespect some Americans feel for the court. Fortunately, the court is sufficiently insulated to make public approval pleasant but inconsequential. Grounds for disqualification have to be firmer than that.

And those who view with alarm the President's actions overlook one other important factor in their anguish over this "blatant political manipulation." They cannot predict with certainly, anymore than can the President who appoints him, the future attitudes or interpretations of a Supreme Court Justice.

One need look no further than President Eisenhower's appointment of Associate Justice Potter Stewart, a member of the "conservative" wing of the tribunal. He just wrote the opinion ruling that open housing has been the law of the land since 1866.

[From the San Antonio (Tex.) Light, June 28, 1968]

L. B. J.'S CHOICE

President Johnson's new Supreme Court appointments honor two of his closest personal associates, both of whom are imbued, like the President, with a deep sense of social conviction.

Justice Abe Fortas, who moves up to Chief Justice, is a former Washington attorney whose friendship with the President dates from New Deal days.

Appeals Court Judge Homer Thornberry, a former Texas Democratic congressman, is an intensely humane man who has also been close to the President for much of his public life.

Thus the President had intimate knowledge of the two men before he made the appointments. This knowledge obviously went into the naming of Mr. Fortas as an associate justice of the court three years ago.

Few who have known Justice Fortas in his public and private life will doubt that he possesses full qualifications. The legal community in particular, in Washington and elsewhere, is honored by his elevation to the highest seat of jurisprudence in the land.

President Johnson observed that he consulted with Democratic and Republican leaders before making the appointments.

In reply to some Republican objections to Supreme Court appointments by what was termed a "lame duck" President, we can only say, with some weariness, that the President has the right and duty to make such appointments.

The objections were ill-advised and in poor taste.

[From the Cincinnati (Ohio) Enquirer, July 2, 1968]

THE VACANCY GAMBIT

The American people are neither instructed nor amused by the aimless little controversy about whether there exists any Supreme Court vacancy to which President Johnson may appoint a successor.

Sen. Sam Ervin (D., N.C.) is at the forefront of those who have maintained that, since Chief Justice Earl Warren worded his resignation to become effective "at such time as a successor is qualified," there is no vacancy for President Johnson to fill.

Curiously enough, the Justice Department, in seeking to clarify the issue, produced some correspondence between President Johnson and Senator Ervin and his North Carolina colleague, Sen. B. Everett Jordan. "Due to the fact that Judge Wilson Warlick has announced his retirement," Senators Ervin and Jordan told the President, ". . . a vacancy now exists in that office."

The Justice Department could see no difference in the Federal District Court judgeship, to which the Ervin-Jordan letter referred, and the case of Supreme Court vacancy created by Chief Justice Warren's resignation. Neither can we.

Senator Ervin and others are entitled to challenge the qualifications of Associate Justice Abe Fortas, whom Mr. Johnson proposes to elevate to Chief Justice, and of Judge Homer Thornberry, whom Mr. Johnson has nominated as an associate justice. But the challenge should be made frontally, not through legislative tricks.

[From the Sacramento (Calif.) Bee, June 28, 1968]

FORTAS, THORNBERRY ARE GOOD CHOICES

So far as anyone can tell at this time, the appointments of Associate Justice Abe

Fortas as chief justice of the United States as successor to Chief Justice Earl Warren and Federal Appeals Judge Homer Thornberry as an associate justice on the Supreme Court, preserve the liberal and distinguished character of the court.

Fortas is an able lawyer and has supported the trend of the court toward speaking for the Constitutional guarantees for justice for the individual and social progress. He becomes the first Jew to be nominated as chief justice, thereby reflecting President Lyndon B. Johnson's policy to break through insidious taboos with courageous "firsts." It also was Johnson who named the first Negro to the high court in the person of Associate Justice Thurgood Marshall.

Thornberry had a distinguished record, as a liberal and as a humanitarian, as a member of Congress before his appointment to the appeals bench by former President John F. Kennedy. He assisted these causes as a ranking member of the powerful House Rules Committee.

A rump court of Republicans who anticipate the GOP will win the presidential election seems bent upon opposing Fortas' confirmation on the ground he is being named by a lame duck president. California's U.S. Sen. George Murphy was among these myopic partisans.

These took the position that since Johnson is not going to run again, the choice of the next chief justice should be the prerogative of the next president. This is a purely political suggestion. Since the Amendment was passed forbidding presidents to serve more than two terms every American president henceforth will be something of a lame duck during his second term.

Would it be in the interest of the nation that all these presidents in their second term be stripped of their powers? To ask the question is to expose the untenable stand of the few who would cripple the executive office.

Both Fortas and Thornberry have the distinguished support of Senate Republican minority leader Everett Dirksen of Illinois. Dirksen said he has "no personal reservations" about either. Likewise, Senate Democratic majority leader Mike Mansfield of Montana reminded all that the Senate once approved Fortas in the original appointment and of Thornberry said: "He is a fair man, a good man, a decent man."

These appraisals by the No. 1 Republican and No. 1 Democrat in the Senate count for much more than the corridor sniping of myopic colleagues who want to make the appointments a thing of political profit.

[From the Charlotte (N.C.) News, June 27, 1968]

THE NEW CHIEF JUSTICE

It is pointless to speculate whether Abe Fortas will make, if his appointment is approved by the Senate, a good or a bad chief justice of the United States. The history of the court shows that such appointments often are the seedbeds of great surprise, not least for the Presidents who make them.

It can be said of Fortas that he has more tangible qualifications to become chief justice than he did to become an associate justice. When he ascended to the court in 1965 the most important entry in his public record was that he had been a long-time friend and confidant of the President. His work on the court since has been eminently respectable, if something short of arresting.

There is no reason why Johnson should have held back and allowed his successor to replace Earl Warren on the high bench. Mr. Johnson is still President, and presidents have to meet their responsibilities as they arise. In any case the debate often had less to do with the propriety of a lame-duck appointment than with the debaters' respective hopes for a "liberal" or "conservative" successor to Warren. And before the court needs one or the other of those it needs a judge of depth and superior perception who can lead it out of the confusion into which it has fallen. If Fortas has yet to prove that he is that man, he also has yet to prove that he is not.

[From the Garden City (N.Y.) Newsday, June 28, 1968]

A NEW CHIEF JUSTICE

Amid rumblings of opposition from Republican senators, President Johnson has designated Justice Abe Fortas as the new chief justice of the U.S. Supreme Court to succeed Earl Warren. He has also named an old Texas friend, Homer Thornberry of the Circuit Court of Appeals, to succeed Fortas as a justice. Both men conform with the present "liberal" orientation of the court.

As to the qualifications of Justice Fortas there can be no argument. He is a thoughtful and compassionate scholar of long tenure in government. He came to Washington as one of the energetic young lawyers recruited by Franklin D. Roosevelt to bolster the New Deal. In later years he has been a highly-esteemed corporation lawyer, who believes that big business—when conducted responsibly—can coexist with big government. Thornberry, in common with Justice Fortas, has the approval of the American Bar Association.

Some threats of filibuster over the confirmation of these two men have come from certain Republican members of the Senate. The threats should be reconsidered. The President has the right to name his own appointees to vacant positions. He is President until the end of his term, and cries of "lame duck" are in reality cries of sour grapes. Former Vice President Nixon, unfortunately, has leaped into the argument. First he insisted that a new President should select a new chief justice. When he learned the appointment had been made, he again repeated his views. He should have kept his silence.

The consternation among some Republicans seems to be based upon the fear that the court will continue to be "liberal" instead of conservative as a result of the appointments the President has made. Those who cry loudest downgrade the dispassionateness of justices of the Supreme Court. Felix Frankfurter, in his time with the New Deal, was vilified for his so-called left-wing views; after he became a justice, he was criticized for his conservatism. The appointments are within the right of the President to make. The merits of those appointed will be best judged after enough opinions are given to establish their contributions to the trends of thought.

[From the Greenwood (N.C.) News, June 29, 1968]

THE NEW CHIEF JUSTICE

President Johnson, who has made few obvious appointments during his term, did the obvious—and quickly—when he nominated his old friend and counselor, Mr. Justice Abe Fortas, to be U.S. chief justice.

Friend or not, it would be difficult to imagine a better qualified man for the nation's highest judicial office—in fact the only judicial office named in the Constitution. The chief justiceship is no place for a man of stuffy, predictable or parochial views, and none may be expected from Justice Fortas.

It is a good place for this Southern-born son of a poor immigrant family whose learning, intelligence and character have brought him to successive places of eminence at the bar, in federal agencies, and as an associate justice on the court—where Mr. Fortas agreed to go only under heavy pressure from Mr. Johnson.

Mr. Fortas is certainly a man of liberal views. He seems to concur largely in the so far vigorous interventions of the court in issues of national policy. Some do not like that, but the Supreme Court is not going to retreat from its key position in adjusting the nation to a new age.

But Mr. Fortas is also a hard-headed man with an intensely practical approach to constitutional law. When he argued as chief counsel for Clarence Earl Gideon, in the landmark right-to-counsel case, he keyed his argument to the avoidance of further abrasiveness between the Supreme Court and state courts, rather than primarily to the Sixth Amendment. His opinions and dissents on the court reflect a healthy skepticism of doctrinaire trustbusting and of bureaucratic arrogance.

It is doubtful, as we suggested the other day, that the senators who threaten to fight Mr. Fortas' confirmation will manage to block it. Both the Democratic majority leader and the Republican minority leader now favor it.

The anti-Fortas faction's case is nebulous to begin with. Mr. Johnson, they contend, is a "lame duck" and should defer to his successors. But he is not yet technically a lame duck, and neither precedent nor constitutional provision bars the "midnight" appointments of a President, or hints that they are in the slightest degree improper.

Mr. Fortas, others contend, is a "crony" of Mr. Johnson's. The word itself is a poor one, a loaded one in fact. If Justice Fortas is a crony, so was Roger B. Taney a crony of Andrew Jackson's. But that did not prevent his becoming a great chief justice who, installed as the backer of strong presidential powers, closed his career resisting what he felt to be constitutional usurpations by President Lincoln. Felix Frankfurter, by the same token, was a "crony" of FDR's. But he became a great justice, and a conservative at that.

Finally, the opposing senators contend that Justice Fortas is, like his predecessor, a "judicial activist." In fact his career on the court is as yet too brief to establish such a pattern. Nobody knows of him, any more than of other judicial appointees, what ultimate course his thought will take. New issues point new directions for judges, and the issues change.

In sum, the case for Mr. Fortas seems to us as strong as the arguments against confirmation are weak. His rejection by the Senate would be sad, and it is most improbable.

[From the Asheville (N.C.) Citizen-Times, June 29, 1968]

LYNDON JOHNSON REVAMPS THE COURT

As usual, President Johnson has ignored appeals from Republicans and from the ultra-conservative critics and has made his Supreme Court appointments. This time, precedent and logic appear to be on his side.

Perhaps Abe Fortas, who was named to succeed the retiring Earl Warren as Chief Justice, is another "liberal" and maybe the President was indulging a bit of cronyism in naming a Texas friend, Judge Homer Thornberry of the Fifth Circuit Court of Appeals, to the vacant judgeship. Even so, he exercised his Presidential right and constitutional duty, presumably with some concern for the national interest.

Despite the loose use of the term in recent references, Lyndon Johnson is not a "lame duck" President in the sense that he has been defeated at the polls and is merely sitting out an interim period until his successor is sworn. Johnson has six more months to serve, not to sit.

Conceivably, his new Court appointments could be blocked by a coalition of Republicans and Southern Democrats. But such obstructionism will serve no predictable purpose if, for example, Hubert Humphrey is elected President.

Virtually the same Senate that confirmed the appointment of Fortas as Associate Jus-

tice will now merely be asked to approve his "promotion." Judge Thornberry is reputedly a competent jurist, whatever the implications of his Texas background.

Promptly and properly, Lyndon Johnson has made his choices. Unless the Senate can produce convincing evidence that the two men are unqualified, the solons ought to respect the Presidential judgment.

[From the Durham (N.C.) Herald, June 30, 1968]

APPOINTMENTS TO SUPREME COURT

President Johnson has used the opportunity presented by the retirement of Chief Justice Warren to name perhaps his closest friend on the Supreme Court chief justice and to name another to the high bench.

Abe Fortas, nominated to be chief justice, was Mr. Johnson's attorney when the President's political career was in jeopardy: in the Texas Democratic senatorial primary in 1948, he had a lead of only 87 votes; his opponent had secured a court order to keep Mr. Johnson's name off the ballot in the general election. Mr. Fortas, as Mr. Johnson's attorney, obtained from Justice Black a reversal of the order. Mr. Johnson's name appeared on the ballot, and he was elected to the Senate.

Homer Thornberry, nominated to be associate justice in Justice Fortas' place, succeeded Mr. Johnson in the House of Representatives when the President ran for the Senate and has long been a personal and political intimate.

While appointments of such close associates inevitably provoke charges of "cronyism," in the case of these nominations the charge is offset by the qualifications of the two men for the positions the President proposes for them. Justice Fortas, before his appointment by President Johnson to the high bench, was recognized as one of the top lawyers of the nation. On the bench, he has demonstrated his great learning in the law. Judge Thornberry, nominated by President Kennedy to be a federal district judge in Texas and by President Johnson to the Fifth Circuit Court of Appeals, has demonstrated judicial capacities of high quality.

If Chief Justice Warren resigned at this time to enable President Johnson to appoint a sucessor of similar views to his, his hopes have been realized. Justice Fortas has usually been aligned with Chief Justice Warren in opinions on cases before the Supreme Court. Judge Thornberry, though described as a Southern moderate, may be expected, from the decisions he has rendered on the Circuit bench, to interpret the Constitution similarly to Justice Fortas and the retiring chief justice.

There will be senators who will oppose both appointments because they disagree with the political philosophy and constitutional interpretations of Justice Fortas and Judge Thornberry. Presently, however, the opposition involves not so much these points as it does the propriety of the appointments by a President who has only a little more than six months in office. While we recognize the reality of this opposition, we do not think it a valid ground for opposing the nominations. The end of a court term is a fitting time for a justice to retire, as Chief Justice Warren did; and it is the responsibility of the President to nominate successors.

The caliber of these appointees argues strongly for their confirmation. The President could have appointed persons of much less ability and far less integrity. We may not agree with all the opinions of any particular justice. We may feel that the "Warren Court" has not always demonstrated the judicial restraint desirable. But we do have confidence that men of ability and integrity will decide in the best interests of the people, consistent with the Constitution. And we have confidence in the ability and integrity of Justice Fortas and Judge Thornberry.

[From the Hickory (N.C.) Record]

FORTAS' BACKGROUND GOOD

President Lyndon B. Johnson has accepted the resignation of Chief Justice Earl Warren of the U.S. Supreme Court, and nominated Associate Justice Abe Fortas to fill the vacancy.

The nomination requires confirmation by the U.S. Senate. Regardless of the fact that the Republican leadership had threatened to block any nominee that President Johnson might submit, it is assumed an organized, partisan fight will now be waged to prevent the elevation of Justice Fortas.

The candidate for Chief Justice is a native of Memphis, Tenn., having been born there June 19, 1910. He earned his A.B. Degree from Southwestern College, at Memphis, in 1930, and then went on to obtain his LL.B. Degree from Yale University in 1933. He accepted membership on the Yale University Law School Faculty, and in July 1935, was married to Carolyn Eugenia Agger. He was appointed Undersecretary of the Interior and served in that capacity from 1942 to 1946. He then practiced Law in the District of Columbia 1946 to 1965, at which time he was nominated by President Johnson for membership on the U.S. Supreme Court Bench, and the nomination was confirmed, enabling Justice Fortas to take his seat on October 4, 1965.

If the nomination of Justice Fortas to become Chief Justice is confirmed, he will have the distinction of being the first Jew ever elevated to the highest judicial post in the United States.

Although we have searched the records painstakingly, we have found nothing but praiseworthy reports covering the life and achievements of Justice Fortas.

As noted at the beginning of our comments, the GOP had warned as soon as it was rumored that Chief Justice Warren was contemplating resignation, an organized effort would be made to prevent President Johnson from exercising his constitutional duty in attempting to fill the vacancy.

Now that Justice Abe Fortas has been duly placed in nomination, the only arguments that the Republican leadership can use in attempting to block his confirmation, is the fact that he is a Democrat and a Jew. He has certainly demonstrated his ability as a talented practicing attorney, as an educator, and as a jurist whose voting record since be joined the High Tribunal in October, 1965, is an open book.

[From the Fayetteville (N.C.) Observer, June 29, 1968]

THE FORTAS NOMINATION

Both United States senators from North Carolina, Sam Ervin and B. Everett Jordan, have adopted a "wait and see" attitude toward President Johnson's nomination of Supreme Court Justice Abe Fortas to succeed Earl Warren as the court's chief justice. Perhaps all North Carolinians should follow the example of their senators in this matter.

Certainly anyone who looks at the high court developments realistically will agree with Senator Ervin that no real fault can be found with the "lame duck" aspect of the matter, meaning that the new court appointments were made by an outgoing President of the United States. Unfortunately the American system works in such a way that the President is President until he leaves office. And it is difficult to see how anyone, much less a group of U.S. senators, could seriously suggest that President Johnson hold up on this matter and let whoever is elected to succeed him make the court changes.

Undoubtedly there is some tendency in some places to jump to the conclusion that in picking Justice Fortas, President Johnson has just named another younger Earl Warren to head the court. Fortas' future performance, however, cannot be pre-judged or accurately predicted on the basis of his few legal opinions concurring in some "liberal" decisions of the court. As Senator Ervin himself put it, Justice Fortas "has not written any of the earth-shaking opinions," presumably meaning such things as the school desegregation decisions the Warren court handed down in the fifties, the "one-man, one-vote" decree and rulings protecting the rights of defendants in criminal cases.

It is entirely reasonable to think, of course, that Fortas as chief justice isn't going to get busily at work trying to turn back the clock. Nothing in his background suggests that. The truth of the matter is, though, that the decisions of the high court under Warren's leadership are now behind it and are the law of the land. Different, perhaps even more difficult, problems will confront the high court in the years ahead. And no one is capable of predicting with certainty the kind of record the court would write under Justice Fortas.

[From the Salt Lake City (Utah) Tribune, June 28, 1968]

JUDGE COURT APPOINTMENTS ON MERIT ALONE

In nominating Justice Abe Fortas to be Chief Justice of the United States, President Johnson has attempted to assure that the liberal, venturesome and creative character of the "Warren court" will be continued.

As was to be expected, considerable criticism has been voiced by opposition party members over the Fortas appointment and that of Judge Homer Thornberry to Mr. Fortas' seat. Opposition is based on the inadvisability of a "lame duck" president appointing a chief justice in the waning months of his term. So far none is based on the appointees' ability and in fact even persons against the appointments concede they are good ones.

It is unfortunate that Chief Justice Earl Warren decided to step down after Mr. Johnson announced he would not seek reelection. But it is too much to expect a sitting President to pass up an opportunity to name a chief justice and an associate justice. It likewise is too good an opportunity for the opposition to make as much political mileage as possible out of the circumstances. But when the dust has settled and Mr. Fortas and Mr. Thornberry are confirmed by the Senate the country will be no worse off because they were named by a President with less than seven months to serve.

As an associate justice Mr. Fortas did his homework well and demonstrated a knack for asking questions that reveal the pivotal issues in a case. He is, according to The New York Times, "persuasive in presenting his views when the court discusses cases in private before voting." As chief justice he will have the task, and the advantage, of presenting his position first and his gift of persuasion will have a greater opportunity to effect the others' views.

During his three years on the court Mr. Fortas usually lined up with Mr. Warren on important issues. But the two men are vastly different personalities. Mr. Warren is a "grandfatherly type" whose idealism has been described as "almost naive." But Mr. Fortas is a tough, sophisticated advocate who has built a solid reputation as a good justice by hard work and intelligence. In the process he has rubbed some of his fellow justices the wrong way.

This quality of judicial and personal stefnness may be the new appointee's weak spot, too. As chief justice he must play the role of healer among the other eight justices and

be able to "marshal the court" so as to preserve its prestige and power. His past history suggests that if a personality change is needed to accomplish this task it will be smoothly and efficiently done.

We trust that opponents of the appointments will have their say and cast their votes quickly. If, as leaders of both parties now predict, the appointments will be confirmed no good will come of protracted debate and maneuvering solely for the sake of making trouble. Senators should not forget that the important thing is to secure a capable chief justice and associate justice. If the appointments are good ones, and we believe they are, then it doesn't really matter that a "lame duck" made them.

[From the Boston (Mass.) Herald-Traveler, June 27, 1968]

FORTAS AND THORNBERRY

In nominating a new Chief Justice and Associate Justice to the U.S. Supreme Court, President Johnson has served history as well as friendship. While both Abe Fortas and Homer Thornberry have enjoyed long and close associations with the President, both also—Fortas especially—bring more than friendship to their new appointments. Moreover, Fortas would become the first Jewish Chief Justice and only the third to be promoted from within the Court.

Justice Fortas' credentials are of the first order. Before joining the Court in 1965, he fashioned an outstanding career as a lawyer, handling several controversial and unpopular cases and building a reputation as a champion of individual liberties and equal protection under the law for all. His service on the Court has not diminished that reputation. Other lawyers regard him as brilliant, articulate, a perfectionist.

Considered generally part of the liberal element within the Supreme Court, Justice Fortas obviously would not be the first choice as Chief Justice of those who have been critical of the Court under Earl Warren. But their criticism of Justice Fortas has been tempered by his obvious devotion to the law and his condemnation of those who would go beyond it.

In an address in Boston in 1965, Justice Fortas said, "We must establish, without exception, the rule of law. We cannot tolerate lawlessness or the conditions which bring it about." Recently he spoke out against certain of the student actions at Columbia University. On another occasion he said: "The advocacy of civil rights does not require or justify the abandonment of all decency." He has advocated adequate education, training, employment, recreation and discipline to prevent the young from growing into lawbreakers.

Justice Fortas does not see the Supreme Court as an aloof entity handing down arbitrary decisions, but as a force very much involved in the mainstream of American development. "Law is a profession dealing with human beings, not an automated business," he has said. His respect for the law blends with a respect for human dignity.

If President Johnson's nominations are confirmed, the essential character of the Warren Court is likely to be preserved, for Judge Thornberry, too, is regarded as a liberal. But as a Southerner, he should be more acceptable at least to those critics of the Court who are from the South. Thornberry is, of course, less well known than Justice Fortas, but he would come to his new post with five years of judicial experience and 15 years of legislative experience in the U.S. House. It was President John F. Kennedy who appointed him a federal district judge in 1963, from which position he was elevated to the appeals court in 1965.

From the standpoint of merit, then, the Senate would have difficulty finding cause to reject Mr. Johnson's nominees. And, while some discontent is still being voiced in the Senate about the practice of having crucial vacancies in the judiciary filled by a lame-duck President, it is doubtful that any organized move to block the appointments on these grounds will be mounted.

Herbert Hoover and every President since him, with the exception of Mr. Kennedy, has named a Chief Justice. Mr. Johnson, up to yesterday, had made only two appointments of Associate Justices, a number equal to President Kennedy's in his abbreviated tenure in the White House. Dwight Eisenhower appointed four Associate Justices, Harry Truman three, Franklin Roosevelt eight.

Today the average age of the Justices is 65, and rumors of additional retirements soon are common. Mr. Johnson's successor almost certainly will have opportunity to leave his own imprint on the Supreme Court.

[From the Louisville (Ky.) Courier Journal, June 28, 1968]

APPOINTMENTS MR. JOHNSON IS ENTITLED TO MAKE

President Johnson, it now seems clear, would like the Supreme Court to continue in the Warren tradition. In appointing Associate Justice Abe Fortas to succeed Chief Justice Warren and nominating a little-known but liberal-minded Texan, Homer Thornberry, to take Justice Fortas's place. Mr. Johnson is doing what he can to assure that the Court will continue in the path laid out by its present majority.

The President cannot be unaware that his critics are calling this an example of cronyism and Texas partiality. Less biased observers will grant that a man who has Justice Fortas for a crony has a powerful intellect and an incisive legal talent on his side. Judge Thornberry, the Texan, also has more going for him than his native state. His record in the House was quiet but good. As a Federal Appeals Court judge for the Fifth Circuit his record worthily echoes much of that of the present Supreme Court.

A LAME DUCK BY CHOICE

The movement to block confirmation of the two men on the ground that they are lame-duck nominations, is not praiseworthy. The President is a lame duck by choice and he has six more months in office, so the charge that he is somehow not playing fair by not leaving the vacancies for his successor is also unfair. The next Supreme Court session will begin before the next administration takes over. Much of its docket for the next term is already decided. To leave it headless until January and then subject to a possible sharp change in leadership is neither wise nor necessary.

Chief Justice Warren is now anathema to many Republicans and conservative Democrats. But it should not be forgotten that he was the appointee of a conservative Republican President and is a Republican himself. What this means is that in interpreting the Constitution, politics is the least relevant consideration. The present Court will survive in history as one which restored the rights of the individual in his relations with the state. This restoration is not yet complete and Mr. Johnson, undoubtedly with the approval of Justice Warren, is seeking to appoint men who will help, not hinder, the completion of a great task.

For this he is to be praised. He is quite likely to run into opposition, first from the Senate Judiciary Committee, which has more than its share of rigid conservatives, and then from people with reasons of varying sincerity for disapproving of the activism of the present Court and the timing of Justice Warren's resignation. Mr. Johnson should still be able to command sufficient support from men who respect the present Court and its achievements to win his point. If he does, not, the nation will have lost more than the critics will have gained.

[From the Des Moines (Iowa) Register, June 28, 1968]

NEW COURT APPOINTMENTS

Justice Abe Fortas, President Johnson's choice to replace Earl Warren as chief justice of the United States, is a distinguished lawyer who has fitted in well in his first two years on the high court. He is best known for his work in a variety of civil liberties cases, and as something of a political fixer and a friend of President Johnson's.

Judge Homer Thornberry of the U.S. Circuit Court of Appeals, President Johnson's choice to replace Fortas, is a former congressman, which should stand him in good stead in the coming fight over confirmation. Thornberry, a lifelong resident of Austin, Tex., was in Congress from 1948 to 1963, much of the time on the formidable Rules Committee, where his record was one of moderate conservatism. On the federal bench, as district court judge since 1963, circuit judge since 1965, his record is considered liberal.

We are not impressed by the justice of the plaint of Republican Senators George Murphy, Robert P. Griffin, John Tower, Everett Dirksen and others that Chief Justice Earl Warren at 77 should have waited another seven months before resigning to avoid giving the right of selection to "a lame duck president." President Johnson is fully President as long as he is in office.

Besides, whoever is President in 1969 is likely to get his share of appointments: Justice Hugo Black is 82, Justices John M. Harlan and William O. Douglas are both 69 and in poor health. All three are unwilling to step down now.

Republican grumbling is based largely on the thought that Richard Nixon might be the next President and might name much more conservative persons than Johnson. Since any nominee must be approved by a majority of the Senate, ordinarily following approval by a majority of the Senate Judiciary Committee, the grumbling has an operative side.

Three of the five Republicans on the 16-member committee are among the grumblers: Senators Dirksen, Strom Thurmond and Hiram L. Fong. Three of the Democrats on the committee have been bitter critics of the recent Supreme Court: Senators James Eastland, John McClellan and Sam J. Ervin. With two more recruits, these six could block committee action. Dirksen isn't sure he wants to go that far.

President Johnson, however, said he had consulted ahead of time with party leaders in Congress and with committee chairmen. He is confident the nominations will go through. They should.

[From the Des Moines (Iowa) Register, June 29, 1968]

DANGERS OF AN UNDERMANNED COURT

President Johnson acted responsibly in sending his choice of Abe Fortas as chief justice and Homer Thornberry as associate justice to the Senate immediately on the heels of Earl Warren's resignation. The Senate should act responsibly by considering confirmation of the nominees without delay and deciding the nominations strictly on their merits.

The Supreme Court is in recess until October, but that does not mean the court is idle. A steady flow of cases comes to the high court throughout the year. The justices must examine the requests for appeal and determine which merit review. The court traditionally announces the disposition of a large number of cases at its opening session in October. It is able to do this only because the justices have been studying review requests during the summer recess.

The justices also are occupied during the recess with cases which were granted review during the recently-completed term of court.

Briefs in the Des Moines armband case, for example, were recently submitted to the court. The case is expected to be argued before the court in the fall. Study of briefs in this and many other cases is part of the preparation for the opening of the new court term.

Citizens who take their claims for justice to the Supreme Court are entitled to the consideration of them by the full court. Participation of one more judge in a case can be crucial to the outcome, as evidenced by the frequency of 5–4 decisions. The favorable votes of at least four justices are required for the Supreme Court to review a case. The absence of a judge from the bench can substantially lessen chances for particular cases to win review.

President Johnson could assure the presence of a full court in the fall by waiting for Congress to go home and then making recess appointments. That would be most undesirable. The last recess appointee, Justice Potter Stewart, served on the bench for a year before being confirmed by the Senate. Justice Stewart participated in hundreds of cases while the Senate watched his performance. Commenting on the effect of this on the independence of the judiciary, a Yale University law professor observed at the time:

"During these probationary months Stewart must feel the Senate looking over his shoulder and appraising his every act. No man in his position could be immune from some temptation to avoid rocking the boat, to play it safe, and to adjust action to anticipated Senate reaction. Nor could a man of integrity and perception, and Stewart is that, be unaware of a countervailing inclination to lean over backwards to avoid that temptation and confound critics eager to discern real or fancied trimming of sails."

The U.S. Supreme Court needs to be at full strength under the leadership of a chief justice if it is to function effectively. The Senate should assure the proper functioning of the court by acting promptly on the President's nominations and avoiding the prospect of recess appointments.

[From the Des Moines Register, July 11, 1968]

LAME DUCK NOMINATIONS

Opponents of President Johnson's nomination of Abe Fortas as chief justice have complained that a "lame duck" President should not make such an appointment. Several Republican senators said the President should let the nomination be made by his successor after the election.

The lame duck argument strikes us as a lame argument.

Every President is a lame duck, in a sense, at least in his second term, since he cannot be re-elected for a third term. In another sense, no President is a lame duck unless he has been defeated for reelection. The term originally applied only to an officeholder serving between his election defeat and the inauguration of his successor.

There are numerous precedents for choosing a Supreme Court justice in the waning months of a presidential term—beginning with John Adams' nomination of John Marshall after Adams, a real lame duck, already had been defeated in the election of 1800.

The senators who have objected to the nominations of Abe Fortas as chief justice and Homer Thornberry as associate justice have approved 11 judicial appointments by President Johnson since he announced he would not run again. These appointments were approved unanimously by the Senate.

The argument of the Republican group, including Senator Jack Miller of Iowa, that the vacancy should not be filled until the country, by its choice of President, shows which direction it wants to go, seems to imply that the electorate should take part in the selection of Supreme Court justices.

This argument is not merely lame; it shows a misconception of the place of the courts in the three-branch federal government. The method of selecting justices is intended to keep the courts free from partisan politics. Nomination by the President and approval by the Senate are designed to divorce judicial appointments from current tides of popular opinion.

Senator Bourke Hickenlooper of Iowa has taken the correct view, we think, of this senatorial responsibility. He said he would vote on the nomination of Fortas and Thornberry on the basis of a study of their qualifications.

The President has a duty to fill Supreme Court vacancies when they occur, since the work of the court must go on, and Chief Justice Warren said he wanted to retire. To postpone appointments until next January would be to throw the nominations into the political race this year. There would be danger of political bargaining for appointments to the court. Senator George Smathers (Dem., Fla.) said it very well in a Senate speech endorsing Fortas and Thornberry.

"Who of those among us who love the law and respect the courts and hope that the public at large will share this attitude can conscientiously condone the prospect that the appointment of a chief justice of the United States could become a political pawn in this summer's political conventions, a bargaining tool among candidates for high office, a vote-getting device in the November election? To follow such a course could well involve the Supreme Court in bitter partisan controversy to the lasting detriment of this great institution and our system of constitutional government."

We agree.

[From the Des Moines Register, July 13, 1968]

DELAY TACTICS ON COURT NOMINEES

Senator Sam Ervin (Dem., N.C.) argued the other day that the Senate need not examine the qualifications of President Johnson's nominees for the Supreme Court because no vacancy exists. Ervin, who was supported by three Republican members of the Judiciary Committee, said there was no vacancy until Chief Justice Earl Warren set a date for his retirement. Warren wrote the President that he would retire "effective at your pleasure."

The "no vacancy" contention seems to be another delaying tactic. It has no more substance than the argument that Johnson is a "lame duck," because he said he wouldn't run for re-election, and should not make a nomination to the court.

Ervin apparently hasn't much confidence in his own "no vacancy" plea, for he said in the same hearing that he intended to question Justice Abe Fortas closely about his qualifications to be chief justice.

The Southern Democrats and Republicans who would like to see a turn back from the liberal philosophy of the present Supreme Court are trying to think up ways to give the nomination of the next chief justice to President Johnson's successor. They hope that Richard Nixon will be elected and would name a conservative jurist.

Their real objections are not to procedure but to Abe Fortas as chief justice and to Homer Thornberry as associate justice. Forthright opposition would be more admirable.

Attorney General Ramsey Clark pointed out that judicial appointments had been made in the "no vacancy" manner scores of times and appointments in the executive branch perhaps thousands of times. It surely appeals to common sense for the chief justice to remain in office until a successor is named.

Ervin said the President could tell Warren to go ahead and retire and settle the matter. But if he did, the objecting senators might be able to find other ways of holding up Senate action, perhaps by filibuster, which has been threatened. This would leave the court without a head and tend to throw the issue into national convention politics.

This political maneuvering about the court appointments does not enhance the dignity of the Senate. It is time for the senators to get down to the business of examining the qualifications of the nominees and voting on them. That is their responsibility, and it is what the country expects of them.

[From the Kansas City Times, June 28, 1968]

THE PROPRIETY OF FILLING HIGH COURT VACANCIES

It is fair enough to criticize any President's nominations to the Supreme court or to any other high position. The senatorial obligation of confirmation not only permits such criticism but also raises the possibility of rejection by the Senate if it so decides. But it is quite another thing—and a very political thing, it seems to us—to suggest that a President, when his term in office is definitely limited, should not fill such vacancies.

In this instance, President Johnson's term is limited by his own choice. He has not been defeated at the polls and thus, in the classical sense, is not a lame duck. We won't quibble about that, however. The fact is that Mr. Johnson presumably has another six months in office and during that period the business of government must go on, and the court must go back into session. Is it proper to suggest that the presidency should, in effect, be paralyzed, unable to make decisions on the assumption that in November the people will deliver a new mandate?

We think not. And this is by no means intended as a defense of the President's appointments. Rather, it is a defense of his right to appoint, even though he is soon to leave office. Were a chief executive to fail to exercise that right, he would in effect be confessing to White House paralysis of his remaining months. There are problems enough when an incumbent is serving out his final term without this type of restriction.

Yet that is what the Republican senators who have protested the appointments are suggesting. The cynic would say that they might have reacted otherwise had the incumbent been a Republican. And they are in part prompted by the hope that the next President will be a Republican. He might be, but that is quite irrelevant to the vacancies of June, 1968, on the court. The next President might also be a Democrat, or, for that matter, he might be George Wallace, but let's not talk about that.

What is at issue here is the right of any President to fill the vacancies that exist during his administration. Perhaps Mr. Johnson could have talked Chief Justice Warren into serving until January. But either he did not try, or Warren was set on retirement. He is 77 years old, and no man could criticize him for wanting to rest.

The situation having been created, the President could not afford to sit back and do nothing. It would have been an abdication of his own responsibility to lead while he is still the leader.

[From the Houston (Tex.) Post, July 1, 1968]

LITTLE CHANGE IN SUPREME COURT

The resignation of Chief Justice Earl Warren, a liberal Republican, was hardly timed to please more conservative members of his party, who have been among his sharpest critics, but they were far off base in suggesting that it was improper for President Johnson to make appointments to the court only a few months before retirement from office.

There is no legal or historical basis for these complaints, and they must be evaluated simply as political campaign statements, intended to reflect confidence on the part of

the conservative Republicans that they will capture the presidency in November.

To accept the principle that a President should not name a member of the court after it becomes definite that he will continue in office for only a fixed period would mean that no President could make any appointment during his last four years in office since the Constitution now limits all Presidents to two terms.

Chief Justice Warren said in his letter of resignation that he was motivated by his age. He is 77. He would be less than human, however, only if he was not interested in seeing to the extent that he is able, that the court continues to move along the path it has charted during the past decade and a half under his administration.

There is at least a possibility that the next President will be a man less sympathetic than President Johnson to the present orientation and philosophy of the court. President Johnson's goals for the nation generally have been compatible with those of "activist" members of the tribunal. The Great Society he would like to build would be one in which there would be equality of opportunity and justice for all.

In selecting a long-time friend, Associate Justice Abe Fortas, to succeed Chief Justice Warren and another old friend, Justice Homer Thornberry of the Fifth Circuit Court of Appeals to fill the vacancy created by the advancement of Justice Fortas, the President made it unlikely that there will be any radical change in the present policies and thinking of the court. Both men are able and well qualified.

During the past 15 years, the court has undertaken to meet its responsibilities as a co-equal branch of the federal government by daring to move into areas where action seemed long overdue and where the other two branches, for one reason or another, had failed to act. The impact of some of its major rulings has been little short of revolutionary.

As a result, the court has become one of the most controversial in history, and its decisions aimed at seeing that equal justice is extended to all have angered those who think that the only function of the federal judiciary should be to preserve the status quo as of some time in the past.

Chief Justice Warren, a former prosecutor and attorney general as well as governor of California, who was named to the chief justiceship by President Dwight Eisenhower in 1953, has had to bear the brunt of this anger and this criticism personally by reason of his position as administrative head of the court, even though he had only one vote on a court that included eight other strong-minded men.

The Court became known as the "Warren Court," and there have been shrill cries for his removal. It would be understandable if at his age he should feel that he had received enough of this abuse. But there is no indication that this had anything to do with his decision to retire. Convinced firmly of the rightness of his opinions, he never paid the slightest attention publicly to the demands for his removal.

It seems much more likely that he was motivated by a philosophy he expressed in a 75th birthday interview, when he said: "I believe that the strength of our system in this country depends on the infusion of new blood into all our institutions."

Since his health was good, he could choose the time of his retirement, and he chose the present when he could be reasonably sure that his successor would be a man with views somewhat like his own.

[From the Racine (Wis.) Journal-Times, June 28, 1968]

FORTAS GOOD APPOINTMENT

In elevating Abe Fortas to the post of Chief Justice of the United States, President Johnson has chosen well. Fortas has had a successful and even brilliant career at the bar, and he has the experience of serving as an associate justice.

Justice Fortas is an old friend and one-time personal attorney for the President. But this is not a valid criticism of the appointment. Johnson tends to place in high office men he has known and trusted. But Fortas' other qualifications stand by themselves: his ability as a trial and appellate lawyer, as a teacher of law, and as a hard-working justice.

Nor are we impressed with the argument of some Republican senators and Richard Nixon that President Johnson should not have made the appointment at all. Lyndon Johnson did not resign as President last March; he simply served notice that he would not seek a new term. His mandate as President runs until Jan. 3, 1969, and all the functions and duties of the office devolve upon him until that date.

Among those functions *and duties* is appointment to fill vacancies on the federal courts. Johnson would be derelict in his duty if he failed to fill the vacancy left by Chief Justice Warren's retirement and especially so if he did so, as Nixon and the Republican senators suggest, for political reasons.

As the Supreme Court takes its coloration from the chief justice, we expect the Fortas Court to bear the stamp of the highly professional lawyer and liberal who now will head it. It will not be a mere continuation of the Warren Court, because of the apparent differences of the two men. The importance of the court in today's America is apparent from the impact that the Warren Court has had on our time, and it is equally important that its leader be a man of high quality and integrity, which Abe Fortas is.

[From the Fairmont (W. Va.) Times, June 27, 1968]

THE COURT NOMINATIONS

People in these parts first began hearing about Abe Fortas when he was general counsel for the Bituminous Coal Division in the Department of Interior back in 1939. This was the government agency which had taken over when the National Bituminous Coal Division was abolished by presidential fiat.

He was then regarded as one of the up-and-coming young lawyers of the New Deal era and was reputed to be one of the few who could get along with curmudgeonish Harold Ickes, in whose domain he rapidly advanced. His star has steadily risen ever since his early days in government, and is only now approaching its zenith.

President Johnson's nomination of Mr. Justice Fortas to be Chief Justice of the United States climaxes a career which encompassed not only a brilliant performance for various federal agencies but a successful and rewarding stint in the private practice of law. The senior member of the firm with which he was associated before he went on the bench is Thurman Wesley Arnold, a onetime dean of the West Virginia University College of Law, and the law partnership is well known in this state.

As chief justice, Fortas is expected to carry on in the liberal traditions set by the retiring Earl Warren. Although he commanded high fees for his legal work, he served as counsel without charge in a Florida case which led to a landmark decision by the Warren Court that an accused in state court must be furnished with an attorney.

Less well known is President Johnson's other nominee, Judge Homer Thornberry of Texas. A former congressman from the Austin district, Thornberry was named to the Fifth Circuit Court of Appeals by President John F. Kennedy. Presumably he meets all the legal requirements and has the additional advantage of being an old presidential friend.

The nation would stand aghast if certain Republican senators carried out their threat to block the nominations of Fortas and Thornberry until after a new President takes office Jan. 20. Not only would the country be left without its highest judicial officer for a period of nearly eight months, but the Supreme Court itself would be tossed into the arena of wardheeler politics.

The Senate should speedily confirm Mr. Justice Fortas and Judge Thornberry in their new assignments, giving picayune politics the short shrift it deserves.

[From the Denver (Colo.) Post, June 30, 1968]

ANTI-FORTAS FILIBUSTER LACKS MERIT

Some Republican senators now are talking of a filibuster against confirmation of Abe Fortas as chief justice of the U.S. Supreme Court.

Maybe, in an election year, they can put together a filibuster team on a purely political basis. But we should think any responsible Republican senator will be uncomfortable about joining such a venture, because on the merits of the nomination they have no case.

Fortas is simply outstandingly qualified for the position of chief justice—not only because of his own background but particularly in view of the kind of cases the court is facing—and anyone who knows Fortas, and the court's docket, knows it.

The Supreme Court is now moving into a significantly different era from the one in which the Warren court has operated. As far ahead as human vision can penetrate, there are no earthshaking constitutional issues to be adjudicated—nothing on the order of school desegregation or one man one vote redistricting.

What the court does face are two other types of case which call less for constitutional innovation and more for incisive legal analysis and pragmatic wisdom.

First, there will be for some time to come the need to spell out applications of many of the Warren court's landmark decisions to specific situations.

Second, just beginning to arrive at Supreme Court level is a new type of case arising from the provision of various services to specific groups of citizens by a benevolent but highly bureaucratic government.

These cases, now arising in the fields of education and welfare but probably soon to come also from health service disputes, commonly ask this sort of question: Where is the line to be drawn between services the state may bestow on certain classes of people at its discretion, and those services the state must provide to all citizens, as a matter of constitutionally-guaranteed equal treatment, if it provides them to any?

One tricky example: how much and what kind of educational aid may the government provide to children in non-public schools?

We think most GOP senators would agree that there is no man better qualified than Fortas to lead the court through the intricacies of such problems.

For nearly 30 years, Fortas has been advising corporate clients and government officials on how to cope with intricate problems arising from conflicts between laws and hureaucratic regulations adopted pursuant to those laws, or conflicts between the laws and regulations and people's (or corporate) needs. In so doing, Fortas has earned a towering reputation for coupling incisive legal analysis of a problem with eminently pragmatic wisdom as to what to do about it.

It has helped, of course, that he has known personally practically everyone in high office during those years. But the reason he knows them is not only that he is a nice guy, but that his advice is so highly valued by all who know him.

Those people include, we're sure, many of the senators who may now be asked to filibuster against his nomination. We find it

hard to believe that any Republican senators of stature will do so.

We know that they shouldn't.

[From the Cleveland (Ohio) Plain Dealer, June 27, 1968]

COURT WOULD KEEP LIBERAL TAG

The liberal tag usually attached to the United States Supreme Court presumably will remain if President Lyndon B. Johnson's nominations affecting that body are confirmed by the Senate.

Abe Fortas, associate justice who has been nominated to succeed retiring Chief Justice Earl Warren, has been on the libertarian side of things, a member of the five-man majority that sometimes has troubled certain members of Congress, strong for civil rights and the right to dissent.

Justice Homer Thornberry of the Fifth Circuit Court of Appeals, was a member of the Texas legislature who succeeded Mr. Johnson in the United States House of Representatives when Mr. Johnson went to the Senate. Thornberry first was appointed to the federal bench by President John F. Kennedy. On his way up to nomination to the Supreme Court, Thornberry—like Fortas—has worn the "liberal" label.

The Senate's obligation is to confirm or deny the nominations on the basis of the character and ability of the nominees. While some senators have spoken out against President Johnson's filling places on the Supreme Court in the closing months of his administration, it is hoped that consideration of the nominations will not be unduly delayed.

In almost three years as an associate justice, since he succeeded Arthur J. Goldberg, Judge Fortas slowly has emerged as one of the stronger men of the court. At 58 his prospects of a long career are excellent; Thornberry, if age is a prime factor, is but one year older.

The liberal appellation attached to Judge Fortas conveniently can be reexamined by senators through perusal of a pamphlet he published this month. "Concerning Dissent and Civil Disobedience." Nowhere does Fortas contend that disobedience to the state is necessarily evil, yet he argues that "violence never has succeeded in securing massive reform in an open society where there were alternative methods of winning the minds of others to one's cause."

Both Justice Fortas and Judge Thornberry have been close to Mr. Johnson. The senate now must set them apart for its judgment.

[From the St. Petersburg (Fla.) Times, June 22, 1968]

THE WARREN COURT

Chief Justice of the Supreme Court Earl Warren is leaving his hign responsibility at a time that is both expedient and symbolic.

The 15 years of Warren's tenure—some of the stormiest and most moving in the court's history—came to a collective conclusion last Monday. On the final day of its 1967-68 term the court set a landmark which may equal or surpass Warren's 1954 school desegregation ruling.

Just as the earlier decision swept away the nonsense of "separate but equal" educational facilities, so the 1968 ruling on full access to housing cleared the American house of the cobwebs of discrimination.

Earl Warren is a judge who personified the personal in ideals and the objective in law.

Though his outward reaching for individual constitutional rights often extended into the unpopular, the chief justice never reacted personally to the abuse and hatred of those who would "Impeach Earl Warren."

To his detractors, the nation's highest tribunal was slurringly referred to as "The Warren Court."

The slur may become an accolade when history calms emotions.

It is because Justice Warren believes so strongly in progress and the court's responsibility that he will be leaving it. Now is the moment to assure that his succession will not make a mockery of his record. By resigning before a change in administration, Warren has increased chances of maintaining the liberal quality of the court.

Speculation will swirl and wash around the person whom President Johnson could select. Liberal Justice Abe Fortas ranks high on the list of possibilities. Arthur Goldberg has been mentioned. Such an appointment would provide a fitting finale to the Supreme Court career previously interrupted to serve at the United Nations.

But more than the drama of the new man will be the force of the old.

From the time in 1953 when Earl Warren came to the court from a highly successful political career that almost led from California to Washington, this man has been in the forefront of tough decision-making. It was in his first year that the desegregation ruling came.

Not only in the field of civil rights has the court, under Warren's leadership, provided direction for the nation. Equally restoring was the decision on political rights: the "One-Man, One-Vote" ruling.

If the remarkable record of the Warren Court is to be preserved, President Johnson faces a really crucial choice for the nation's legal and philosophical future.

[From the Portland (Oreg.) Oregonian, June 27, 1968]

JOHNSON'S COURT

Two colleagues and personal friends of Lyndon B. Johnson from the old New Deal days of Franklin D. Roosevelt will assure the continued "liberal" direction of the U.S. Supreme Court. Despite the mutterings of southern Democrats and some Republicans, the Senate is almost certain to confirm their nominations.

Justice Abe Fortas, 58, two years on the high bench, succeeds Chief Justice Earl Warren, Homer Thornberry, 59, of Austin, Tex., will move up from the 5th U.S. Circuit Court of Appeals to replace Fortas.

The Senate found no excuse to deny confirmation when Fortas was appointed to the high court or when President Kennedy named Thornberry to the district court in Texas and President Johnson advanced him to the circuit court. Despite the antipathy of Sen. James Eastland of Mississippi, chairman of Senate Judiciary, it is most unlikely that these appointments by a "lame duck" President will be rejected unless opponents can find something besides political liberalism with which to charge them.

Chief Justice Warren, 77, said in his letter of resignation to the President he was retiring solely because of age. But surely in the back of his mind was the desire to assure continuance of the "activist" trend of the "Warren Court." History will judge the stupendous record of that court in civil rights, voters' rights and law enforcement—and the verdict, on the whole, we believe, will be more favorable than unfavorable.

Still, the times cry for a more conservative approach to the interpretation of the Constitution and the laws, and a decrease in legislating by judicial processes. This isn't going to happen for a while, it would seem, although Judge Thornberry may have a different slant on rights of criminals than have some members of the Warren Court. He worked his way through the University of Texas law school as a deputy sheriff and served 14 years in Congress.

[From the Harrisburg (Pa.) Patriot, June 28, 1968]

SUPREME COURT: L. B. J. APPOINTMENTS ARE JUSTIFIED

The 18 Republican senators who are threatening a filibuster to block President Johnson's nominees to the Supreme Court would he well advised to back off while the backing's good. "A lot has to do with the country's reaction," says a leader of the effort, the "moderate" Sen. Robert Griffin of Michigan. "I think a lot of people feel that a new President with a November vote behind him should make the Supreme Court appointments."

We do not pretend to know what the country's reaction is or will be, but we feel, and we suspect that many people will agree, that this is a transparent political maneuver which cannot be justified.

The Supreme Court is a political force, but it ought not to be made a political football. This is June. President Johnson will be in the White House for another six months. He is, technically, a "lame duck," but then so was President Eisenhower for all four years of his second term.

Would the country really react favorably to a filibuster, of all things, designed to keep the Senate from voting to fill a vacancy on the most important court in the country, and for purely partisan motives.

So long as Mr. Johnson is President, just so long must he execute the responsibilities of his office. In nominating Associate Justice Abe Fortas to succeed Chief Justice Earl Warren, and Federal Judge William H. Thornberry to succeed Justice Fortas, Mr. Johnson has executed his responsibilities; he would be guilty of negligence if he did not. Now the Senate must exercise its responsibilities, but in a responsible way.

That Justice Fortas is a friend for 30 years of the President is common knowledge; that he is one of the most brilliant lawyers in the nation, a man of breadth and depth, courage and compassion, is also a matter of public record.

The appointment of judge Thornberry, a former congressman who represented Mr. Johnson's former district, is less distinguished hut by no means unjustifiable. Judge Thornberry is a liberal Texan, which is not a conflict in terms, and he is well-regarded on the federal bench, not only for his carefully reasoned decisions but for his dedication to equal justice under the law for all men, white and black.

In general approach, Justice Fortas is close to Chief Justice Warren. The continuity will be good for the country, for in the 15 years during which Earl Warren has presided over it the Supreme Court has produced landmark decisions to maintain individual liberty against government, to compel government to be responsive to the people, to strike down segregation and to uphold free speech.

Those have been years upon which—as former Pennsylvania Bar Association President Gilbert Nurick of Harrisburg has declared—historians will look and conclude that the Supreme Court has made meaningful and long-needed contributions "toward the accommodation of our great Constitution to the present and future needs of our nation."

[From the Trenton (N.J.) Times, June 28, 1968]

CHIEF JUSTICE FORTAS

We assume that the manufacturers of the "Impeach Earl Warren" signs will be resourceful enough to convert their unsold stock to read "Impeach Abe Fortas." Because the big balding Southerner who has been nominated to be the next U.S. Chief Justice is similar to Warren in outlook, and the spiteful crowd that hated Warren for the judicial philosophy he personified will find Fortas no more to its liking.

Both men are activists, who sees the U.S. Constitution not as a narrow, rigid 18th-century document but as a flexible instrument whose language is broad enough to be relevant to the transformed America of today. Both have shown by their decisions involving individual rights that they take very seriously indeed the Bill of Rights and the

14th Amendment that guarantees due process and equal treatment under the law. Fortas, it might be added, sees very clearly the distinction between individual liberty and anarchy; in a recent pamphlet he expertly demolished the proposition that mob action can ever be an acceptable substitute for traditional democratic and legal processes.

There are differences between the two men, of course. Fortas, unlike Warren, brings to the country's top judicial job a brilliant legal mind that has been exercised in the courtroom, the classroom and on the bench. However, there is some question whether he can match Warren's great ability for reconciling differences within the court. Time alone will tell.

A few small-minded senators are scheming to try to block Justice Fortas' confirmation, along with that of the President's other appointee to the high court, Judge Homer Thornberry of Texas. Any such effort, rooted as it would be in pure partisanship, would discredit only those who joined in it—not the appointees themselves, or the man who appointed them.

[From the Minneapolis (Minn.) Star, June 29, 1968]

A PAIR OF GOOD APPOINTMENTS

President Johnson's appointment of Abe Fortas to succeed Earl Warren as chief justice and Judge Homer Thornberry of a U.S. Court of Appeals in Texas to the vacant seat was an astute political move, a typical Johnsonian exhibit of personal loyalty, and at the same time a guarantee of the continuity of the progressive Warren traditions.

By obtaining in advance the enthusiastic approval of Senate GOP leader Everett Dirksen, LBJ countered carping about "lame duck" appointments. He's not really a "lame duck," which means a defeated politician serving out an expiring term.

LBJ was not defeated. He has the duty and moral right to exercise all powers of office.

That both Fortas and Thornberry are old personal friends, that the first is Jewish, and both are Southerners is less important than that both are a credit to the bench intellectually, and put the highest priority on individual rights and dignity.

Fortas is a tough-minded legal scholar who can be expected to "marshal the court" as did Warren. For all his toughness he is sensitive to the civil rights and civil liberties issues that make up half the court's business. Thornberry, who served LBJ's old congressional district, was the only southern liberal on the House Rules Committee. As a subsequent federal judge he has been strong on desegregation and civil rights.

One of Warren's accomplishments as chief justice was to minimize internal dispute that can result in 5-to-4 decisions which in turn can subtly undermine the Supreme Court's prestige. The Fortas and Thornberry appointments are double assurance that "the Fortas court" will continue on the humane course that produced for that august body, the most powerful court in the world, some of its finest hours.

[From the Chicago (Ill.) Daily Defender, July 3, 1968]

THE GOP OPPOSITION

The GOP's loud protest against President Johnson's nominations of a chief justice and an associate justice of the Supreme Court in the waning months of his term, will not heighten the Republican cause in the hearts of the Negro voter.

The argument that President Johnson should relinquish the privilege of naming a new Chief Justice to his Presidential successor is simply idiotic. Tradition and constitutional warrant are both on the side of Mr. Johnson in this matter.

With Nixon, the party's Presidential frontrunner, spearheading the opposition, the Republicans are making it solemnly clear where they stand on the great social issues on which the high court has deliberated, and what they will do if they capture the White House.

Though retiring Chief Justice Warren was elevated to the Court's high station by President Eisenhower, both Ike and his Vice President Nixon were noticeably cool to Warren following the decision which found segregation of the public schools unconstitutional.

To reinforce that attitude, 18 GOP senators have signed a petition threatening a filibuster if necessary to block the confirmation of justice Abe Fortas to replace Earl Warren as Chief Justice and U.S. District court judge Homer Thornberry as associate justice.

In legal circles, Fortas is rated as a liberal with uncommon legal scholarship. His mastery of the law and the logic he adduces to his opinions make his persuasion irresistible. During the short period he has been on the court, his influence quickly has exceeded his seniority.

Thornberry's record as a liberal is without blemish. He was always on the side of justice and right especially where racial minorities were concerned when he was in Congress. And as District Judge, Thornberry has not deserted that tradition.

The Republicans are against a liberal court. Above all they do not want a continuity of the Warren tradition. During the 14 years of Warren's justiceship, the Supreme Court has done more to change the face of the nation than either the Congress or the Presidency. Its major decisions, especially on public schools, transportation and housing have technically raised the Negro out of the second-class citizenship.

The strictures against the Warren court have come, in the main, from Republican Congressmen and Republican newspapers. They have inveighed against every Supreme Court decision that pushed aside the major impediments to full citizenship for black Americans.

We are left with the inescapable assumption that advancement of the black man through the various interlocking segments of the American society is not a serious concern of the Republican Party as presently constituted.

[From the Newark (N.J.) News, June 27, 1968]

FORTAS FOR WARREN

On merit alone, President Johnson has every justification for the appointment of an old friend, Abe Fortas, to be the chief justice, suceeding Earl Warren. Justice Fortas went to the high court almost three years ago with an impressive background as a Washington lawyer and after years of high-level government service.

He had also been a close confidant of the President since their early days in the capital as young New Dealers in the first administration of Franklin D. Roosevelt. Fortunately, his political credentials are more than matched by a keen legal mind, which fits him well for the philosophical atmosphere of the high court.

In his brief tenure on the bench, Justice Fortas has demonstrated that he is no doctrinaire liberal, although he has generally aligned himself with the liberal bloc on the court. Indeed, there has been some evidence that he favors, at least to some extent, the exercise of judicial restraint in the deciding of constitutional issues.

However, there would seem to be little doubt that Mr. Fortas will not abandon the liberal path pioneered by Mr. Warren. But whether the court's liberal majority will be maintained will depend on Circuit Judge Homer Thornberry of Texas, Mr. Johnson's choice as another old friend, to fill the vacancy on the court.

In making the Fortas appointment, the President disregarded Republican urgings that he refrain from filling the post because of his lame-duck status, thus leaving to the new president the choice of a chief justice who will set the tone of the court in the years ahead. Now that the president has chosen to make the nomination, the Senate, in its advise and consent role, should be guided only by Mr. Fortas' qualifications.

His predecessor, Chief Justice Warren, leaves the high court after having wrought radical changes in the legal and social structure of the nation while generating some of the most intense controversy to envelop a judicial figure.

Chief Justice Warren went to the court with certified credentials as a liberal. In fact his liberal philospophy was so well established and authenticated during his career as governor of California that at one point he was nominated for election by the Democratic as well as the Republican parties. All this was well known when Mr. Warren was named to the court by Dwight D. Eisenhower who as a middle-of-the-road president otherwise opened few avenues to the left.

After Mr Warren's appointment, the court embarked upon a course that resulted in a series of civil rights decisions beginning with desegregated schools on through voting rights that changed social and legal concepts embedded in the law and the public consciousness for a century.

Similarly, he held in highest value the rights and dignity of the individual, and it was fulfillment of this doctrine in criminal cases, embodied especially in snch controversial decisions as Miranda and Escobedo, that brought the Warren court into sharpest conflict with Congress and much of the country.

[From the Baltimore Sun, July 16, 1968]

JUDICIARY HEARINGS

The Senate Judiciary Committee hearings on the President's nominations to the Supreme Court begin in earnest this morning. Early sessions have largely quieted preliminary matters, trivial and otherwise. Few really doubt that two court vacancies exist or are imminent with Chief Justice Warren's announcement that he will retire. No one really denies President Johnson's power to name Justice Fortas as the new Chief Justice and Judge Thornberry for the vacancy that results. The fact that both nominees are friends of the President may explain but hardly invalidates the nominations. The real issues, the truly solemn questions now as always and perhaps more in these times of trouble, go to the nature and scope in our tripartite arrangements of the judicial power, to the views thereon of the nominees and to their competence to do as they say.

As it happens, the Judiciary Committee members and the country in general have a brief and consummately stated guide to the ultimate considerations in a case decided on the last day of the Supreme Court's recent term. Five justices affirmed a conviction under local Texas law for public drunkenness. The appellant had pleaded that he was an alcoholic, that alcoholism is a compulsive disease and that the court should outlaw penal sanctions for behavior not willed but compelled by alcoholism. The drama of the case was heightened by the fact that Chief Justice Warren was in the majority which rejected this constitutional innovation, the Chief Justice designate wrote the dissenting opinion supporting it, and Justice Black, the court's senior in tenure and perhaps its most eloquent libertarian, wrote the concurrent with the majority from which we quote.

"This court," said Black, ". . . is asked to set itself up as a Board of Platonic Guardians to establish rigid, binding rules upon every small community in this large nation for the control of the unfortunate people who fall

victim to drunkenness. . . . The constitutional rule we are urged to adopt is not merely revolutionary—it departs from the ancient faith based on the premise that experience in making local laws by local people themselves is by far the safest guide for a nation like ours to follow. I suspect this is a most propitious time to remember the words of the late Judge Learned Hand, who so wisely said: 'For myself, it would be most irksome to be ruled by a bevy of Platonic Guardians, even if I knew how to choose them, which I assuredly do not. . . .'"

No member of the court, actual or prospective, would disavow Judge Hand's preference for free and representative government. Nor can the Judiciary Committee or the Senate itself wholly subdue the variability of words in the minds of strong and conscientious men. But ours is nevertheless still a government of words, the words of our constitutions and laws, and surely the committee and the court and the country will work toward the consensus that keeps it that way.

[From the New York Post, July 15, 1968]

THE FORTAS HERESY

In the end the confirmation of Abe Fortas as Chief Justice of the Supreme Court still seems virtually certain. The real question appears to be how much indignity he will be required to endure before he is cleared.

Latest to join the opposition bloc is Sen. Russell B. Long (D–La.), his party's whip in the upper house. Long says his opposition based on positions Fortas has taken "supporting the rights of criminal suspects."

In a sense, such attack can only bolster the case for the Fortas appointment. He has indeed been guilty of the kind of reverence for the Bill of Rights exhibited by Earl J. Warren. That is why his designation to replace Warren means so much to millions of Americans—and to those who are battling for freedom inside Communist and Fascist tyrannies. His critics do him honor, and give added meaning to the size of the confirmation vote.

[From the Nashville Tennessean, July 11, 1968]

SENATORS EYE THE MOUSETRAP

At least some of the 19 Senate Republicans who thought they had a roaring campaign issue are having second thoughts about opposing the appointment of Mr. Abe Fortas as chief justice of the Supreme Court.

Sen. Everett Dirksen, the Senate minority leader, said he would not join in the fray and that two of the original 19 were reconsidering. This week Kentucky Sen. Thruston B. Morton said he is one of the two.

"I got caught in a mousetrap on this thing," Senator Morton explained. Originally, he said, he thought he would be opposing only an action by the administration. Since the appointment, however, Senator Morton said he would be opposing Mr. Fortas, whom he described as "a helluva guy."

Perhaps another consideration is the pledge of Chief Justice Earl Warren to remain if his successor is not confirmed by the Senate.

The Republican stance has never had any legal or historical precedent. If they insist on trying to block confirmation with a filibuster now, they will be in the position of delaying or killing important legislation, continuing the controversial "Warren court," and opposing a popular and able justice.

In that event, they will have indeed created a campaign issue in the November elections—for the Democrats.

[From the Christian Science Monitor, July 15, 1968]

STRONG SENATE TIDE DEVELOPS FOR FORTAS

(By Godfrey Sperling, Jr.)

WASHINGTON.—A poll of the Senate by The Christian Science Monitor shows that the tide is running strongly in favor of approval of the nomination of Abe Fortas as chief justice.

Sixty senators have responded to a questionnaire asking if they would approve such an appointment. Thirty-nine answered "yes." Nineteen said "no." And two said they were "undecided."

Within this response lies enough dissent, of course, to launch a filibuster in the waning days of Congress. But White House pressure now is being exerted, and this resistance may fade.

With adjournment of Congress nearing, Senate delay has become the chief obstacle to confirmation. What the opponents to confirmation will do remains the imponderable.

Among some Republican leaders in both the Senate and House there is considerable unhappiness over the fight against confirmation that was launched by GOP Sen. Robert P. Griffin of Michigan. He and 18 other Republicans formed a bloc to prevent what they saw to be a "lame-duck appointment."

CHANGES INDICATED

But this group now is breaking up a bit. Sen. Thruston B. Morton, a member of the 19, has changed his position, now favoring a Fortas confirmation. Senate minority leader Everett McKinley Dirksen also has indicated support of the Fortas nomination.

Behind the scenes several GOP leaders have passed the word that the GOP resistance to Associate Justice Fortas has become an embarrassment to the party. Said one leader:

"The Republican Party has been making considerable progress with the Jewish community. But this GOP opposition to Fortas is going to hurt us with that group."

The GOP opposition to a Fortas (and Judge Homer Thornberry) appointment was detailed in an answer from Sen. Howard H. Baker Jr. of Tennessee:

"I believe that positions on the Supreme Court are of such significance that when coupled with the certainty that there will be a new administration in January, the new administration, whether Republican or Democrat, should have the opportunity to designate the new chief justice and the new associate justice of the Supreme Court."

POLITICS QUESTIONED

Sen. A. S. Mike Monroney (D) of Oklahoma, in supporting the appointments, had this to say on his questionnaire: "I think this assumption that presidential powers end six or seven months before his term expires is repugnant to the office of the presidency and to the Constitution."

Opposing the appointment, Sen Len B. Jordan (R) of Idaho takes this position:

"The question is whether it is wise policy for the Senate to confirm a new chief justice and an associate justice, who presumably will serve for life, when the people are in the midst of choosing a new president and a new government.

"I expect to vote against both confirmations—not so much as a protest against the persons whose names have been sent up to the Senate by the President, but as a matter of principle and a protest against the system."

OPPOSITION TO MILITARY SERVICE IN VIETNAM

Mr. HATFIELD. Mr. President, recently, I received the texts of statements from 103 college student-body presidents and newspaper editors, 200 Woodrow Wilson Scholars, and 19 Danforth Fellows, stating that they cannot in good conscience serve in the military so long as the war in Vietnam continues.

Although I have continually spoken out against civil disobedience, I think it is imperative that we seek to understand the terrible dilemma which these young men face. Indeed, many of our Nation's most idealistic young men are torn between the recognition of their duty to serve their country and their duty to apply an individual moral standard to the actions they perform. Though we as lawmakers must disavow their contravention of the law, I would hope that we will not ignore either the integrity of their decision or the agony of their action. Their words echo the feelings of so many young men who are deeply tormented by the sacrifice of values which is demanded of them by participation in a war which they believe is immoral.

I cannot help contrasting the bitterness of today's young men drafted to fight in Vietnam with the call my generation felt to serve in the Second World War. I was proud to serve in the Navy in the South Pacific at Iwo Jima, Okinawa, and Indochina, because the purpose and the necessity of our struggle was clear. Today, however, I question the avowed purposes of the war in Vietnam, and I question a system of conscription which forces young men to contradict their own moral commitments. It has been clearly demonstrated, I believe, that the current draft system is a drastic invasion of individual liberty; does not apply equally to all young men; and does not economically provide the type of personnel needed by the military. A voluntary military recruitment program with improved incentives and opportunities, as I proposed in S. 1275, the Armed Forces Improvement Act of 1967, would not only be economically feasible and capable of producing the necessary number and quality of military personnel, but also would eliminate the injustice and the compulsion of the present system.

So I ask unanimous consent that the statements of these students be printed in the RECORD. In doing so, I hope that we will not remain impervious to their cry for revaluation—of a war in which they in good conscience feel they cannot serve and of a Selective Service System which gives them no choice.

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

STATEMENT OF 103 COLLEGE STUDENT BODY PRESIDENTS AND NEWSPAPER EDITORS

Despite our government's hardening of position in negotiations with North Vietnam, we hope that the President's actions of March 31st indicate the beginning of a reversal of our war policies. Students have, for a long time, made known their desire for a peaceful settlement. The present negotiations, however, are not an end in themselves, but rather the means to a cease-fire and American extrication. And until that cease-fire is reached, or until the Selective Service System is constructively altered, young men who oppose this war will continue to face the momentous decision of how to respond to the draft.

In December of 1966, our predecessors as student body presidents and editors, in a letter to President Johnson, warned that "a great many of those faced with the prospect of military duty find it hard to square performance of that duty with concepts of personal integrity and conscience."

Many of draft age have raised this issue. Last spring over 1000 seminarians wrote to Secretary of Defense McNamara suggesting the recognition of conscientious objection to particular wars as a way of "easing the

the Senate proceed to the consideration of unfinished business.

The PRESIDING OFFICER. The bill will be stated by title.

The ASSISTANT LEGISLATIVE CLERK. A bill (H.R. 17023) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the Department of Housing and Urban Development for the fiscal year ending June 30, 1969, 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. 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. MORSE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF BUSINESS

Mr. MORSE. Mr. President, I ask unanimous consent that I may speak on a nongermane matter.

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

THE SUPREME COURT NOMINATIONS

Mr. MORSE. Mr. President, I spoke yesterday on one phase of the constitutional issue involved in the controversy over the nomination of Justice Fortas to be Chief Justice of the United States and Judge Thornberry to be an Associate Justice of the Supreme Court.

In the speech yesterday, I discussed the views of 480 deans and professors of 68 of the finest law schools in the Nation, law teachers representing every section of the country, who pointed out that in their opinion the constitutional issue is very clear; that not only is there not the slightest basis for denying this authority to the President of the United States but also that it is his clear duty to make nominations when vacancies occur.

They also pointed out that it is the constitutional duty of the Senate either to confirm or not to give its consent for confirmation, but not to engage in tactics that would prevent the Senate from carrying out its duties under the Constitution.

It appeared from the hearing on the Fortas nomination that a new "constitutional" issue has been dragged into the Fortas nomination. At first I thought it was a spoof. Then I realized that it was just plain ignorance.

I have taught the Constitution. I have lived with the law all my life. But when I saw accounts this week of the Constitution being masked and the history of our Nation from its earliest beginning being ignored, I could not contain myself.

So now I rise to set the record straight—as I see the record—because I want the American people to have the facts which I believe are being denied them.

The claim that the separation of powers is "breached" or "called into question" each time a President seeks the advice of a Supreme Court Justice on matters totally unrelated to the court, flies in the face of almost two centuries of practice and precedent.

In the statement which I read previously, I did not see that George Washington was accused of breaching the Constitution. The author of that statement apparently did not know that Chief Justice John Jay not only gave plenty of advice to George Washington, but—while Chief Justice— also served as our Minister to England.

I did not see John Adams criticized or Chief Justice Ellsworth maligned when history reveals that Ellsworth became Minister to France while he was still Chief Justice.

I did not hear a single word chastising our great Chief Justice, John Marshall, who served as John Adams' chief foreign policy adviser while still on the Court.

I did not hear President Monroe called to task for asking Supreme Court Justice William Johnson for advice on Federal-State matters.

In that glib "off the bench" constitutional opinion rendered day before yesterday, I did not hear Chief Justice Roger Taney censured for advising President Andrew Jackson—both orally and in writing—about a wide variety of matters.

I heard not a single word of criticism leveled against Justice Catron when President Buchanan asked him to draft sections of his inaugural address.

Nor, might I add, was President Abraham Lincoln called a flouter of the Constitution when he asked Justice David Davis who, by the way, was Lincoln's former campaign manager, for opinions on dealing with unrest in the nation and on the legality of imposing martial law by Presidential action.

Not a word in judgment was leveled against Chief Justice Fuller, who gave political advice and counsel to President Grover Cleveland, or against Justice Chase, who was a frequent adviser to Andrew Johnson.

There was no comment on the fact that President Theodore Roosevelt asked for counsel from Justice Moody.

Nor did I hear Justice Brandeis maligned for giving constant advice to President Woodrow Wilson all through World War I. In fact, history shows that one December evening in 1917, President Wilson went to Brandeis' apartment to request advice on certain railroad problems.

I see that no fault was found that Harlan Fiske Stone advised Herbert Hoover and actually commented on drafts of speeches and Executive messages—or the "assistant president" role that Chief Justice Taft—the father of Senator Robert Taft and the grandfather of Congressman ROBERT TAFT, JR.—played in giving close advice to Presidents Hoover, Harding, and Coolidge.

Nor was Justice Frankfurter maligned for the volumes of open records to show his close ties with President Franklin Roosevelt.

No word was raised in anger against President Harry Truman for sending Chief Justice Vinson on a vital diplomatic mission to the Soviet Union during the height of the cold war.

This is only a partial catalog. History is replete with other examples. The record speaks clearly and proudly of almost 200 years of our history. It speaks of Presidents, Republicans and Democrats alike, who have sought and received advice and counsel from members of the Supreme Court in whom they trusted and confided.

But the basic question does not end here. It does not end with the Supreme Court. Is there a single Member of this body—of the separate legislative branch—who would refuse to give advice and counsel to the President? Is there a single Member of this body who has not been in the White House to consult on some matter? Senator Griffin can counsel the President and recommend actions to him on a riot situation in Detroit, but a Supreme Court Justice is not even permitted to read a President's statement about the riots, according to this unfortunate rationale.

What is this nonsense which says that the separation of powers or the Constitution prevents honorable men from consulting with one another on grave issues of the day?

Let us call it what it is—politically motivated and reckless poppycock.

That is the way I see it. That is the way the American people, I believe, are going to see it. And that is the way Presidents, Chief Justices, and Members of Congress have seen it for the past 200 years. Apparently, some of my colleagues are either too young to know or too old to remember the facts of history.

And I cannot leave this matter without an additional observation.

As an American, I am ashamed; as a Senator, I am offended; as a lawyer, I am deeply disturbed by the spectacle—the unprecedented spectacle—of subjecting a Chief Justice nominee to cross-examination on his judicial opinions and his judicial views.

If anything flouts the separation of power, it is this.

Never before in the history of this country has a sitting Justice, nominated for Chief Justice, previously confirmed by the Senate, been questioned on his judicial views by a Senate Committee.

This is the harassing work, in my judgment, of biased men who lack a sense of history, and I am sorry that it is taking place. I hope we will be through with it and get on with the job of carrying out our duty either to confirm or refuse to confirm, under the advise and consent clause of the Constitution.

INDEPENDENT OFFICES AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT APPROPRIATIONS, 1969

The Senate resumed the consideration of the bill (H.R. 17023) making appropriations for sundry independent executive bureaus, boards, commissions, corporations, agencies, offices, and the De-

11. Work to combat the alienation between Negroes and police.

12. Work to improve race relations.

13. Hold elected officials accountable for the efficiency and performance of the police force.

14. Help to change the atmosphere in the community toward correction services so that there will be acceptance of their importance and of their worth.

15. Educate young people about law, law enforcement, crime, and their civic responsibilities.

16. Work toward the eradication of the social conditions that induce crime; volunteer to assist in existing social agencies.

A Gallup poll, conducted the day Senator Kennedy was shot, asked, "What steps do you think should be taken to prevent such violence in the future?" In addition to mentioning the need for gun-control laws, the respondents stressed the need for *"removing programs of violence from television."*

For those who are unaware of the extent of violence on television, our rsearchers analyzed the television listings, including televised movies, in the *New York Times* and *TV Guide* for the weeks of June 2 (the week Senator Kennedy was assassinated) as well as the week immediately following his death (June 9). Here is what they found:

WEEK OF JUNE 2, 1968, 6 P.M. TO 1 A.M.

	Total time (in hours)	Percent of air time
Westerns	14	6
Horror, mystery, suspense	19	8
Spy	8	3
Crime (detective, courtroom, etc.)	17	7
War, adventure	19	8
News coverage of war, violence	24	10
Other	9	4
Total	110	46

WEEK OF JUNE 9, 1968, 6 P.M. TO 1 A.M.

	Total time (in hours)	Percent of air time
Westerns	18	7
Horror, mystery, suspense	26	11
Spy	4	2
Crime (detective, courtroom, etc.)	12	5
War, adventure	49	20
News coverage of war, violence	30	12
Other	5	2
Total	144	59

Our researchers also looked into the matter of prizefights on television. They discovered that the total number of *families* watching men inflict bloody injuries on one another in the four most recent major professional bouts on TV came to an astounding 33,081,400.

How, then, can such television programs be eliminated? As McCall's suggested last month, you can do much toward this end. If even half of our fifteen million women readers will take the following steps, the major TV networks will soon be faced by an irresistible argument for discontinuing programs of violence:

1. Keep track of all programs of violence (including movies) that you believe have an unsettling or brutalizing effect on young people. Note the networks on which these programs are shown.

2. Write to the president of each network (see note), listing objectionable programs by title and asking that they be replaced by other fare.

3. Keep up this activity for an indefinite period.

McCall's attempted, unsuccessfully, to obtain statistics on the number of violent motion pictures that were released to theaters around the country last year. No breakdown existed, nor was it possible for our researchers to persuade the individual motion-picture companies to provide such breakdowns, together with attendance figures. Nonetheless, it is painfully obvious to anyone who merely reads the advertisements and reviews that violence in movies is on the increase.

Last month, we suggested that you compile your personal list of objectionable movies and send it to Mr. Jack Valenti, President, Motion Picture Association of America, Inc., 522 Fifth Avenue, New York, N.Y. 10036, asking him to register your objections with the motion-picture executives responsible for each of the films on your list. Keep this up for a month or two, and encourage your neighbors to do the same.

A second effective way to cut down on the showing of violent films is to find out the names of the owners of your local theaters and drive-ins. Each time a violent movie is being played in one of these houses, write the owner and inform him of your family's intent to boycott it. Your local exhibitor will feel the effect of a community boycott and will eventually request his national distribution agency to offer him a wider selection of films, including nonviolent ones.

There is much evidence of the damaging effect of violent toys on the development of a child's personality. It is widely believed that the boy who has played with knives and guns and rockets and jets as a youngster is quite likely to think of war and violence as an extension of his childhood activities.

(NOTE.—NBC: Mr. Robert Sarnoff, President, Radio Corporation of America, 30 Rockefeller Plaza, New York, N.Y. 10020

(ABC: Mr. Leonard H. Goldenson, President, The American Broadcasting Co., Inc., 1330 Avenue of the Americas, New York, N.Y. 10019

(CBS: Dr. Frank Stanton, President, Columbia Broadcasting System, Inc., 51 West 52nd Street, New York, N.Y. 10019)

McCall's found most top manufacturers reluctant to give figures on the number of warlike toys manufactured and sold every year; but we were able to get an estimate on the annual sale of toy guns. It comes to $130,000,000.

An increasing number of manufacturers are offering constructive, creative toys and playthings, available almost everywhere. Encourage these manufacturers by buying their products, and discourage those who sell guns, rockets, Vietnamese planes shot full of holes, and other toy replicas of the machines of war—by not buying.

Even books are contributing to today's dangerous climate, as an analysis of the book listings for the year 1967 in *Publishers' Weekly*, the industry's leading trade publication, indicates.

BOOKS PUBLISHED IN 1967

	Violent	Percent
Fiction	226 of 699	33
Mystery, suspense	228 of 252	90
Nonfiction	347 of 1,211	29
Children's books	59 of 279	21
Total	860 of 2,441	36

One hopeful footnote: Of the twenty best-selling books in the same year, not one could be described as exploiting violence. Possibly this will help convince thoughtful publishers that there are more salable subjects than murder and mayhem.

June 7, as the body of Senator Kennedy lay in state at Saint Patrick's Cathedral in New York City, almost a million men, women, and children stood in line for an average of six hours. They stood patiently, peacefully, in ninety-degree heat, waiting to enter the cathedral—because they *cared*.

Now, if this concerned million and tens of millions more, will only care enough to perform some responsible public act of protest, we believe America will have begun to find its answer to violence.

—MARY KERSEY HARVEY.

STATEMENT IN SUPPORT OF THE CONFIRMATION OF THE NOMINATION OF JUDGE THORNBERRY AS SUPREME COURT JUDGE

Mr. YARBOROUGH. Mr. President, I support with great pleasure the President's nomination of Judge Thornberry to be an Associate Justice of the U.S. Supreme Court. This is a promotion within the judicial system and Judge Thornberry's great legal experience gives him outstanding qualifications. At the University of Texas Law School and as a U.S. district and circuit court judge, his record shows him to be a man of great ability and solid judgment. As a former Representative, Judge Thornberry has also dealt with the area of law formulation and intent.

Whether as a Representative or in his position as Federal district and then as circuit judge, we have all seen Judge Thornberry act with restraint, with moderation, and yet with compassion and understanding toward the serious problems facing this country. Whether serving in the legislative or judicial branch of Government, he is not afraid to act. He realizes that no part of our government can insulate itself from controversial issues. As a circuit judge, Mr. Thornberry has played a part in significant constitutional decisions affecting a number of our basic freedoms. These same basic freedoms are destined to remain a very significant area for Supreme Court rulings.

Although Judge Thornberry's experience eminently qualifies him to join the select group of Judges privileged to sit on the highest court in the land, I am supporting Judge Thornberry for personal as well as professional reasons. I knew Homer Thornberry while he was working his way through the University of Texas Law School as a chief deputy sheriff of Travis County, at Austin, Tex., while I was a State district judge, serving in the same courthouse with him. And I watched him go after graduation into the State Legislature of Texas. After 5 years in the legislature, he became an able and efficient prosecuting district attorney in Austin before he entered the Navy in World War II. After 4 years in the Navy he returned as a commissioned officer, and served as mayor pro tempore of the city of Austin before he started his national career by being elected to Congress in 1948.

As a friend and fellow Texan, I have watched Judge Thornberry grow and season as all of us hope to do. He is a man with a very, very broad background in public service in executive, legislative, and judicial capacities. He has filled all of them with distinction, but if I had to pick out one characteristic of Justice Thornberry, I would say that his hallmark is what laymen call horsesense, and the lawyers call sound judgment.

Mr. President, I have recently received a copy of a letter from Chief Judge John R. Brown, of the Fifth Circuit Court of Appeals, to the chairman of the Senate Committee on the Judiciary. As chief judge of the court of which Judge Thornberry served for 3 years, Judge Brown is in a unique position to assess Judge Thornberry's abilities and capabil-

ities as a potential Supreme Court Justice. I have not found more eloquent testimony in behalf of Judge Thornberry or any other judicial appointee by a more qualified man. Chief Judge Brown's letter is more than a testimonial to Judge Thornberry. In a broader sense, it narrates in a superb way the qualifications we would look for in hunting a superior judge. The letter is both a testimonial to Judge Thornberry and an eloquent testimonial of the wisdom, perception, and breadth of judicial understanding of the extremely able and gifted chief judge who wrote it. Because the committee is now considering Judge Thornberry's qualifications and abilities, I ask unanimous consent that Judge Brown's letter be printed at this point in the RECORD.

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

FIFTH CIRCUIT,
U.S. COURT OF APPEALS,
July 10, 1968.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

MY DEAR SENATOR EASTLAND: It is my privilege to affirm to you, your fellow committee members, and to the Senate as a whole, my high esteem for the professional, judicial qualifications of Judge Homer Thornberry, nominated to be an Associate Justice of the United States Supreme Court.

As you know, Judge Thornberry came to the Court of Appeals for the Fifth Circuit in July of 1965. He has thus served with us through three full court years (1965–66; 1966–67; 1967–68).

Both as one of his associate Judges and now (since July 17, 1967) as the Chief Judge, I know intimately and firsthand the tremendous talents of this dedicated public servant.

He is a vigorous, industrious worker. He has more than carried his full share enthusiastically and without shirking. This is a real tribute in view of the explosive growth of our docket in these few three years (1079 filings in 1965–66 and 1340 in the year just closed). But industry, putting in the hours of struggle, is not enough. A Judge now must be an effective worker. Judge Thornberry is blessed with this capacity and this includes a number of skills. One is a capacity to make up his mind. Closely akin is the capacity—once a decision has been reached by an open-minded consideration of the problem and the contrary views of others—to adhere to a determination once made. This is an absence of that trait so unfortunate in a Judge who suffers from the torment of vacillation.

Next, be has the capacity to write and write effectively. This is, finally, the test for an Appellate Judge. His opinions are pieces of excellent professional craftsmanship, revealing organized thinking, analysis, discussion and decision. They bear the mark of high literary quality and a style that is both readable and understandable. He writes not only effectively, but with productive dispatch so that he makes a continuous current contribution to the output of our Court (over 1000 opinions this year). In volume of work done, opinions written, his output is at or near the top.

Fortunately, too, these capacities are catholic in nature, free of parochialism, either geographic, economic or in specialized fields of the law. He handles and writes well, and has done so, in all areas of the law—criminal, civil, state-oriented diversity problems covering the whole of life's experience as well as federal question cases including, of course, the ever prevalent cases invoking the Federal Constitution. Undoubtedly his long experience in elective public life, and especially in the Congress, has given him both breadth of outlook and the tools of understanding.

To the work-a-day problems of judging as such, court administration is now more and more important. The bench, the Bar, the cause of justice needs leadership and action in this field. No better place to find such leadership than on the United States Supreme Court could ever exist. Judge Thornberry has unusual talents for this activity. He has handled, with great efficiency, a number of administrative matters delegated to him by me as Chief Judge.

But these things—essential as they are to the Judge, and especially the good Judge—pertain primarily to the professional craftsmanlike skills. What is more vital is superior intelligence, wisdom, judgment, a disposition to hear, consider, weigh, with a mind as open and as free of predilection as possible for human beings, and then make a decision. He has these qualities in great store. He would, of course, be the first to deny this. And this highlights another quality—now so rare—a genuine humility, a modest disclaimer which undoubtedly leads him to leavs nothing undone in work, study, research and hammering out the finished product to assure himself of the right decision as he sees it.

Although, as Chief Judge, I would not consider that I have a right to speak for the Court itself, or to bind even the Judges as members thereof, to a matter of this kind, I know from the close association we all have and the extended discussions we have had among ourselves since the President sent Judge Thornberry's nomination to the Senate, that all share these views which I have tried to express. To a man, all look upon Judge Thornberry as an able, energetic and conscientious person having exceptional talents as a Judge which he has demonstrated in his service with us. We will miss him sorely on the Fifth Circuit, but we know that, with all of these qualities, both as a man and as a Judge, he would make a distinguished Associate Justice of the Supreme Court.

I am taking the liberty of sending copies of this letter to your distinguished associates on the Committee and to my fellow Texans, Senators Yarborough and Tower.

Sincerely yours,

JOHN R. BROWN,
Chief Judge,
Fifth Circuit Court of Appeals.

NEW ENGLAND GOVERNORS CALL FOR STUDY OF REGION'S HIGH ELECTRICITY RATES

Mr. MUSKIE. Mr. President, in its constant support of continuing appropriations for the planning and the construction of the Dickey-Lincoln hydroelectric project on the St. John River in northern Maine, the Senate has recognized the seriousness of New England's high electric rates and has acknowledged that something must be done to change this pattern. The Senate has not been alone. Public and private citizens throughout New England have felt these costs most immediately and have urged effective action.

Finding that "New England electric consumers, residential, commercial and industrial, pay the highest rates in the continental United States for their electricity and that this high cost of power is an obvious detriment to our region's prosperity and continued economic development," the New England Governors Conference recently called for a 6-month study of the electric industry in New England. In their most recent meeting, held in Stowe, Vt., the Governors of all six States recognized the importance of finding—once and for all—the causes of these rates and what can be done to lower them.

I feel certain that the findings of this study will support the importance of the construction of the Dickey-Lincoln hydroelectric facility. Our region can no longer afford to handicap the welfare of its citizens and the development of its industries by tolerating such high power costs.

So that Senators may more closely examine the feelings of the six Governors of the New England States in this regard, I ask unanimous consent that the relevant articles from the June 29 issue of the Burlington, Vt., Free Press and the Barre-Montpelier, Vt., Times-Argus be printed in the RECORD.

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

[From the Burlington (Vt.) Free Press, June 29, 1968]

CHIEF EXECUTIVES REQUEST NEW ENGLAND POWER STUDY

STOWE.—A call for a massive, six-month study of the electric industry in New England was sounded here Friday by the governors of the six states in the region.

The New England Governors Conference also approved of companion action designed to monitor the impact of new nuclear power plants on the region's environment, particularly its waters.

In a formal resolution sponsored by Vermont Gov. Hoff, the Governors Conference noted that the power rates in the region are the highest in the nation and that those high rates are "an obvious detriment to our region's prosperity and its continued economic development."

The resolution called for an armistice in the running battle between public and private power advocates and said the goal must be improved planning and lower rates.

The study will be undertaken in cooperation with the Federal Power Commission, the New England River Basins Commission, the New England Conference of Public Utilities Commissioners and the Electric Coordinating Council of New England, which is the information and lobbying agency for the private power companies.

Hoff, who is chairman of the New England Governors Conference, has long led the effort to get lower power rates in the region.

His proposal for a broad study of the electric power industry in New England came in response to a suggestion made by his old friend, Charles R. Ross, a member of the FPC and former chairman of the Vermont Public Service Board.

In a recent FPC decision, Ross urged the New England governors and their regulatory agency officials to request the FPC to embark on a comprehensive survey of New England's power system.

Ross said the FPC was unable to initiate such an inquiry on its own, but could move into the region at the request of the states.

The survey will be designed to explore:

Integration of the "small and fragmented" power systems in New England.

The impact of current industry expansion plans on power costs.

Coordination of river basin development in conjunction with a "more economic electric bulk power supply."

Steps to help the private power companies lower costs.

The potential role of out-of-state power development projects, such as New York State's new venture into nuclear power development, in meeting New England's power needs.

The New England River Basins Commissions also told the governors it has a task

frantically held up her clipboard. On it she had penciled, "Fuzz, don't stop."

She was crying her eyes out, and mascara was running all over her face. I stopped anyway, of course, and when I did, two policemen came out of the bushes and arrested me, plus another salesman who was in the car. The cops were polite but firm about booking us, and it soon appeared we'd be spending the night in jail, for Diamond Dick told me on the phone that he didn't want to drive down with the bail money. This was especially galling because all of us had been contributing $4 out of every sale toward a bail-bond fund for just such emergencies. I called Diamond Dick up again and argued furiously with him. At last, he reluctantly telephoned one of the local bondsmen and guaranteed that he would make the bail good.

After that experience, I went to great lengths to avoid capture. Once, I had to spend an evening behind park shrubbery while patrol cars circled the area looking for me. Another time, I was in Vacaville, California, when the cops cornered me in a house where I was making my pitch. Upon seeing the patrol car pull up, I talked the mooch into going outside and swearing to the cops that I was an invited guest. (The Vacaville police had been death on salesmen since the time several years earlier, when a vacuum-cleaner salesman who lived there had a cop arrested for peddling tickets to the policeman's ball.)

In addition to avoiding policemen, we had to be careful not to run out of money, for Diamond Dick was extremely loath to wire cash—even if you had it coming from your commission. Once, seven of us ran out of cash on a selling trip to Los Angeles. When we telephoned Diamond Dick that we hadn't eaten all day, he told us to sell an encyclopedia set and use the deposit. Fortunately, one of us managed to make a sale, and that evening, we used part of the $12.50 deposit to buy 19-cent bamburgers. We were still so short of cash, however, that we didn't have enough for gasoline to get us all the way back to San Francisco, and we made it only because we turned off the ignition of the car whenever we were going downhill.

Naturally this aggravated my relations with Diamond Dick. Matters came to a head when I told him I didn't want to contribute to the "prize fund" any longer. (To finance this "fund," each of us had to contribute $6 out of every sale, which went to buy prizes for the salesman who peddled the most sets during a given month.) Diamond Dick said I had a choice between participating—or quitting. The latter option was tempting, but I was married by then and didn't have the guts to give up the $1,000 or so I was making each month. I compromised by transferring to Seattle, but, alas, the change of scenery didn't make me any happier in my work. In fact, I became even more dissatisfied here than I'd been in California, mainly because my sales fell off. One night, trying to find out why, I took my wife along on some calls in hopes she could pinpoint what I was doing wrong—which she promptly did.

"You're getting an embarrassed smile on your face at the crucial moments of the pitch", she said. "I think it's your guilty conscience showing."

With a little practice, I managed to suppress that telltale smile, and my sales picked up again. But my mood of depression persisted, and incidents which, earlier in the year, would have made me roar with laughter now seemed only to deepen it.

On one occasion, for example, I was trying to sell a set of encyclopedias to a young couple in Burien who had been married for only a couple of weeks. Clearly, the wife wanted the set and the husband didn't, and right in front of me, they started fighting about it. When she grabbed a vase and heaved it at him, I quietly picked up my briefcase and fled. As I closed the door, they were pummeling each other and screaming at the top of their lungs. The next day, I went back to their house to apologize. I found the place wrecked and the young husband disconsolate because his wife had gone home to Mother. He insisted on buying the set from me because he said, "Maybe that'll make her come back."

A few weeks later, something even more bizarre happened. I was in the middle of a presentation when my prospect, who was a Boeing expediter, suddenly covered his face with his hands and started sobbing. "I'm sorry," wailed this supermooch, "but this is the first time in my life I've ever received anything for free."

I decided on the spot not only that I'd succeeded in my determination to become an encyclopedia salesman, but that I was too proficient at it for my own damn good. Yes, I wrote up the supermooch's order, but not long afterward, I walked into the office and resigned.

Since then, I've spent most of my time at home going through the want ads. I haven't decided yet just what sort of job I'll apply for, but I can assure you it won't be selling encyclopedias. In fact, I hope I never see another encyclopedia as long as. . . .

Excuse me. I think there's someone at the door.

THE SENATE MUST ACT RESPONSIBLY ON SUPREME COURT NOMINATIONS

Mr. BREWSTER. Mr. President, it is apparent that the American people want the Senate to act responsibly with reference to President Johnson's nominations of Justice Abe Fortas to be Chief Justice of the United States and Judge Homer Thornberry to be an Associate Justice of the Supreme Court.

This does not mean that the nominations should be rushed through the Senate with undue haste, nor does it mean that the Senate should not seriously and responsibly consider the qualifications of the two nominees for the positions to which they have been named.

What it does mean is that the Senate should examine these nominees on their merits and then either accept or reject the nominations. To illustrate the way the country feels, I should like to quote from some recent public statements:

From the Patriot, Harrisburg, Pa.:

We grant, of course, that the Senate is not obliged to rubberstamp all Presidential nominations. The senators may vote "no" for any reason they wish—the color of the nominees' views or the color of their eyes. But to engage in a filibuster so that a minority can block the will of the majority—and for no better reason than partisan politics—is not even intelligent partisan politics.

From the Washington Post:

Justice Fortas' record on those issues about which he has been questioned is perfectly clear to anyone who cares to read what he has written. A prolongation of these hearings cannot add to or subtract from that record.

A letter from the incoming president of the American Bar Association, addressed to the chairman and the ranking minority member of the Committee on the Judiciary, was published in the following St. Louis Post-Dispatch. I will quote the gist of the letter:

This is, as you know, a time of great turbulence in our society. We are faced with a movement of social protest that questions the efficacy of the law as an instrument of social justice; indeed, it asserts that the law is being used as a device to frustrate the legitimate aspirations of those seeking to participate in the benefits of American society. At such a time we need a strong, enlightened Chief Justice, one of large vision and deep insight, whose conception of the role of the judicial process in our society would command the support of the country and especially of minority groups in the Supreme Court as an institution, one who could inspire their confidence in the law and our system of jurisprudence as a positive force in our society. Mr. Justice Fortas would, I think, be such a Chief Justice.

Mr. President, I ask unanimous consent to have printed in the RECORD the complete texts of the editorials and the letter from which I have quoted.

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

[From Harrisburg (Pa.) Patriot, July 16, 1968]

HIGH COURT ROW—DIRKSEN'S DEFENSE OF JOHNSON; "YOU DON'T NOMINATE ENEMIES"

U.S. Senate Republican Leader Everett McKinley Dirksen, that master of mellifluous circumlocution, can come straight to the point when he is so minded.

Replying to the charge by his fellow Republican, Sen. Robert P. Griffin of Michigan, that President Johnson was guilty of "cronyism" in appointing Justice Abe Fortas to be Chief Justice of the U.S. Supreme Court, and Federal Judge Homer Thornberry to Justice Fortas' place, the Illinois Republican declared: "You don't go out and look for an enemy to put on the Court."

It is to Senator Dirksen's credit that he has been willing to stick out his neck in opposition to about half the 36 Senate Republicans, whose leader he is supposed to be. It is to their discredit that they have chosen to fight the two Supreme Court nominations on such flimsy and partisan grounds.

Senator Griffin concedes that a "lame duck" President has the power to make the appointments but seems to think there is something wrong when the President exercises the power. Senator Dirksen finds the term "lame duck" to be "improper and offensive." We do not. It is the coin of political discourse. It is simply inappropriate. Thanks to the 22nd Amendment, from now on every President in his second term will be a "lame duck" from the date of his second inaugural. Would anyone suggest that Presidents in their second and last terms, then, refrain from making important appointments in deference to their unknown successors?

The argument that there really is no vacancy until the Chief Justice names a date or actually steps down is just as insubstantial. It is a legalistic higgle without even the merit of tradition behind it. Vacancies have been filled in similar circumstances on many occasions, by Republican and Democratic Presidents alike.

"Never before," asserts Senator Griffin, "has there been such obvious political maneuvering to create a vacancy so that a 'lame duck' President can fill it and thereby deny the opportunity to a new President about to be elected by the people." Never before, if one wishes to engage in the same kind of hyperbole, has there been such obvious political maneuvering to prevent a President from filling a vacancy and thereby give the opportunity to the next President.

But it may be recalled that the second President of the United States, John Adams, filled a slew of vacancies by his famous "midnight appointments just before he left office to be replaced by that radical Thomas

Jefferson. One of those vacancies was that of Chief Justice of 'the Supreme Court. The Jeffersonians objected strenuously, but John Marshall served for the next 35 years and he is generally considered to have been one of the greatest, if not the greatest, occupants of that exalted position.

The only grounds, it seems to us, upon which the nominations can be opposed are character and competence, and it is a measure of the quality of the opposition that neither Senator Griffin nor any of his associates, including certain Southern Democrats torn between their desire to get Chief Justice Earl Warren off the bench and their distaste for the views of his putative successor, have dared oppose the nominations on those grounds.

We grant, of course, that the Senate is not obliged to rubberstamp all presidential nominations. The senators may vote "no" for any reason they wish—the color of the nominees' views or the color of their eyes. But to engage in a filibuster so that a minority can block the will of the majority—and for no better reason than partisan politics—is not even intelligent partisan politics.

[From the Washington Post, July 19, 1968]

SENATORIAL ABUSE

The Senate of the United States likes to be thought of as the world's greatest deliberative body where decisions of national and international import are made calmly and carefully. But the animosity, indiscretion and ignorance demonstrated in the Judiciary Committee in the last two days ought to shake the faith of even the truest believer in this myth.

Senator Thurmond's tactics yesterday in questioning Justice Fortas have no place in a civilized government. They were tactics that would only be used by the crudest policeman in the backroom of a station house. They would be unacceptable in any courtroom in the Nation yet they were used against a nominee for the Nation's highest judicial office. They are tactics the Senate ought not to permit.

The situation was ideal, of course, for Senator Thurmond. Justice Fortas could not answer the questions he was being asked without violating his oath of office and disregarding one of the basic principles of American government. If Senator Thurmond did not know this, he merely demonstrated his own ignorance. If he did know it, he engaged in the business of slapping in the face a man whose hands were tied so he could not defend himself.

The performance of Senator Thurmond, and the earlier performance of Senator Ervin in asking similar questions although in a considerably less vicious and less personal manner, make clear the wisdom of the past when nominees for the office of Chief Justice were not asked to appear before Congress. Mr. Fortas is the first nominee for that office to be asked to come before the committee; if this week's hearings are any guide he ought to be the last. No nominee for this office, or for any seat on the Supreme Court, should be subjected to the open, personal harassment that Justice Fortas has stoically withstood.

Justice Fortas' record on those issues about which he has been questioned is perfectly clear to anyone who cares to read what he has written. A prolongation of these hearings cannot add to or subtract from that record. They can only provide time for those who wish to further abuse the Justice. The Committee has now so strung out its work as to almost assure that this nomination cannot reach the floor before the Republican Convention begins and thus has assured that the Senate cannot adjourn for many weeks. The Committee ought to stop the harassment and get on with its business.

[From the St. Louis Post-Dispatch, July 12, 1968]

A WORD FOR JUSTICE FORTAS—INCOMING ABA PRESIDENT PRAISES HIS NOMINATION FOR CHIEF JUSTICE

(The writer of the letter becomes president of the American Bar Association next month.)

Hon. JAMES O. EASTLAND,
Chairman,
Hon. EVERETT M. DIRKSEN,
Ranking Minority Member,
Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATORS EASTLAND and DIRKSEN: I am writing to express to you my personal opinion that Mr. Justice Abe Fortas is eminently qualified to be Chief Justice of the United States.

That he has singular intellectual equipment has been amply demonstrated by scholarly achievements in his academic life and in the legal profession. For several years he was a well regarded professor of law at Yale University Law School, of which he is a graduate with honors.

His experience as a lawyer has been as varied and extensive as it has been distinguished. Before his appointment as a Justice of the Supreme Court in 1965, he enjoyed a large independent law practice, being widely respected as a practicing lawyer, and he represented corporations and impoverished individuals with equal skill and devotion. Earlier he had acquired broad professional expertise as counsel for various government agencies, all of which he served with great distinction.

Mr. Justice Fortas has had intensive experience in the work of the Supreme Court, both as judge and as an advocate, wholly sufficient, I think, to qualify him as Chief Justice. But I would remind you of a comment made by Mr. Justice Frankfurter in 1953:

"I think that when the President of the United States comes to select someone to fill a vacancy on the Supreme Court, no single factor should be the starting point in his deliberation. He should not say, 'I want a man who has had experience as a judge,' or, 'I want a man who hasn't had experience as a judge.' It is important that if you blot out the names of those who came to the Supreme Court without any prior judicial experience, you blot out, in my judgment, barring only two, the greatest names on its roster."

This is, as you know, a time of great turbulence in our society. We are faced with a movement of social protest that questions the efficacy of the law as an instrument of social justice; indeed, it asserts that the law is being used as a device to frustrate the legitimate aspirations of those seeking to participate in the benefits of American society. At such a time we need a strong, enlightened Chief Justice, one of large vision and deep insight, whose conception of the role of the judicial process in our society would command the support of the country and especially of minority groups in the Supreme Court as an institution, one who could inspire their confidence in the law and our system of jurisprudence as a positive force in our society.

Mr. Justice Fortas would, I think, be such a Chief Justice. He would, moreover, preside over the court with great dignity and precision and would, I am sure, be a skillful moderator inside the conference room. As Chief Justice, he would have the confidence of the bar as well as the court.

It is hardly necessary to remind you that Mr. Justice Fortas is a man of principle and of sterling character, who is well balanced, disciplined and responsible person in every respect. Indeed, his attributes as a man, quite aside from his credentials as a resourceful tough minded legal craftsman, are likely, I think, to add stature and strength to the court by his appointment as Chief Justice.

DETROIT.

WILLIAM T. GOSSETT.

FREEWAYS IN THE DISTRICT OF COLUMBIA

Mr. HART. Mr. President, the Federal-Aid Highway Act of 1968 has now been approved by both bodies and a conference committee is meeting to reconcile differences.

Among the most important decisions which this committee will have to make are those involving provisions of the House act which would require construction of the massive freeway system through the parks and monument areas of Washington, D.C. and those provisions which seriously weaken existing statutory safeguards against highway destruction of historic sites, public parks, recreation areas, and wildlife refuges.

In the act passed some weeks ago, we not only rejected these dangerous, anti-conservation provisions but, with the leadership of the distinguished Senator from Washington [Mr. JACKSON], we actually strengthened the protection afforded conservation lands against road intrusions. An excellent editorial appeared recently in the Ann Arbor News pointing out the threat posed by the provisions of the House act. I ask unanimous consent that this editorial appear in the RECORD and I urge my colleagues on this conference committee to stand firm on the positive conservation protections the Senate placed in this act.

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

[From the Ann Arbor News, July 16, 1968]

HOUSE THREATENS END TO PROTECTION OF PARKS

Two years ago Congress approved and sent to the President a monumental highway bill designed to protect the environment our road system throughout the country penetrates, and to improve those sections made ugly by previous highway building.

It forbade the Secretary of Transportation, for instance, to approve "any program or project which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless there is no feasible and prudent alternative."

The law also set aside certain funds for beautification and billboard removal, and threatened states which did not pass legislation complying with certain minimal billboard and junkyard removal standards with loss of ten percent of the federal funds normally given to states for road construction.

Now with one blow, the House of Representatives, under pressure from both the decision to cut back federal spending and potent urging by lobby groups, has knocked out the safeguards to the parks and funds for beautification.

The Senate some time ago passed a good bill which will continue to protect the parks and supply adequate funds for beautification, but unless this version is adopted by the Senate-House committee now trying to effect a compromise, America will be back on the "cheap and ugly road" program.

There has been, in the past couple of years, an increasing revolt against freeways, as, time after time, the roadbuilders, in their haste to pave America, have put forth plan

United States, and to the appellate Courts of Pennsylvania;

Secondly, that each of you write, and likewise be sure to see the members of the State Legislature from your district and your Congressman and your two United States Senators about the Association's recommendations and resolutions and criticisms, and the reasons for the Association's opinions and convictions.

Finally, you must fight with all your might and power and as never before for all the law-abiding people of our wonderful State who are consciously or unconsciously relying upon you (and the Courts) to protect them from felonious criminals and from all law-breakers.

DEATH OF MARGARET BAYNE PRICE

Mr. PELL. Mr. President, I mourn with intense regret the loss of Mrs. Margaret Price who left us on the 23d of this month.

When a good friend leaves us, we are all saddened. But, Margaret Price was much more than that, for during much of her life she was dedicated to trying to shape history for the betterment of her country.

Arduous tasks and thankless jobs were frequently her lot. She did them well, with flair and imagination. She sought not glory, but achievement

Modesty and effectiveness were her attributes.

Operation Support, Four for '64, Flying Caravans, Tell-a-Friend, were the products of her drive and leadership.

Millions of women across the Nation respected and admired "Mrs. Democrat" for her leadership and sincerity of purpose.

In essence, she was a lady of vision, verve, and vitality.

From a personal viewpoint, she was a good and valued friend.

The passing of Margaret Price will prove to be a great loss to her country and her party; we all miss her deeply.

BALTIMORE SPEAKS OUT ON SUPREME COURT NOMINATIONS

Mr. GRIFFIN. Mr. President, an aroused American public is beginning to make its voice heard concerning the President's nominations to the Supreme Court. Letters and telegrams are pouring into our office from all parts of the Nation, and the tide is running overwhelmingly in favor of the position I have taken.

I wish to call attention to another indication of the public's view of this matter. On July 10, television station WMAR–TV in Baltimore, Md., conducted a poll.

The station asked its viewers to respond by telephone to this question: "Should the U.S. Senate delay confirmation of L. B. J.'s Supreme Court nominations so these could be made by the new President next January?"

The poll was conducted during prime viewing time—between the hours of 7:30 and 11 p.m. During that 3½-hour period, the station reported that 1,459 persons called to register their opinion.

Sixty-four percent of those voting supported the view that the Senate should not confirm the pending nominations. That is a margin of nearly 2 to 1 in an area where the President would be expected to have strong political support.

A Gallup poll taken in June, before the current controversy erupted, indicated that public confidence in the Supreme Court has fallen to an all-time low. It is not unreasonable to suggest that public confidence in the Court will not be enhanced if the Senate should rubberstamp the pending nominations.

The residents of Baltimore have registered their opinion. I am confident that other cities and States will follow their lead.

I ask unanimous consent that a newspaper article containing the Gallup poll be printed in the RECORD.

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

[From the Washington Post, July 10, 1968]

THE GALLUP POLL: HIGH COURT GETS A LOW RATING

(By George Gallup)

PRINCETON, N.J., July 9.—Favorable attitudes toward the U.S. Supreme Court have declined during the last year, as judged by a nationwide Gallup survey just completed.

Today, unfavorable feelings toward the High Court outweigh favorable sentiment by a 3–2 ratio. In a survey reported in July, 1967, Americans showed feelings toward the Court—with about as many giving it "excellent" or "good" marks as gave it "fair" or "poor" rating.

Over the past 30 years the Gallup Poll has regularly checked on the public's attitudes toward the Supreme Court as a branch of government. This survey was not designed to gauge public reaction to the recent Administration appointments of Abe Fortas and Homer Thornberry to the Court.

This is a question put to a representative national sample of 1534 adults the last weekend in June:

"In general, what kind of rating would you give the Supreme Court—excellent, good, fair or poor?"

[In percent]

	Latest	July 1967
Excellent	8	15
Good	28	30
Total favorable	36	45
Fair	32	29
Poor	21	17
Total unfavorable	53	46
No opinion	11	9

A person's opinion of the Supreme Court is closely related to how he identifies himself politically. Rank-and-file Republicans are most critical of the Court (60 per cent give the Court an unfavorable rating) while Democrats are about evenly divided between favorable and unfavorable ratings.

Persons with college training are more inclined to give the Court a favorable rating than those with less formal education. Still, college-trained persons are evenly divided in their evaluation of the Court.

Southerners are more critical of the Court than are residents of other regions. About half of young adults, those in their twenties, give the Court either an "excellent" or "good" rating, while older persons tend to be less favorably disposed toward the Court.

Following are the results by major groups in the population:

[In percent]

	Excellent	Good	Fair	Poor	No opinion
National	8	28	32	21	11
Republicans	7	21	35	25	12
Democrats	10	32	30	17	11
Independents	7	29	32	24	8
College	14	34	27	21	4
High school	6	29	35	20	10
Grammar school	6	21	31	23	19
East	11	32	31	16	10
Midwest	8	31	29	17	15
South	5	18	35	31	11
West	9	31	33	19	8
21 to 29 years	11	37	32	12	8
30 to 49 years	9	31	31	18	11
50 and older	6	19	32	29	14

The public favors certain changes in the way Supreme Court Justices are selected. Sixty-one per cent support the proposal that the American Bar Association draw up a list of candidates it prefers and then let the President make a choice from the list.

In addition, three out of every four people in this country favor President Eisenhower's proposal that Justices of the Supreme Court and other Federal judges be required to retire at the age of 72.

VOCATIONAL EDUCATION

Mr. PEARSON. Mr. President, vocational education has become one of the fundamental individual achievements of our national economic strength. Recognition of this fact was most recently stated in a statement on KLEO radio station in Wichita, Kans., on July 22 and 23 of this year. It is a strong plea for Senate action.

Because I share this view, I ask unanimous consent that this statement be printed in the RECORD.

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

[An editorial comment broadcast on KLEO, July 22–23, 1968]

OBSERVATION 148

The House in Washington has passed the vocational educational amendments and sent them to the Senate. These represent an important step forward in making more occupational education available to the youth of our Nation. We can only hope that the bill will not get lost, watered down or killed in the rush of the final days of congressional meetings before the political conventions. Here in Kansas we have made great movements forward in having excellent Vo-Tec schools, but if approved, the Federal provisions would be given assist in broadening these opportunities here and throughout the Nation.

EVANS AND NOVAK ON THE JOHNSON-FORTAS RELATIONSHIP

Mr. GRIFFIN. Mr. President, in considering the nominations pending for the Supreme Court, questions have arisen as a result of a past and continuing relationship between Mr. Fortas and President Johnson.

A carefully researched book, written by the respected columnists, Rowland Evans and Robert Novak, throws considerable light upon that relationship.

I ask unanimous consent that a number of excerpts from the book "Lyndon B. Johnson: The Exercise of Power," along with my introductory remarks be printed in the RECORD.

died by the law on the basis of their public threats, before they commit violent acts.

Any person who openly flouts the law should be called to account.

The hooded organization that engages in terrorism, arson, and bombings should be infiltrated by representatives of the law until its leaders are behind bars and its members scattered into oblivion.

The wave of civil disobedience that is threatening our national life seems to have paralyzed us into fear and inaction. But unless it is reversed, we face anarchy. No segment of society can be permitted to act above the law and to destroy the things on which a decent society is based.

We are on the verge of being frightened enough to believe that the outlay of hundreds of billions of dollars is the answer to our problem. No one questions the need to rebuild our cities; but chaos cannot be cured by money, no matter how great the sum. Even if every person in America were put in a mansion, without regard for law and order our problem would continue.

No one can deny that we have countenanced discrimination and humiliation to such a point that a sense of frustration is inevitable; now this frustration has caused violent reactions. These sins against human beings must cease, and equal opportunities must be available to all. But with these needed changes (and tremendous progress is being made in this direction), respect for law and law enforcement must be maintained.

This is no plea for maintaining the status quo. It is a plea for recognition that the blindness and unconcern of the dominant segment of our society must be completely changed. And on the other hand, it is an affirmation that any status and rights gained through civil disorder will be gained at too high a price.

Two centuries ago Edmund Burke, the great English statesman, gave this warning: "Men are qualified for civil liberties in exact proportion to their disposition to put moral chains upon their own appetites. . . . Society cannot exist unless a controlling power upon will and appetite is placed somewhere, and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters."

In medicine there is a condition known as "generalized carcinomatasis," which, in layman's language, means cancer that has spread over the entire body. At that stage there is no known cure.

The lawlessness that has entered our national life through civil disobedience—a concept having the approval of most of the major denominations—can prove to be the moral cancer that will destroy our country.

This is a plea to churchmen, who will be meeting during the coming months, to take stock of what has been loosed upon the land. Civil disobedience is not the "harmless gesture of protest" it was once said to be. Rather, it has grown into a monster of disorder, riots, and general lawlessness that is eating at the victuals of our national life. It is proving as senseless—and as devastating—as the proverbial "burning down the barn to get rid of the rats."

Some of our most distinguished jurists and law-makers have deplored the actions of various church courts in condoning civil disobedience. Sufficient time has now elapsed to assess the damage; one has but to open his daily newspaper to realize that we totter on the brink of open rebellion.

Responsible law-makers must do everything they can to eliminate injustice, discrimination, and humiliation. At the same time, those who administer the law must be supported at all costs.

The alternative is national disaster.

L. NELSON BELL.

A TRUE PUBLIC SERVICE

Mr. MONTOYA. Mr. President, from time to time an intolerable situation comes to light that affects the consumers of this Nation. This has been the case in recent weeks regarding unwholesome poultry which has been reaching American consumers in recent years.

When such a situation is brought to light, it is incumbent upon this body to act on behalf of the consumer, and in no uncertain terms. This we have done, to the credit of this body and safety of the consumer.

A spur to this type of action is always provided by an alert public and an aroused and public spirited press. In a time when many people in public life make it a point to decry our mass media, there are too few who give proper credit where credit is due.

In this case we were faced with an intolerable situation that posed a clear danger to the public. Much of the Nation's press leaped to expose this situation, placing it in the glare of public scrutiny where it belonged.

As a result of this type of public-service-motivated activity, the long-overdue reform that was placed in jeopardy was rescued from obscurity and perhaps defeat.

There are times when I too am saddened by irresponsibility on the part of mass media. But such was not the case this time. Newspapers of this city did themselves and the public interest proud by their activities. Their exposure of the situation existing regarding unwholesome poultry in the United States did much to allow us to pass a bill that will go far towards lifting this shadow from the tables of America's consumers.

One of the editorials that came at a most opportune time appeared in the Washington Post. I offer it now for inclusion in the RECORD with my heartiest thanks to that paper for a job well done on behalf of the public.

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

CHICKEN STANDARDS

The Senate will have the opportunity today to do its part in bringing poultry inspection standards up to a level where they should be in a nation that is hoping to send a man to the moon before the end of the year. Currently, the standards across the country for inspecting poultry sold within the states where it is produced are either uneven, low or non-existent. And in some cases, as Senator Montoya told the Senate Saturday, poultry is processed in "repulsive . . . primitive conditions." The wholesome poultry bill, which has passed the House and is now before the Senate in substantially the same form, would be a giant step toward eliminating those conditions. Under the provisions of the bill, states may set up inspection systems to operate in intrastate commerce, if they comply with Federal standards that control interstate poultry sales. The bill ought to be passed intact without two amendments that threaten its effectiveness.

The first crippling amendment, introduced by Senator Holland of Florida, is particularly dangerous. It would allow the sale everywhere in the Nation of red meat as well as poultry products which have been passed by a system of state inspection certified as at least equal to the Federal system. One difficulty with the Holland amendment is that once Federal certification is obtained it may not be maintained. The state standards may fall below the Federal level, permitting rotten meats and poultry to be sold across state lines before the lax standards can be corrected. The danger is that it encourages subtle competition among the states by lowering standards to attract meat and poultry processing plants.

The second amendment, sponsored by Senator Talmadge of Georgia, places an obstacle in the way of quickly condemning a diseased carcass of a fowl by requiring an inspector to have "substantive scientific fact" before he can declare the carcass unfit for human consumption.

For most of us, of course, poultry means chicken and turkey, but many Americans have active tastes for duck and goose. All told, about 11.5 billion pounds of poultry are commercially processed each year in the Nation. And under present regulations, according to Mr. Montoya, every American "based on the law of averages, is likely to have a disease, contaminated, or adulterated poultry product served to him during the year. This is not only unnecessary but completely unpardonable in our modern, technologically advanced society." The Senator is absolutely right.

THE SENATE SHOULD ADDRESS ITSELF TO THE QUALIFICATIONS OF THE TWO SUPREME COURT NOMINATIONS

Mr. CLARK. Mr. President, the discussion following President Johnson's nomination of Justice Abe Fortas to be Chief Justice of the United States and Judge Homer Thornberry to be Associate Justice of the Supreme Court has ranged all the way from profound constitutional questions to partisan political polemics.

When all is said and done, though, the fundamental issue that remains is whether these two men are qualified for the positions to which they have been named. In accordance with the Constitution, this matter is for the Senate to determine.

Unfortunately, we seem to be digressing from this central issue, and such action serves neither the Senate interests as an institution nor the national interest as a whole. I should like to quote from some recent editorials on this subject from newspapers in various sections of the country.

From the Christian Science Monitor:

There is something excessive about the fuss which senators are making over the appointment of Justice Abe Fortas as Chief Justice of the United States. It would be hard to make a persuasive case that he is not qualified for this awesome post.

From the Los Angeles Times:

Legitimately, however, it seems clear that only one issue should determine Senate action in these cases: is there real cause for rejecting one or both of the nominees?

From Newsday:

If these hearings were based upon valid objections to the elevation of Justice Fortas to the post now held by Chief Justice Warren, the length of time involved would be wholly unimportant. To the contrary, they are based, simply, upon the tactics of harassment and delay.

From the New York Post:

From the start, most of the attack on President Johnson's designation of Abe Fortas as Chief Justice of the Supreme Court has been a shabby performance.

From the Cleveland Plain Dealer:

The questioning of Justice Abe Fortas of the United States Supreme Court by members of the Senate Judiciary Committee did not bring out any solid evidence to preclude, by itself, confirmation of Fortas as chief justice.

From the Fargo, N. Dak., Forum:

Senate has no valid reason to hold up Okay of Fortas.

From the Chicago Daily News:

The continuity of the court—its constant readiness to perform its vital job in any emergency—is essential to the well-being of the nation. The President who takes office next January will have exactly the same responsibility to the court that President Johnson has now—to make sure that it is fully manned and functioning throughout his term.

From the Philadelphia Sunday Bulletin:

Senators are entitled to their opinions but their function does not include imposing constitutional judgments on the court. Congress may limit the court's jurisdiction. It may pass new laws. It may, if it can find grounds, impeach justices. The Constitution may be changed. But Congress may not and individual senators may not, supplant the court.

I believe that it is time for the Senate to live up to its reputation as "the world's greatest deliberative body" and to fulfill its constitutional responsibility with respect to the two Supreme Court nominations.

AIRPORT HELICOPTER SERVICE

Mr. BIBLE. Mr. President, as the chairman of the Committee on the District of Columbia, I have a continual interest in any measures which may be taken to bring about a more integrated and efficient transportation system for the District of Columbia and its metropolitan area. As every Member of the Senate is well aware from his own experience, each day that passes without the introduction of some improved means of expedited travel into and out of the city means another day of increasing congestion for the Nation's Capital. As the existing modes of surface transportation get progressively slower and more inconvenient with no breakthrough promised until the establishment of an adequate areawide rapid transit system, more and more commuters turn to the readily available automobile as their means of entering and leaving the downtown area. In consequence, the highways become more crowded.

Mr. President, the present rapid transit and highway plans for improving surface transportation into and out of the Nation's Capital will take years to accomplish, and it is incumbent on those of us concerned with the transportation problems of the District to look to other available means of relieving congestion. Probably the most practical source for such relief in the present circumstances is the authorization of a transport helicopter service, which would overfly our crowded highways and carry its passengers directly by air from point of origination to point of destination. Such a service could be operated from a downtown heliport to each of the three airports now serving the Washington area; namely, National, Dulles, and Friendship. This service, by making flights at the outlying airports more attractive to the air traveler, would bring about some immediate relief to the problem of ground and air congestion at Washington's in-town National Airport. To the extent that Dulles and Friendship Airports are brought closer to the city in terms of time and convenience, the airlines will be encouraged to transfer jet flights out of National and the problem of noise and air pollution over the city will be abated accordingly.

Furthermore, Dulles may begin to get some of the use to which its superior facilities entitle it, so that the Government may begin to realize some return on its $109 million investment there. I am told that the airport presently loses about $6 million yearly in its operations, while National earns over $2 million per year in profits.

Mr. President, Congress has recognized the problem of traffic congestion in the Nation's Capital and has further recognized the utility of helicopter service as at least a partial solution to the problem by enacting into law a provision which directs the Administrator of General Services to establish a permanent heliport for the District of Columbia on the site of the present Union Station. This law, Public Law 90–264, also authorizes the establishment of a National Visitors Center at the site, which would provide a colorful and instructive introduction to the city for all travelers and would serve as a transportation center as well. It is contemplated that helicopter service will play a vital role at the Center, along with the subway system and shuttle bus transportation.

In contrast to other prospective solutions to our access difficulties, airport helicopter transport service requires only a Civil Aeronautics Board authorization to get started. No Federal support at all need be involved. Once begun, service to, from, and between the airports can be expanded to include service to downtown Baltimore and to suburban points. In time, the service might benefit not only air travelers, but commuters to and from the city, as well.

Mr. President, I do not anticipate that helicopter service can provide any comprehensive solution to the problems related to the mass movements of people into and out of our Capital City. But airport helicopter service offers at least a partial and immediate solution. I think we should be ever vigilant to encourage such developments.

I understand that a number of parties have applied to the Civil Aeronautics Board for authority to operate such a service—at no cost to the Government. I hope the Board will help to facilitate access to the Nation's Capital by authorizing such a service.

ECONOMIC DEVELOPMENT ADMINISTRATION AND RURAL DEVELOPMENT

Mr. JAVITS. Mr. President, when we consider the myriad problems of our cities, we should not lose sight of one of the root causes of these problems—changing technology that has eliminated agricultural jobs and displaced millions of ill-educated, untrained farmworkers.

The trek of such unfortunate people from rural areas to central city slums over the last two decades has cost the Nation billions in welfare and social programs. The cost in human misery, in losses through crime and property deterioration in slum areas cannot even be estimated.

This migration to the cities is continuing, and, of course, we in Congress deal with the problems constantly. We are agreed, I believe, that the best solution would be to make it possible for the displaced farm families to find alternatives that would allow them to stay in their home regions.

Three years ago Congress acted to do something about this basic problem when we passed the Public Works and Economic Development Act that led to the establishment in the Department of Commerce of the Economic Development Administration. We have in this agency a vehicle for helping lagging areas to stop and reverse the tide of in-migration that is inundating the cities.

Because of the job EDA is doing in getting people to work together to help themselves and because of the great promise its programs hold for the Nation, I should like to point to the growing need for funds for its operation.

EDA, under the direction of Assistant Secretary of Commerce Ross D. Davis, is helping economically lagging areas to reduce high rates of unemployment, raise family incomes and, most important, to stem the tide of out-migration. However, the agency is operating with less than half of the funds authorized by the 89th Congress.

The act provides $810 million a year for the economic development program, but the bill under consideration would appropriate only $274,740,000 for the fiscal year ending June 30, 1969.

EDA works with the people in more than 900 lagging areas in the planning and carrying out of projects to stimulate the growth of private industry and the creation of jobs.

One of the most promising aspects of the program is the linking together of several counties in an economic development district to help solve problems that cross political lines. A district can include economically healthy countries, as well as at least two with low income and unemployment problems. This has been quite effective in my own State of New York.

Development in a district revolves around a growth center—usually a city of not more than 250,000. The creation of industry in the growth centers will provide jobs and increased incomes for residents of the lagging areas in districts.

Because of the need for sound planning and preparation, the district program has been in operation for only 1 year; but already growth center projects to provide jobs for displaced farm families are underway.

The success of the economic development district program will help ease the burden on the cities and help revitalize

now have a crisis in their own backyards. I hope they take to heart the wise observations of our majority leader this morning. This should be a joint defense in Europe, and one set up on a realistic basis; else it can only fail.

Mr. MANSFIELD. Mr. President, I wish to express my thanks to the senior Senator from Missouri who has been a leader in the fight, for more years than I care to remember, in trying to bring about a readjustment of policy vis-a-vis our relations with our European allies. The Senator has been an inspiration to us all in this matter.

Mr. DODD. Mr. President, the distinguished majority leader is always wise in his thoughts and I am always anxious to hear what he has to say. I look forward to reading his speech in the RECORD.

COMMITTEE MEETING DURING SENATE SESSION

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

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

ORDER FOR RECOGNITION OF SENATOR DODD

Mr. DODD. Mr. President, I ask unanimous consent that at the close of the morning business and when the Senate takes up the pending business I be recognized for such time as may be required.

Mr. JAVITS. Mr. President, reserving the right to object, and I shall not object, I wish to call the attention of the majority leader to this matter. We have before us a request for priority of recognition for as much time as the Senator requires.

Mr. MANSFIELD. Does the Senator from Connecticut ask to be recognized in the morning hour?

Mr. JAVITS. After the morning hour. The request blocks everybody from speaking, and the Senator could take 3 days.

Mr. DODD. I shall not be that long.

Mr. JAVITS. Will the Senator put a limit on the request?

Mr. DODD. I have no intention of preventing anyone from speaking.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Connecticut [Mr. DODD] be recognized immediately after the conclusion of routine morning business and after the pending business is laid before the Senate.

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

Mr. JAVITS. I have a 15-minute speech in connection with the Fortas nomination. The Senator is acquainted with my problem. The Senator will accommodate me, will he not?

Mr. DODD. I shall. My interest is in expediting the pending business. I did not put a time limitation on my request for the purpose of prolonging anything.

INCOME TAX REFORM ESSENTIAL

Mr. YOUNG of Ohio. Mr. President, we Americans bear an extremely heavy income tax burden. Our Internal Revenue laws are unfair. There must be income tax reform. Laws should be simplified, tax loopholes closed, and special privileges to the ultrarich denied.

Last year, 37 Americans with incomes of more than a half million dollars paid no income taxes whatever on their stupendous incomes. They owned many millions of dollars worth of tax-free bonds and took advantage of every tax loophole available. In 1967 20 persons whose incomes exceeded $1 million each for that year paid no income taxes whatever for the previous year, nor for 1967. These superrich taxpayers claim charitable exemptions. Some create so-called charitable foundations. Unfortunately, we ordinary taxpayers must pay more as these ultrarich do not pay their fair share.

During recent years, extremely wealthy men and women purchase and operate "Gettysburg farms" and then claim tax losses from farming. This can be a device to cut down taxes on nonfarm income. Of course, the land values of their farms increase tremendously year after year, but our State and Federal Governments receive very little increased taxes for that.

Middle-class wage earners and many business and professional men bear the burden of almost intolerable taxes while those of great wealth buy tax-free bonds, or large farms which are really showplaces in many instances, or take advantage of various available tax loopholes.

Another tax loophole is the 27½-percent depletion allowance for oil and gas producing companies and the 23-percent depletion allowance for some 41 other minerals produced. The oil depletion allowance, in particular, has always appeared indefensible since the time in 1949 when I served on the Ways and Means Committee. I have, since that period, consistently voted to reduce it or abolish the allowance altogether. In 1967, five of the largest oil and gas producing corporations in the United States with net profits approximating $6 billion paid only 9 percent in taxes to our good Uncle Sam. This, due to the depletion allowance. This, at a time when individual Americans with modest earnings are shelling out at least one-fourth of their incomes in taxes, or having wages deducted to that extent.

Mr. President, it should be a most important duty of the 91st Congress convening next January to provide real and needed tax reform.

FORTAS-THORNBERRY AND THE AMERICAN BAR ASSOCIATION

Mr. GRIFFIN. Mr. President, although the Constitution provides that Supreme Court Justices are to be appointed "with the advice and consent of the Senate," strangely enough, it seems to be the opinion of many that the "advice and consent of the American Bar Association"—not the Senate—is all that should be required.

Apparently, we have arrived at a point where even some leaders of the bar refuse to recognize the Senate constitutional responsibility in the appointing process.

During the recent ABA convention in Philadelphia, Joseph A. Ball, president of the American College of Trial Lawyers, was quoted as follows:

> Let's repudiate those lunatics (in the Senate who questioned Justice Fortas) . . . they are not fit to tie Justice Fortas' shoes. (*Syracuse (N.Y.) Herald-American*, August 11, 1968).

Over and over again, a refrain is heard that the Senate should routinely confirm the pending Supreme Court nominations because, after all, the ABA has determined that the nominees are "qualified."

In view of all this, I believe it is necessary and appropriate for the Senate to take a close look at the role of the ABA and the procedures it has followed in passing judgment on the pending nominations.

Frankly, as one member of the ABA, I was shocked to learn—and I believe many of my 133,000 fellow members will be shocked to learn—about the way ABA approval came about in the case of the Fortas-Thornberry nominations.

First. It should be understood, first of all, that these nominations have never been approved by the ABA membership or by its governing body, the house of delegates. The only approval has come from the ABA's Committee on the Federal Judiciary.

Second. Most of the members of the 12-man ABA Committee on the Federal Judiciary had no knowledge whatsoever of the Fortas-Thornberry nominations until about 7 a.m. on the morning of June 26, the very day the President publicly announced his appointments.

Third. On that morning, the committee "met"—if that is the proper term—by means of a telephone conference call which lasted the better part of 1 hour. During this conference call the committee members were informed of the President's intention, and they were advised of investigative reports on the nominees.

Fourth. The investigation of Mr. Thornberry was conducted by Leon Jaworski, of Houston, Tex., a close associate for many years of President Johnson. Mr. Jaworski, although not a member of the committee, participated in the conference call meeting.

Fifth. Since that time, Mr. Jaworski has been quoted as saying he was asked to investigate Judge Thornberry "because I knew him better than the others."

Sixth. Although it has been reported that committee approval was unanimous, I am advised that at least one member of the committee had no knowledge whatsoever of the conference call and took no part in any vote on the nominees.

In view of such circumstances, I wonder what weight the members of the U.S. Senate are expected to assign to the oft-cited approval by the American Bar Association of the Fortas-Thornberry nominations.

After all, we are not picking an all-America backfield or deciding whether Mickey Mantle should be on the all-star team. As U.S. Senators, we are called upon to exercise a constitutional responsibility which affects the whole fabric of American society for generations to come.

What weight should be given to the recommendations of Mr. Jaworski? According to the New York Times of August 3, 1968, Mr. Jaworski is "a former attorney for President Johnson, who has been associated with Mr. Johnson for years."[1] Could he reasonably have been expected to report unfavorably on a Presidential selection under such circumstances?

Why was the ABA committee given so little time in which to consider such important nominations? As I understand it, the committee generally takes much more time—often a week—to consider nominations to lower court positions.

Of course, it is not the function of Congress to effect reforms in the procedures of a private professional organization. But the Senate should take note of such procedures as well as the fact that widespread misunderstanding seems to have grown up concerning the role of the ABA in such matters.

In fairness, I should emphasize that 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 EASTLAND—see pages 1, 69 of the hearings on nominations of Fortas and Thornberry—transmitting the committee's recommendation with respect to Messrs. Fortas and Thornberry contain this statement:

> Our responsibility is to express our opinion *only on the question of professional qualifications* 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.*

Clearly, in its own letters, the ABA committee recognizes that the confirming authority—the Senate—may properly take into account other considerations not related to professional qualifications.

Under the circumstances, it is difficult to understand why some ABA leaders criticize the Senate when it sees fit to exercise its constitutional responsibility by looking at matters outside the mere professional qualifications of a nominee.

Of course, even in the limited area to which ABA approval is applicable, there is no obligation on the part of the Senate to substitute ABA judgment for its own. Indeed, for the Senate to follow such a course would be an abdication of its constitutional responsibility.

[1] For example, in 1960 a suit was brought in Texas challenging the right of Mr. Johnson to run for Vice President and Senator at the same time. Lawyers defending Mr. Johnson's position included Jaworski and Fortas.

And, of course, it is nonsensical to suggest—as some have suggested—that ABA approval of a nominee should somehow preclude all further Senate inquiry, even as to matters admittedly not covered by the ABA.

In order to determine the weight to be accorded the ABA approval in the Fortas-Thornberry case, the Senate should know what matters were, in fact, considered by the ABA's committee during its hour-long telephone meeting. Is a transcript of that discussion available to the Senate? To what extent, if at all, did the committee concern itself with Mr. Fortas' role as an adviser to the President while sitting as a Justice of the Supreme Court? Were the opinions of Judge Thornberry, including the decision in University Committee against Lester Gunn, carefully reviewed by the committee during that hour?

As a member of the ABA, I have been interested to find that a significant number of other members share my concern about the inadequacy of present ABA procedures—particularly in light of the role in judicial selection claimed for the ABA by some of its leaders.

During the course of this controversy, some members have been surprised to learn that the ABA does not pass on whether a nominee is among the best qualified for a judicial post, but merely determines whether the nominee meets a minimum standard of professional qualification.

Some do not believe it is right for a 12-member committee to purport to speak on such matters for the 133,000 members of the American Bar Association.

During the recent convention in Philadelphia, two resolutions calling for reforms in this area were submitted to the ABA assembly. Although action has not been taken, the mere introduction of such resolutions was read by many as a significant sign.

Furthermore, I am aware that several members of the ABA's Committee on the Federal Judiciary were very much disturbed because they were expected on the morning of June 26 to give such hasty rubber-stamp approval to the Fortas-Thornberry nominations. Because the time allowed for such consideration was so short and because the political character of these and other Supreme Court nominations has been so apparent, I understand that members of this ABA committee came close at Philadelphia to recommending that the ABA abandon altogether its role with respect to appointments to the Supreme Court.

Mr. President, while I am critical of certain procedures which have been followed by one ABA committee in this particular situation, my remarks today should not be interpreted as blanket criticism of the ABA or of all its officers. Indeed, I am proud of my membership in this great association which has generally advanced the legitimate interests of the legal profession in many commendable ways.

Nevertheless, on this occasion, I am convinced that there is need to reestablish and maintain a proper perspective concerning the appropriate roles of the U.S. Senate and the ABA in the appointing process.

Mr. President, I ask unanimous consent that an article from the New York Times of August 3, 1968, an article from the Los Angeles Times of August 3, 1968, and two resolutions submitted to the Assembly of the American Bar Association on August 5, 1968, be printed at this point in the RECORD.

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

[From the New York Times, Aug. 3, 1968]

JOHNSON TEXAS LAWYER CHECKED THORNBERRY FOR PANEL OF ABA

(By Fred P. Graham)

PHILADELPHIA, August 2.—Leon Jaworski, a former attorney for President Johnson, acknowledged today that he was called in by the American Bar Association in June to investigate the qualifications of Judge Homer Thornberry, Mr. Johnson's nominee to the Supreme Court.

Mr. Jaworski, a Houston lawyer who has been associated with Mr. Johnson for years, said the A.B.A. called upon him to report on Judge Thornberry a former Texas Representative, because Mr. Jaworski had formerly served on a committee that screened judicial appointees, and "because I knew him better than the others."

Judge Thornberry, a member of the United States Court of Appeals for the Fifth Circuit, was first appointed to the Federal judiciary in District Court by President Kennedy in 1963. Mr. Jaworski disclosed that he alone had investigated Judge Thornberry's qualifications.

After hearing Mr. Jaworski's report on a conference telephone call on the morning of the day the nomination was announced, the A.B.A.'s Committee on the Federal Judiciary found Judge Thornberry "highly acceptable" to serve on the Supreme Court.

NEWS CONFERENCE HELD

The role of Mr. Jaworski came to light in a question-and-answer period at a news conference called by several A.B.A. leaders to urge Senate approval of Abe Fortas' nomination as Chief Justice. Mr. Jaworski and the other participants are associated with the American College of Trial Lawyers, which is holding its annual meeting here prior to the annual A.B.A. convention, which begins Monday.

Last week Senator Robert P. Griffin, Republican of Michigan, charged that the Bar Association committee had "rubber stamped" President Johnson's nominations of Judge Thornberry and Justice Fortas, who were nominated on the same day. Both nominations, now in the Senate Judiciary Committee, face determined opposition when the Senate returns next month.

The association's committee has been a powerful voice in recent years in the naming of lower Federal judges, and few judges have been approved who were found "not qualified" by it.

But some lawyers have questioned if the committee plays a meaningful role in the selection of Supreme Court Justices, and Mr. Jaworski conceded today that the 12-man group voted unanimously to approve Judge Thornberry and Justice Fortas after an hour-long conference telephone call that began at 7 A.M. on the day President Johnson announced the nominations. They were occasioned by the resignation of Chief Justice Earl Warren.

Mr. Jaworski was a member of the A.B.A. committee from 1960 to 1962. He was suc-

ceeded by John W. Ball of Jacksonville, Fla., the present member for the Fifth Circuit.

When Judge Thornberry was named to the Federal District Court in 1963, Mr. Jaworski investigated and approved his qualifications. He said he did this for judicial nominees in Texas because Mr. Ball lives so far away.

In a rare break with recent custom, President Johnson did not ask for the A.B.A. committee's approval when he appointed Judge Thornberry, a friend for more than 40 years, to the Fifth Circuit.

[From the Los Angeles (Calif.) Times, Aug. 3, 1968]

EX-JOHNSON LAWYER COUNSELED BAR GROUP BACKING THORNBERRY

(By Ronald J. Ostrow)

PHILADELPHIA.—Leon Jaworski of Houston, a former personal lawyer for President Johnson, took part in an American Bar Assn. Committee's disputed endorsement of Judge Homer Thornberry to sit on the Supreme Court, it was learned here Friday.

The committee's twin endorsement of Justice Abe Fortas to become chief justice and Thornberry to succeed him as associate justice has been denounced as a "rubber-stamping" procedure by Sen. Robert P. Griffin (R-Mich.), leader of the GOP opposition to the nominations.

Fortas and Thornberry are both old friends of Mr. Johnson. Opponents claim that the appointments emacked of "cronyism."

The nominations are still before the Senate Judiciary Committee, which is expected to resume consideration of them when the Senate returns after Labor Day.

Jaworski's role consisted of advising the 12 members of the ABA's committee on the federal judiciary, on which he had previously served, that Thornberry's record as both a federal district and appellate court judge was one "of very good service."

The committee unanimously found both men to be "highly acceptable from the standpoint of professional qualifications." A President rarely proceeds with an appointment to the federal judiciary without such backing.

Jaworski discussed his role at a press conference here called by Joseph A. Ball, president of the American College of Trial Lawyers, to support Fortas and denounce the tactics of some senators opposing the nomination.

Replying to a question, Jaworski confirmed that he had represented Mr. Johnson on some legal matters in 1959 and 1960. He did not disclose the nature of the legal work.

QUALIFICATION CLAIMED

"I don't think being the President's lawyer disqualified me" from advising the committee of Thornberry's qualifications, Jaworski said.

"I have performed many services for many different organizations, professional and other kinds, despite the fact that I did represent President Johnson in connection with some matters back in 1959 and 1960," Jaworski said.

Turning to the role he played on the ABA committee, Jaworski said he participated in a lengthy long-distance conference call linking the committee members as they reviewed Thornberry's qualifications. The call took place shortly before Mr. Johnson announced the appointments June 26.

He did so at the request of Albert E. Jenner Jr., chairman of the committee on the federal judiciary.

SERVED IN TEXAS

"Since Judge Thornberry had served as a U.S. district court judge in Texas and had served on the 5th Circuit Court of Appeals (whose territory includes Texas), it was felt by the chairman of the committee that I had more information than anyone else," Jaworski said.

Jaworski, a veteran Houston lawyer who served on the President's crime commission and is now on the President's commission on violence, said he had investigated Thornberry for the committee when he was named a district judge in 1963.

He said he dropped out of the conference call when the committee turned to considering Fortas' nomination.

Asked if he was a personal friend of Thornberry, Jaworski said: "I don't believe I had talked to him twice" when he first investigated Thornberry in 1963. "I have seen him more since he was a federal judge," Jaworski said.

FORTAS PRAISED

In the press conference, Ball praised Fortas as "one of the outstanding lawyers of this nation, an expert craftsman . . . with as keen a mind as has been on that (Supreme) court for many years."

The endorsement marked the first by leading lawyers since Fortas told the Senate Judiciary Committee that while on the court he attended White House conferences on Vietnam and the Detroit riots to summarize both sides of arguments for the President.

Ball said: "I do not think there was anything shown that would any way affect the separation of powers and the fact that the President, on occasion, asked him to give advice. * * * I can assure you that I as a citizen of this nation would have felt proud if the President asked me to give advice in times of this nation's stress . . . I think he's entitled to the finest judgment in the nation at those times . . ."

A RESOLUTION SUBMITTED TO THE ASSEMBLY OF THE AMERICAN BAR ASSOCIATION ON AUGUST 5, 1968

Whereas, the far-reaching powers exercised by the Supreme Court in reshaping our criminal procedure and other aspects of our policy make it essential for the maintenance of public confidence in the Court's holdings that the nomination of persons to fill vacancies on the Court be confined to those clearly best qualified for such nomination, and

Whereas, the unlimited discretion now enjoyed by the President in making such nominations does not always assure that such nominations shall in fact be confined to those clearly best qualified for such nomination,

Be it resolved, That it is the sense of this Assembly that an inquiry into how better to assure that nominations to the Supreme Court shall be confined to those clearly best qualified for such nomination should be accorded high priority by the appropriate organs of this Association.

Submitted by Lewis Mayers, I. Arnold Ross, and Edward W. Stitt, Jr. of New York.

RESOLUTION RELATIVE TO APPOINTMENT OF SUPREME COURT JUSTICES

Whereas, it was in this City of Philadelphia between the second Monday in May and September 17, 1787, that the Constitutional Convention met and drew up the United States Constitution in which there was included the grant of the power to the President to appoint the Justices of the Supreme Court with the advice and consent of the Senate; and

Whereas, it is well known that, at that time, there were serious difficulties connected with the anticipated selection of judges for the "National Judiciary" including (a) the general inability, then, of the citizens of the Confederated States to communicate with each other relative to a matter such as this, (b) their lack of prior experience with respect thereto, (c) the fact that there was very limited information among the citizens as to what persons, or Judges, if any, might qualify for the "National Judiciary" because of the acknowledged, limited legal and judicial education and backgrounds, generally, of the citizens of the States of the Confederation and (d) the lack of existence of such a "National Judiciary" up to that time; all of which posed a serious problem for the delegates to the Convention; and

Whereas, at that time, when, due to said difficulties, a scarcity of qualified lawyers and justices from which to choose Supreme Court Judges pragmatically, it was even deemed proper and advisable to allow persons without legal or judicial education or background to become judges of said Court, while, in this day and age there would be no more justification for such a determination than there would be to decide to appoint all judges of all courts without regard to whether they are lawyers or judges or not, or have any legal or judicial experience or not; and

Whereas, during the entire summer following the opening of the said Convention and down to about September 7, 1787, (ten days before the Convention finished its work), the proposal before the Convention (which had been submitted by the Virginia delegation including Madison and Randolph and was referred to as the Virginia Plan) relative to the appointment of said judges, provided as follows:

"Resolved that a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the National Legislature (the Senate) to hold their offices."[1] and

So it is known that it had been the original intent of the Virginia Plan that the Senate, and not the President, was to have the power to appoint the judges of said Court; and

Whereas, within said ten day period prior to September 17, 1787, the date on which the Convention approved the proposed Constitution (although no explanation in the texts relative thereto has been found to account for it), the power of the President to appoint said Judges was inserted into the previously proposed provision of the Virginia Plan (Article X, Sect. 2) relative to the power given to the President to "commission all officers of the United States and shall appoint officers in all cases not otherwise provided by this Constitution" and included in the proposed Constitution, on September 17, 1787, in Article II, Section 2;[2] and

Whereas, it could never have been contemplated, then, that the situation would develop in the national political system, whereby the Presidential office would carry with it the prestige, influence and power, which has developed, whereby the President, due to political obligations or considerations, or other inadequate considerations, could influence the Senate to appoint a person of his choosing, whether qualified to be a judge by his education and experience or not, to be a Judge of the Supreme Court; and

Whereas, the national and international legal involvements and problems requiring consideration and determination by the members of said Court have become so complex (and these complexities increase virtually daily) and of such great importance and have such tremendous influence on national and world affairs, that the Supreme Court is one of the most, if not the most, powerful and important Courts in the world; and

Whereas, the members of the American Bar Association deem it for the best interests of the country and the world that a change be made in the Article II, Section 2 of the Constitution with respect to the power of the President to appoint, with the consent and advice of the Senate, such per-

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[1] See "the Drafting of the Constitution" by Beardsley, p. 573.

[2] See page 462 of The Constitution of the United States of America as printed by the U.S. Government Printing Office in 1964, prepared by the Legislative Conference Service, Library of Congress.

sons as he may deem, for whatever reason, fit to be Judges of this Court; and

Whereas, there are standards and requirements provided as safeguards for the Federal Judiciary system which insure, insofar as possible, that the persons who become Justices of the District Courts of Appeal will be highly qualified to be such justices and it has become the accepted practice for the elevation to membership in the Circuit Court of Appeals, justices of the District Courts, who, by reason of their background and experience in said lower courts, are deemed better qualified to serve in the Circuit Court;

Now, therefore, it is hereby—

Resolved that the American Bar Association shall recommend, and advocate to the proper governmental or other authorities, that Article II, Section 2 of the Constitution of the United States be amended so that the second paragraph thereof, shall read as follows:

"He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, *who are to be chosen from any Circuit Court of the United States Judiciary System* * * *, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

AMENDMENT OF FEDERAL AVIATION ACT OF 1958

Mr. MAGNUSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 3566.

The ACTING PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 3566) to amend the Federal Aviation Act of 1958 with respect to the definition of "supplemental air transportation," and for other purposes, which was, strike out all after the enacting clause, and insert:

That paragraph (33) of section 101 of the Federal Aviation Act of 1958 is amended to read as follows:

"(33) 'Supplemental air transportation' means charter trips, including exclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(8) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d) (1) and (2) of this Act. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales."

***An alternative proposal, which might be considered with favor, would be to add, where the three asterisks are above, the following words:

". . . or from the highest Court of any of the States of the United States . . ."

Submitted by Edward F. X. Ryan of Larchmont, N.Y.

SEC. 2. Certificates of public convenience and necessity for supplemental air transportation and statements of authorizations, issued by the Civil Aeronautics Board, are hereby validated, ratified, and continued in effect according to their terms, notwithstanding any contrary determinations by any court that the Board lacked power to authorize the performance of inclusive tour charter trips in air transportation.

SEC. 3. Section 401(e)(6) of the Federal Aviation Act of 1958 is amended to read as follows:

"(6) Any air carrier, other than a supplemental air carrier, may perform charter trips (including inclusive tour charter trips) or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board."

Mr. MAGNUSON. Mr. President, I move that the Senate concur in the amendment of the House, but before action is taken on that motion, I wish to make an explanation of the measure for the RECORD.

The Senate passed S. 3566 to give specific statutory authority to the Civil Aeronautics Board to authorize supplemental air carriers to conduct inclusive tour charters and to validate the certificates already issued by the Board for such charters notwithstanding any court decision that the Board exceeded its statutory power in issuing them. The Senate bill amended the definition of supplemental air transportation set forth in section 101(33) of the Federal Aviation Act of 1958 by inserting the phrase "including inclusive charter trips" after the term "charter trips."

The House-passed bill is identical in this respect. The House, however, added two clarifying amendments, the first of which specifically prohibits the sale of inclusive tours to the general public by a supplemental air carrier directly, or indirectly through control relationships with tour operators.

The second House amendment would add to section 401(e)(6) of the Federal Aviation Act the same language that was added to section 101(33) to make clear that the Civil Aeronautics Board has the authority to authorize scheduled air carriers to conduct inclusive tour charter trips, if the Board defines it is in the public interest to do so.

Although I believe the Senate bill is preferable, the House bill does accomplish the prime purpose of confirming the Civil Aeronautics Board's authority to authorize supplemental air carriers to engage in inclusive tour charter trips to the extent it has previously done so under regulations of the Civil Aeronautics Board. The second House amendment is merely a clarifying amendment and does not add or detract from the authority the Board already has.

Therefore, in order to end the confusion which has surrounded the authority of supplemental air carriers since 1962, I am in favor of accepting the House amendments.

Mr. President, I ask unanimous consent that a statement by the distinguished senior Senator from Oklahoma, the chairman of the Aviation Subcommittee, be included in the RECORD at this point. Senator MONRONEY's statement clearly sets forth his understanding and my understanding and the understanding of the distinguished Senator from New Hampshire [Mr. COTTON] with respect to this legislation and with respect to the House amendments.

Mr. President, I urge the Senate to concur in the House amendments to S. 3566.

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

STATEMENT BY SENATOR MONRONEY

As the Senate will recall, in 1962 Congress amended the Federal Aviation Act so as to include a definition of supplemental air transportation and to empower the Board to certificate such transportation. So far as is presently pertinent, supplemental air transportation was defined simply as "charter trips". The Civil Aeronautics Board construed these provisions as empowering it to certificate the supplemental air carriers to conduct inclusive tour charters, subject to regulations designed to insure that such charters would not be a subterfuge for sale by the supplementals of individual point-to-point transportation. Unfortunately, two federal courts of appeals reached squarely conflicting conclusions as to the validity of the Board's construction and the Supreme Court, dividing evenly, failed to resolve the conflict.

The basic purpose of this legislation is to settle the question by making it perfectly clear that the Board may authorize inclusive tour charters by the supplementals, and to validate the certificates already issued by the Board for such charters notwithstanding any court decision that the Board exceeded its statutory power by issuing them. In these respects the bills passed by both bodies are the same. They merely amend the definition of supplemental air transportation set forth in Section 101(33) by insertion of the phrase "including inclusive tour charter trips" after the term "charter trips", and they contain a section, identical in language, ratifying outstanding certificates for inclusive tour charters.

The House amendment differs from the Senate bill in two respects, each of which I shall discuss briefly.

The first is the addition of a sentence to the new definition of supplemental air transportation which specifically prohibits the sale of inclusive tours to the general public by a supplemental carrier directly, or indirectly through control relationships with tour operators.

I am inclined to believe that it would be better policy to leave the Board with discretion in this respect to meet future exigencies which we cannot now foresee. The House amendment deprives the Board, to some extent, of flexibility, and for this reason I believe the bill as passed by the Senate is preferable. On the other hand, the Board has not thus far undertaken to authorize a supplemental carrier to deal directly with the public in the sale of inclusive tours nor has it approved any control relationships between supplemental carriers and tour operators. The provision added by the House will not, therefore, disturb existing authorizations and policies. However, we are as concerned as the Committee on Interstate and Foreign Commerce of the other body with tour operators and will follow with interest the continuation of inclusive tour service through charters between supplemental air carriers and tour operators. The CAB has ample authority over the supplemental air carrier certificates. Should additional authority which cannot be effected by agency rulemaking over the tour operators be deemed necessary, the Congress will expect prompt notification from the CAB. These are the matters of overriding importance now.

The urgent need at present is to remove the confusion and doubt which the con-

Work has always been a very important part of my life, even from my early boyhood days back on the farm. I'm aware that this is a word that has declined in popularity in recent years, but I still feel that it is one of the basic, most vital ingredients, of a good life.

There are so many good things which come about as a result of work. Even when one works in the dark, as I have done at times. Something worthwhile is almost sure to develop as a result.

I had the good fortune and privilege of getting into the habit of working at an early age. Life was rough on our North Dakota farm, where I was born and spent the first 21 years of my life. Huge rocks had to be dug from the ground and moved before the land was fit for plowing—then there was the plowing itself and, the pitching of hay, threshing, tending of animals and all the other backbreaking work that every farmer knows so well. This hard work gave me a tremendous advantage in life. The music business always seemed easy in comparison, and when things didn't go too well for me, I always had the fear of going back to the plow, the pitchfork and the rocks.

In our travels around the country, we are usually met at the airport by a group of newspaper, TV and radio reporters for interviews. The first question asked is almost always the same: "Mr. Welk, how do you account for the long-standing success of your orchestra?"

Of course, there is no single reason for our long life on TV, but I think I have narrowed it down to a few vital factors: First: I am most fortunate to have so many wonderful and talented people in my musical family, and to have the help of so many very able righthand people. I have also been blessed with a devoted wife and family and have enjoyed an exceptionally happy home life. Finally, I believe my personal philosophy has been partly responsible for some of the good fortune which has come our way. This philosophy has actually been the guiding force in the operation of our orchestra. It's quite simple and is based largely on the principle of "earning your keep—giving value for value received." Well, why beat around the bush—the secret is "work."

The earth gives its fruits only to those who labor for them. To earn your bread by the sweat of your brow is a cold, hard reality. It applies to all, and without it, man loses his vision, his confidence and his enthusiasm. His life becomes largely meaningless. On the other hand, there is no preventative or cure so effective for boredom and fatigue or for the many of our mental and emotional ills as an honest day's work every working day of the year. There is no limit to the rich things that we may have—material, mental, spiritual—if we work hard enough to obtain them.

Know what you want, work for it and the earth will yield its treasures to you.

This is still the land of opportunity, perhaps more so now than ever before. Individual initiative is still the guiding force that makes our nation strong. Let us encourage it in every way possible. God's world is a beautiful world, rich beyond measure.

The terms for helping ourselves to this abundance are simple but iron-clad. They are simple ways of life and among the most important of them are sincerity of purpose, honest effort, the desire to be useful, devotion to duty, just and compassionate relationship with our fellow man, faith in ourselves and in God—these are the coins to be placed in the till as prepayment.

Many sincere men are alarmed today about the increasing number of people who are looking for free buggy rides through life. I'm speaking of the free riders who live off the labors of others. They are the men and women who take the benefits of group activities, but who accept little or no responsibility for doing their share in creating the benefits they consume. In the world of nature we call them parasites. It is difficult to understand how these people can delude themselves into adopting as a way of life such a concept of social irresponsibility. If man realized the lack of justice of living off the efforts of others, there would probably be much less of it. Free buggy rides drain away the benefits earned for the group by its productive workers.

The fundamental law of life is that man must earn what he receives if he wishes to live with dignity, independence and security.

Man, of course, can live off the labors of others, but when he does, his personality disintegrates and decays, he becomes a parasite, a whining, frustrated weakling.

Let man, however, feel the challenge of creating his own life and of getting what he needs through his own labors and he becomes strong, virile and confident. He has found the way to dignity, independence and security—his life is his own.

I have tried to instill this type of philosophy in all the members of our musical family. The fact that they have responded generously, indeed, accounts for much of our success. This is why I am such a firm believer in the concept of "hard work" as a remedy for many of today's ills.

Our freedom did not come cheaply, and should not be taken lightly. American citizenship is a precious privilege and it carries with it certain responsibilities: To give a day's work for a day's wages, to make an honest effort to be self-supporting, to respect and obey the laws of the land.

I am in favor of greater emphasis on these ideals which helped to make our nation great—free enterprise, self-determination, personal initiative, individual responsibility.

I am convinced that work—hard work—is the answer if we are to return to these ideals and keep our country strong. I feel that when people work with a happy and contented mind, they become immune to the diseases of hatred and discord.

I know that with God's blessing on our labors, we can accomplish miracles in the field of human relationships and in our fight for a better America and a better world.

This, I believe.

NOMINATIONS TO THE SUPREME COURT

Mr. GORE. Mr. President, I have a copy of a statement which was sent to the chairman of the Judiciary Committee and released publicly yesterday by a newly formed Lawyers Committee on Supreme Court nominations. The committee is probably the largest group of distinguished lawyers that has ever been formed to express their views on a single issue. Included in this group are lawyers from the District of Columbia and every State in the Nation except Mississippi. Seven past presidents of the American Bar Association, many past and present officers of State bar associations, and 20 law school deans are members of the committee.

Because of the significance of a Supreme Court nomination, particularly that of a Chief Justice, which was submitted to the Senate nearly 3 months ago, I wish to read the statement of the committee:

We have formed a Committee of Lawyers from all parts of this country to urge the Senate to fulfill its constitutional responsibilities by giving prompt and fair consideration to the two Supreme Court nominations made by the President nearly three months ago.

The Constitution of the United States explicitly sets forth the authority and obligation of the President and the Members of the Senate during their terms of office with respect to the appointment of high Federal officials. Among the joint responsibilities of the President and the Senate is the duty to fill vacancies as they occur on the Supreme Court of the Untied States. The Constitution provides that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint . . . Judges of the Supreme Court."

The threatened use of the filibuster technique to frustrate the appointive power which is vested by the Constitution in the President and the Senate would be a most unworthy assault upon our constitutional system of government. Just as the President is constitutionally bound to nominate persons to fill vacancies as they occur, the Senate is bound to consider the nominations on the merits and to advise and either grant or deny its consent to the appointments.

It is of course appropriate for the Senate to take into account the jurisprudential views of the nominee as set forth in his opinions and other writings. But it is plainly inappropriate to queston a nominee as to how he arrived at his prior judicial decisions or as to his views on particular questions that may come before him as a judge.

It is equally clear that the advice and consent process was not designed to provide a forum for an indiscriminate attack on the Supreme Court for its decisions. Thc courts, like other institutions of our government, profit from constructive criticism. But sweeping and indiscriminate attacks upon the highest judicial tribunal in the land can only undermine the public respect for law upon which our entire systems depends.

We urge the Senate to exercise its constitutional responsibilities by addressing itself promptly to the business properly before it: voting on the Supreme Court nominations on their respective merits.

Mr. President, I ask unanimous consent to have printed in the RECORD the list oi lawyers who have joined in making this statement.

I am distressed that a group of lawyers felt it necessary to remind the Senate of its obligations and responsibilities under the Constitution. But I have to admit that they had every justification for feeling that their statement was necessary. The Senate has had before it for nearly 3 months now the nomination of a distinguished American for Chief Justice. Extensive hearings on this nomination were completed more than a month ago, and now we hear talk of a filibuster and demands for further delays.

Thus, I join the committee of lawyers in urging the Senate to act promptly and fairly to fulfill its constitutional responsibilities. I join them in opposing the use of the filibuster in this matter, which can only discredit this great body and encourage disrespect for the law. I join in opposing the use of the advise-and-consent process for an indiscriminate attack on the Supreme Court, its decisions, and its members. And I join in opposing the questioning of a nominee about his prior judicial decisions or his views on matters that may come before him as a judge.

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

ALABAMA

Jerome A. Cooper, Birmingham, Ala.

ARIZONA

Charles E. Aros, Tucson, Ariz.

ARKANSAS

E. Charles Eichenbaum, Little Rock, Ark.; Robert A. Leflar, Fayetteville, Ark.

CALIFORNIA

Edward L. Barrett, Jr. (Dean), Davis, Calif.; Richard C. Dinkelspiel, San Francisco, Calif.; Edward C. Halbach, Jr., Berkeley, Calif.; Bayless A. Manning, Stanford, Calif.; William H. Orrick, Jr., San Francisco, Calif.; Joseph A. Ball, Long Beach, Calif.; Robert G. Sproul, Jr., San Francisco, Calif.; John A. Sutro, San Francisco, Calif.; Maynard J. Toll, Los Angeles, Calif.; Homer D. Crotty, Los Angeles, Calif.; Brent M. Abel, San Francisco, Calif.; Richard C. Maxwell (Dean), Los Angeles, Calif.

COLORADO

Richard M. Davis, Denver, Colo.; Joseph G. Hodges, Denver, Colo.

CONNECTICUT

Donald F. Keefe, New Haven, Conn.; Louis H. Pollack (Dean), New Haven, Conn.

DELAWARE

William Poole, Wilmington, Del.

FLORIDA

Cody Fowler, Tampa, Fla.; Hugo L. Black, Jr., Miami, Fla.

GEORGIA

William B. Spann, Jr., Atlanta, Ga.; Robert R. Richardson, Atlanta, Ga.; Herbert Johnson, Atlanta, Ga.

HAWAII

J. Garner Anthony, Honolulu, Hawaii.

IDAHO

Jerry V. Smith, Lewiston, Idaho.

ILLINOIS

William H. Avery, Chicago, Ill.; Walter T. Fisher, Chicago, Ill.; Morris I. Leibman, Chicago, Ill.; Phil C. Neal, Chicago, Ill.; Howard J. Trienens, Chicago, Ill.

INDIANA

Floyd W. Burns, Indianapolis, Ind.; Joseph O'Meara, Notre Dame, Ind.

IOWA

Luther L. Hill, Jr., Des Moines, Iowa; David H. Vernon, Iowa City, Iowa.

KENTUCKY

Herbert D. Sledd, Lexington, Ky.

LOUISIANA

Thomas B. Lemann, New Orleans, La.; Revius O. Ortique, Jr., New Orleans, La.

MARYLAND

E. Clinton Bamberger, Jr., Baltimore, Md.; H. Vernon Eney, Baltimore, Md.

MASSACHUSETTS

Robert F. Drinan, Boston, Mass.; Robert W. Meserve, Boston, Mass.; Paul A. Tamburello, Pittsfield, Mass.; Neil Leonard, Boston, Mass.

MICHIGAN

Charles W. Joiner, Detroit, Mich.; Robert A. Nitschke, Detroit, Mich.

MINNESOTA

Sidney S. Feinberg, Minneapolis, Minn.

MISSOURI

Arthur J. Freund, St. Louis, Mo.; John H. Lashly, St. Louis, Mo.; John Raeburn Green, St. Louis, Mo.; W. William McCalpin, St. Louis, Mo.; Arthur Mag, Kansas City, Mo.; James M. Douglas, St. Louis, Mo.

MONTANA

Kendrick Smith, Butte, Mont.

NEVADA

John Shaw Field, Reno, Nev.

NEW HAMPSHIRE

Robert H. Reno, Concord, N.H., Joseph Millimet, Manchester, N.H.

NEW JERSEY

Walter Leichter, Union City, N.J.; John H. Yauch, Newark, N.J.; James D. Carpenter, Newark, N.J.; John J. Gibbons, Newark, N.J.; T. Girard Wharton, Somerville, N.J.

NEW MEXICO

Don G. McCormick, Carlsbad, N.M., William A. Sloan, Albuquerque, N.M.; John D. Robb, Jr., Carlsbad, N.M.

NEW YORK

Robert A. Bicks, New York, N.Y.; Bruce Bromley, New York, N.Y.; Norris Darrell, New York, N.Y.; Milton Handler, New York, N.Y.; Robert B. McKay, New York, N.Y.; Ross L. Malone, New York, N.Y.; Orison S. Marden, New York, N.Y.; Burke Marshall, Armonk, N.Y.; Samuel R. Pierce, Jr., New York, N.Y.; Whitney North Seymour, New York, N.Y.; William Tucker (Dean), Ithaca, N.Y.; Betheul M. Webster, New York, N.Y.; Simon H. Rifkind, New York, N.Y.; Oscar M. Ruebhausen, New York, N.Y.; Russell D. Niles, New York, N.Y.; Samuel I. Rosenman, New York, N.Y.; Eli W. Debevoise, New York, N.Y.; Herbert Wechsler (Prof.), New York, N.Y.; William C. Warren, New York, N.Y.

NORTH CAROLINA

Terry Sanford, Raleigh, N.C.; John V. Hunter, Raleigh, N.C.

NORTH DAKOTA

Robert E. Dahl, Grafton, N.D.

OHIO

Robert H. Kennedy, Cleveland, Ohio; N. Seth Taft, Cleveland, Ohio.

OKLAHOMA

Ted J. Davis, Oklahoma City, Okla.; G. M. Fuller, Oklahoma City, Okla.; Jerry Tubb, Oklahoma City, Okla.; John Draper, Oklahoma City, Okla.

OREGON

R. W. Nahstoll, Portland, Oregon; James C. Dezendorf, Portland, Oregon.

PENNSYLVANIA

John G. Buchanan, Pittsburgh, Pa.; Lewis H. Van Dusen, Jr., Philadelphia, Pa.; Jefferson B. Fordham, Philadelphia, Pa.; David F. Maxwell, Philadelphia, Pa.; Gilbert Nurick, Harrisburg, Pa.; Jerome Shestack, Philadelphia, Pa.; Thomas W. Pomeroy, Jr., Pittsburgh, Pa.

RHODE ISLAND

Arthur J. Levy, Providence, R.I.

SOUTH DAKOTA

Ross H. Oviatt, Watertown, S.D.

TENNESSEE

Walter P. Armstrong, Jr., Memphis, Tenn.; Edward W. Kuhn, Memphis, Tenn.

TEXAS

Charles O. Galvin, Dallas, Tex.; William F. Walsh, Houston, Tex.; Charles Alan Wright, Austin, Tex.; Cecil E. Burney, Corpus Christi, Tex.

VIRGINIA

George C. Freeman, Jr., Richmond, Va; Edward Griffith Dodson, Jr., Roanoke, Va.; George E. Allen, Richmond, Va.

WASHINGTON

Stimson Bullitt, Seattle, Wash.

WISCONSIN

N. Sencer Kimball, Madison, Wisc.

WYOMING

George F. Guy, Cheyenne, Wyoming.

WASHINGTON, D.C.

Stephen Ailes, Washington, D.C.; Frederick A. Ballard, Washington, D.C.; W. Graham Claytor, Jr., Washington, D.C.; Lloyd N. Cutler, Washington, D.C.; Vernon X. Miller (Dean), Washington, D.C.; Rufus King, Washington, D.C.; Louis F. Oberdorfer, Washington, D.C.; Robert L. Wald, Washington, D.C.; Edward Bennett Williams, Washington, D.C.; H. Thomas Austern, Washington, D.C.; Francis M. Shea, Washington, D.C.

DEATH OF MAJ. GEN. KEITH WARE IN VIETNAM

Mr. JACKSON. Mr. President, I wish to speak today about Maj. Gen. Keith Ware, Commander of the U.S. First Infantry Division, who was killed a few days ago at the age of 52 in the crash of his command helicopter near South Vietnam's Cambodian border. He had served in Vietnam 9 months and had directed the defense of Saigon during the adversary's Tet offensive last winter.

Keith Ware's death at the height of his powers is a tragic loss to the Nation. But his family and friends have one great consolation: his place in the history of this Nation is assured. He gave the larger part of his life to the cause of national defense and the safeguarding of individual liberty—he distinguished himself in one assignment after another and he died on the frontline in the service of his country.

Inducted into the Army in July, 1941, Keith Ware was one of the first graduates of the officers candidate school to be promoted to the rank of general.

He won the Medal of Honor on December 26, 1944, while leading an infantry battalion of the 3d Infantry Division on a German-held position near Sigolsheim, France. With his assault companies pinned down, he reconnoitered alone 150 yards ahead of his command and drew German fire to unmask the Nazi position. Returning to his troops, he picked up an automatic rifle and led a small assault group of 11 men and a tank in knocking out four machineguns. Wounded, he refused medical attention until the Germans had been cleared from the hill position.

Keith Ware also won the Silver Star, Bronze Star Medal—Valor—Purple Heart with Oak Leaf Cluster, Croix de Guerre with Gold Star, and French Fourragere, and recently was awarded the Distinguished Service Medal, following his tour of duty as Army chief of information.

During his Army career, Keith Ware filled a wide variety of assignments with distinction. They included instructor of military psychology and leadership; U.S. Military Academy; regimental commander, 34th Infantry, Korea; Congressional Army liaison officer—where he was of inestimable help to so many of us here in the Senate; Chief, Emergency Plans and Requirements Branch and executive to Chief of Staff, SHAPE; assistant division commander, 2d Armored Division, Fort Hood, Tex.; and Army chief of information.

As a man of sterling character, unshakable integrity, and personal courage, Keith Ware let us see at first hand the qualities of greatness and true service to the country. We shall miss him. He was the kind of real patriot our country needs in these dangerous and difficult days.

THE SENATE AND THE SUPREME COURT

Mr. INOUYE. Mr. President, the Washington Post of September 6 pub-

ator's attention to an item which appeared in the June 14 issue of the Wall Street Journal some 7 days before there was any authoritative report that Chief Justice Warren intended to resign.

The Wall Street Journal stated that Chief Justice Earl Warren "may quit before President Johnson's term runs out. Reason: He hopes to have a voice in the selection of his successor." When that kind of speculation, of which I know none of us would approve, is coupled with a letter which is conditional and is effective at the pleasure of the President, it obviously raises all sorts of disturbing questions.

Mr. PEARSON. I thank the Senator. As I look at the volumes of the hearings of the nomination of Abe Fortas and Homer Thornberry, can the Senator advise me as to the nature of the nomination of Justice Thornberry, who now, I believe, serves on the circuit court of appeals. Is it conditional upon a vacancy being created by the taking of office of Mr. Fortas as Chief Justice of the United States?

In other words, what is the situation, not so much in relation to whether or not a vacancy exists in the office of Chief Justice, but whether or not a vacancy exists on the Court itself.

Not to be facetious, but to carry the argument to some length, suppose this situation, if we confirmed Justice Thornberry and did not confirm Justice Fortas—did the Senator follow my question?

Mr. GRIFFIN. There is a Senator in the Chamber who happens to be a member of the Committee on the Judiciary. He is probably in a position to answer some of these questions. For example, it is my understanding, not being a member of the Committee on the Judiciary, that it has not reported the nomination of Justice Thornberry and that further action by the committee would be taken in the event that Justice Fortas' nomination was confirmed. I ask the distinguished Senator from North Dakota, am I correct?

Mr. BURDICK. I would respond to the question of the Senator from Michigan by saying that no action has been taken on Justice Thornberry.

Mr. PEARSON. No action has been taken, but hearings have been completed by the Committee on the Judiciary on this particular nomination?

Mr. BURDICK. I am not certain, but hearings have been held on the nomination.

Mr. PEARSON. But the committee has received the nomination?

Mr. BURDICK. That is correct.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that this colloquy not jeopardize my rights to the floor.

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

Mr. BURDICK. Mr. President, will the Senator from Michigan yield further?

Mr. GRIFFIN. I am glad to yield to the Senator from North Dakota for a question.

Mr. BURDICK. The Senator from Michigan, in responding to the question asked by the able Senator from Kansas [Mr. PEARSON], stated that the manner of presenting the nomination was unprecedented in history.

Mr. GRIFFIN. If the distinguished Senator from North Dakota will allow me to correct him, I said in the history of the Supreme Court.

Mr. BURDICK. Yes. That is right, in the history of the Supreme Court.

I should like to invite the attention of the Senator from Michigan to the record of the hearings on page 11, and I quote from the testimony of the Attorney General:

> Mr. Justice Gray notified President Theodore Roosevelt on July 9, 1902, that he had decided to avail himself of the right to resign at full pay, and added:
>
> "* * * I should resign to take effect immediately, but for a doubt whether a resignation to take effect at a future day, or on the appointment of my successor, may be more agreeable to you."
>
> In accepting the resignation on July 11, 1902, President Roosevelt stated:
>
> "If agreeable to you, I will ask that the resignation take effect on the appointment of your successor."

This is the precise precedent for what has been done here.

Mr. GRIFFIN. If I may be permitted to respond, that point was raised in committee when I was testifying before it. My response now will be as it was then, and that is to simply read a little further on in the statement presented by the Attorney General.

Mr. BURDICK. Where?

Mr. GRIFFIN. From the record on page 12 of the hearings, as follows:

> On August 11, 1902, President Roosevelt appointed Oliver Wendell Holmes, Jr., to succeed Justice Gray. The Congress was then in recess. Holmes chose not to serve under the circumstances. Justice Gray died in September and the President nominated Holmes on December 2, 1902, the day after the Senate reconvened. He was confirmed December 4.

Thus, although there was a letter of a similar nature submitted, it never culminated in the appointment and confirmation of a successor and therefore does not provide any real precedent for this procedure.

Mr. BURDICK. I submit to my able friend that that did not change the form of the resignation.

Mr. GRIFFIN. If the Senator is making the point that Justice Gray submitted such a letter in those words, I certainly concede that point.

But, I think it is also important that we remember that we now have a vacancy—which is not a vacancy—which will be very obvious on October 7 when Justice Warren reconvenes the Supreme Court.

This unfortunate situation comes about not as the result of one party to this arrangement but because of both parties.

President Johnson could and should have responded to this letter by accepting it as of a date certain. He could have accepted it as of any particular date, I assume, and then we would not have had this kind of situation. But he chose to respond by saying, "I accept your intention to retire when, in effect, my nominee is quallfied and confirmed by the Senate."

Mr. PEARSON. Does the Senator know whether Justice Thornberry has submitted a similar letter to the President? He is now serving on the circuit court of appeals.

Mr. GRIFFIN. No, he has not to the best of my knowledge.

Mr. PEARSON. The Senator made reference to a press conference by Chief Justice Warren wherein a number of subjects were covered. Can the Senator tell me whether, in any way, either through the press conference or otherwise, the Chief Justice indicated that if this particular nomination were not confirmed, he would not retire, and would withdraw his intention to retire?

Mr. GRIFFIN. I doubt that he put it in those precise words. I think, as indicated in the New Republic, they were pointing to the fact that he left that clear implication by his words.

My legislative assistant tells me that on page 1382 of the hearings, there is, from U.S. News & World Report, a transcript of the press conference of Chief Justice Warren, to which the Senator referred.

Mr. PEARSON. I thank the Senator.

Mr. GRIFFIN. Mr. President, when the administration witnesses, Joseph W. Barr and W. DeVier Pierson, refused to appear before the Committee on the Judiciary to answer questions concerning the allegations that Justice Fortas had participated in the framing of a legislative measure, these two administration witnesses based their refusal on the claim of executive privilege.

I think it is important for the Senate to take note of the fact that in hiding behind the claim of executive privilege, they and the administration repudiated the explicit policies established by the late President John F. Kennedy, and adopted by President Johnson, because both Presidents had assured Congress, in writing, that information would not be withheld from Congress on the grounds of executive privilege, unless the President himself should invoke that executive privilege.

In a letter dated March 7, 1962, to Chairman JOHN MOSS of the Special Government Information Subcommittee of the House Committee on Government Operations, President John F. Kennedy wrote:

> As you know, this administration has gone to great lengths to achieve full cooperation with the Congress in making available to it appropriate documents, correspondence, and information. This is the basic policy of this administration and it will continue to be so.

Continuing to quote from President Kennedy's letter:

> Executive privilege can be invoked only by the President and will not be used without specific Presidential approval.

In a letter of April 2, 1965, to Representative Moss, President Lyndon Johnson wrote:

> Since assuming the Presidency, I have followed the policy laid down by President Kennedy in his letter to you of March 7, 1962, dealing with the subject. Thus, the claim of executive privilege will continue to be made only by the President.

Here we are now, Mr. President. The Senate has a constitutional responsibility to advise and consent concerning a nomination to the highest judicial post in the land. We have this responsibility

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 90th CONGRESS, SECOND SESSION

SENATE—*Friday, October 4, 1968*

The Senate met at 10 a.m., and was called to order by the Acting President pro tempore.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

O God of grace and glory, in whose love and wisdom lies all our help and hope, in these hectic days may we be strengthened with might and our jaded souls refreshed as Thou dost lead us into green pastures and beside still waters.

God of all mercies, in a violent day swept by angry forces with which unaided we cannot cope, Thou only art our strength and refuge, amid mortal ills prevailing.

We would solemnly reaffirm the reverent declaration of those who so long ago, with intrepid faith, stepped upon the shores of this promised land with the motto "In the name of God. Amen."

With the sound of that great amen as our summons in these stirring new days, we would be true to the vision splendid of a redeemed earth. For this cause we set up our banners in this, Thy glorious day.

We ask it in the name of the Christ whose saving truth is marching on. Amen

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, October 3, 1968, be dispensed with.

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

LIMITATION ON STATEMENTS DURING TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that statements in relation to the transaction of routine morning business be limited to 3 minutes.

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

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Leonard, one of his secretaries, and he announced that the President had approved and signed the following acts:

On October 1, 1968:

S. 444. An act to establish the Flaming Gorge National Recreation Area in the States of Utah and Wyoming, and for other purposes.

On October 2, 1968:

S. 119. An act to provide for a National Wild and Scenic Rivers System, and for other purposes;

S. 827. An act to establish a national trails system, and for other purposes;

S. 2515. An act to establish a Redwood National Park in the State of California, and for other purposes;

S. 2751. An act to designate the Mount Jefferson Wilderness, Willamette, Deschutes, and Mount Hood National Forests, in the State of Oregon; and

S. 3058. An act to amend the Water Resources Planning Act to revise the authorization of appropriations for administering the provisions of the act, and for other purposes.

REPORT OF OFFICE OF ALIEN PROPERTY—MESSAGE FROM THE PRESIDENT

The ACTING PRESIDENT pro tempore 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 the Judiciary:

To the Congress of the United States:

I am pleased to transmit the Annual Report of the Office of Alien Property for Fiscal Year 1967.

Not all government agencies grow and expand. Some effectively perform their mission and decrease in size.

The Office of Alien Property is such an agency. As the property under its custody diminished, its independent status was terminated. Today only $64 million remain under the control of the Office, and its duties are performed by personnel of the Department of Justice.

I commend this report to your attention.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *October 4, 1968.*

EXECUTIVE MESSAGES RECEIVED

As in executive session,

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations and withdrawing the nominations of Abe Fortas, of Tennessee, to be Chief Justice of the United States, and Homer Thornberry, of Texas, to be Associate Justice of the Supreme Court of the United States, which nominating messages were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

FIRE PREVENTION DAY

Mr. DODD. Mr. President, the State of Connecticut has proclaimed Wednesday, October 9, 1968, as Fire Prevention Day. The proclamation serves to remind all of us that the tragic losses in life and property suffered each year from fire are in great measure due to man's carelessness.

Mr. President, I ask unanimous consent to have this proclamation printed in the RECORD.

There being no objection, the proclamation was ordered to be printed in the RECORD, and referred to the Committee on the Judiciary as follows:

BY HIS EXCELLENCY JOHN DEMPSEY,
GOVERNOR: A PROCLAMATION

During 1967, uncontrolled fires in Connecticut took the lives of forty-nine of our fellow citizens. Ninety-one suffered injuries in fires. Property damage, resulting from 3,176 fires, amounted to $7,633,379.

This is a tragic loss. It is especially disturbing in view of the fact that, according to the report of the State Fire Marshal, 381 fires were caused by the carelessness of smokers. Another 118 were attributed to "carelessness" on the part of others.

These alarming figures serve to remind us that fire prevention is largely a responsibility of the individual. Undoubtedly many of these fires could have been prevented if basic precautionary measures had been observed.

For many years the fire insurance industry, state and local safety authorities and our schools have worked together to guard against unnecessary fires. These efforts have helped substantially to reduce fire losses and are deserving of the full and continuing support of all residents of this state.

In accordance with the direction of the General Assembly that a day be set aside each year to call attention to the need for fire prevention measures, I designate Wednesday, October 9, to be Fire Prevention Day.

Let us observe this day by resolving to make a personal effort to be constantly mindful of the danger of fire and to do everything possible to prevent fires.

I urge that exercises be conducted in schools throughout Connecticut at this time to acquaint students with the procedures to be followed in the event of fire and to encourage an appreciation of the importance of fire safety practices.

Given under my hand and seal of the State at the Capitol, in Hartford, this twenty-fifth day of September, in the year of our Lord one thousand nine hundred and sixty-eight and of the independence of the United States the one hundred and ninety-second.

JOHN DEMPSEY.

By His Excellency's Command:

ELLA T. GRASSO,
Secretary of State.

Pizarro and which is flanked on two of its sides by the presidential palace and the Cathedral of Lima. The ceremonial palace guard quickly opened the gates and stepped aside as a small group of officers dressed in green fatigue field uniforms swept inside.

Approximately 50 minutes later, they emerged, accompanied by Belaunde, who was described by witnesses as pale but fully dressed with only his necktie askew. As the group left the palace, the witnesses added, Belaunde shouted: "These are the traitors . . . these are the betrayers of the country . . . the cowards."

He then was put into a jeep and whisked off. Several hours later, a radio station apparently under army control announced that Belaunde, together with three government security men as guards, had been put aboard a specially chartered jet belonging to the Peruvian National Airline, APSA, and flown to Buenos Aires.

Finance Minister Ulloa, after his radio broadcast was cut off, went to the Foreign Ministry, where he and various members of the Cabinet appointed Tuesday reportedly began discussing the possibility of a general strike. While the meeting was in progress, police arrived to arrest the participants. They were taken off in police cars to an unspecified detention point.

A stinging indictment of the coup came from Armando Villanuela, secretary general of the APRA. He issued a statement to reporters calling the army's action "a reprehensible attack on constitutionality" and called upon the country to resist the coup.

In justifying the coup—the first in Latin America since the Argentine army overthrew President Arturo Illia in June, 1966—the Revolutionary Government's manifesto charged that "powerful economic forces, national and foreign in complicity with unworthy Peruvians had been frustrating the popular will for basic structural reforms to continue maintaining an unjust social and economic order."

It went on to accuse the Belaunde government of "indecision, confusion, immorality, intrigue, clandestine activities, improvisation, absence of social sense," and said that the government's handling of the IPC question was "evidence of the moral decomposition of the country."

The manifesto promised to honor all of Peru's existing foreign treaties and said that foreign investors "who observe our laws" have nothing to fear from the new government.

[In Washington, Peruvian Ambassador Celso Pastor, brother-in-law of President Belaunde, resigned.]

Mr. YARBOROUGH. 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. YARBOROUGH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

ADJOURNMENT TO MONDAY

Mr. YARBOROUGH. Mr. President, under the terms of the previous order, I move that the Senate stand in adjournment until 12 o'clock noon Monday next.

The motion was agreed to; and (at 2 o'clock and 39 minutes p.m.) the Senate adjourned until Monday, October 7, 1968, at 12 o'clock noon.

NOMINATIONS

Executive nominations received by the Senate October 4, 1968:

COMMODITY CREDIT CORPORATION

Ted J. Davis, of Oklahoma, to be a member of the Board of Directors of the Commodity Credit Corporation, vice George L. Mehren.

POSTMASTERS

The following named persons to be postmasters:

ARKANSAS

Kermit E. Hale, Stuttgart, Ark., in place of F. S. Brummitt, deceased.

CALIFORNIA

Ronald D. Huisenga, Tustin, Calif., in place of J. J. Parks, Jr., retired.

CONNECTICUT

Anthony M. Chiappetta, Cos Cob, Conn., in place of E. E. Ritch, retired.

Joseph J. Maruzo, Millsdale, Conn., in place of L. N. Snow, retired.

GEORGIA

Launa W. Addington, Tallulah Falls, Ga., in place of B. C. Burrell, retired.

T. Hugo Starling, Thomaston, Ga., in place of A. H. Harvey, retired.

INDIANA

William Rudolph, Jr., Ireland, Ind., in place of Clara Wigand, retired.

Lucille C. Wells, Linton, Ind., in place of Esther Wolford, retired.

Forrest D. Butler, Rockville, Ind., in place of J. V. Pinegar, retired.

MISSOURI

Glen E. Gamble, Fair Play, Mo., in place of J. F. Hobbs, deceased.

OHIO

Lee D. Hartman, Troy, Ohio, in place of D. F. Shuler, resigned.

OKLAHOMA

Glenn E. Morrison, Ketchum, Okla., in place of Bess Douglas, retired.

TEXAS

Dreda F. Jacoby, Eola, Tex., in place of E. L. Martin, retired.

Victor C. Novosad, Sugar Land, Tex., in place of N. M. Iiams, retired.

VIRGINIA

William J. Smith, Hallwood, Va., in place of LeRoy Davis, deceased.

WISCONSIN

Edward J. Zinda, Delafield, Wis., in place of W. G. Brown, retired.

Irvin H. Rosenberg, Shawano, Wis., in place of H. A. Meyer, retired.

WITHDRAWALS

Executive nominations withdrawn from the Senate October 4, 1968:

U.S. SUPREME COURT

Abe Fortas, of Tennessee, to be Chief Justice of the United States, vice Earl Warren, which was sent to the Senate on June 26, 1968.

Homer Thornberry, of Texas, to be Associate Justice of the Supreme Court of the United States, vice Abe Fortas, which was sent to the Senate on June 26, 1968.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 4, 1968:

FEDERAL POWER COMMISSION

Albert Bushong Brooke, Jr., of Maryland, to be a member of the Federal Power Commission for the remainder of the term expiring June 22, 1969.

UNESCO CONFERENCE REPRESENTATIVES

The following-named persons to be representatives of the United States of America to the 15th session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

William Benton, of Connecticut.

Alvin Christian Eurich, of Colorado.

Katie Scofield Louchheim, of the District of Columbia.

James H. McCrocklin, of Texas.

Frederick Seitz, of Illinois.

The following-named persons to be alternate representatives of the United States of America to the 15th session of the General Conference of the United Nations Educational, Scientific, and Cultural Organization:

Robert H. B. Wade, of Maryland.

Marieta Moody Brooks, of Texas.

Elizabeth Ann Brown, of Oregon.

Morton Keller, of Massachusetts.

George E. Taylor, of Washington.

UNITED NATIONS REPRESENTATIVES

James Russell Wiggins, of the District of Columbia, to be the representative of the United States of America to the United Nations with the rank and status of Ambassador Extraordinary and Plenipotentiary, and the Representative of the United States of America in the Security Council of the United Nations.

James Russell Wiggins, of the District of Columbia, to be a representative of the United States of America to the 23d session of the General Assembly of the United Nations.

Brewster C. Denny, of Washington, to be a representative of the United States of America to the 23d session of the General Assembly of the United Nations.

Raymond D. Nasher, of Texas, to be an alternate representative of the United States of America to the 23d session of the General Assembly of the United Nations.

Marvin L. Warner, of Ohio, to be an alternate representative of the United States of America to the 23d session of the General Assembly of the United Nations.

DISTRICT OF COLUMBIA COURT OF APPPEALS

Andrew McCaughrin Hood of the District of Columbia to be chief judge of the District of Columbia Court of Appeals for the term of 10 years.

THE DIPLOMATIC AND FOREIGN SERVICE

The nominations beginning Charles C. Carson, to be a consular officer of the United States of America, and ending Bernard J. Woerz, to be a consular officer of the United States of America, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 24, 1968; and

The nominations beginning Burnett F. Anderson, to be a Foreign Service information officer of class 1, consular officer, and a secretary in the Diplomatic Service of the United States of America, and ending Miss Edith E. Russo, to be a Foreign Service information officer of class 7, a consular officer, and a secretary in the Diplomatic Service of the United States of America, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 30, 1968.

IN THE COAST GUARD

The nominations beginning William F. Nettell, to be lieutenant (junior grade), and ending Jimmie D. Woods, to be an associate professor, U.S. Coast Guard Academy, in the grade of commander, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 27, 1968.