Approved For Release 2005/12/14 : CIA-RDP70B00338R000300180011-4

Senate

TUESDAY, JULY 23, 1968

The Senate met at 12 noon, and was called to order by the Acting President pro tempore.

The Chaplain, Rev. Frederick Brown Harris, D.D., offered the following prayer:

Eternal God, who art righteous in all Thy ways and holy in all Thy works, whose kingdom is an everlasting kingdom, and whose dominion endureth throughout all generations, and yet who art nigh unto all them that call upon Thee in truth.

All that is highest and deepest in our own lives finds its source in the living fountain of Thine own being:

For every virtue we possess
And every victory won,
And every thought of holiness
Are Thine alone.

Speak to our hearts when courage fails and men faint for fear and the love of many grows cold and there is distress among the nations of the earth.

Keep us resolute and steadfast in the things that cannot be shaken. Restore our faith in the omnipotence of good; and may we see beyond the seen and temporal things unseen and eternal.

We ask it in the Redeemer's name. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, July 22, 1968, be dispensed with.

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

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States submitting nominations were communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session,

The ACTING PRESIDENT pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

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, without amendment, the following bills of the Senate:

S. 1532. An act to require that contracts for construction, alteration, or repair of any public building or public work of the District of Columbia be accompanied by a performance bond protecting the District of Columbia and by an additional bond for the protection of persons furnishing material and labor, and for other purposes; and

S. 3456. An act to provide that the prosecution of the offenses of disorderly conduct and lewd, indecent, and obscene acts shall be conducted in the name of and for the benefit of the District of Columbia.

The message also announced that the House had passed the following bills, each with an amendment, in which it requested the concurrence of the Senate:

S. 1224. An act to establish a register of blind persons in the District of Columbia, to provide for the mandatory reporting of information concerning such persons, and for other purposes; and

S. 1228. An act to authorize projects grants for construction and modernization of hospitals and other medical facilities in the District of Columbia.

The message further announced that the House had agreed to the amendment of the Senate to the bill (H.R. 25) to authorize the Secretary of the Interior, in cooperation with the States, to conduct an inventory and study of the Nation's estuaries and their natural resources, and for other purposes.

The message also announced that the House had agreed to the amendments of the Senate to the bill (H.R. 10673) to amend title III of the Packers and Stockyards Act, 1921, as amended.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 13781) to amend title II of the Marine Resources and Engineering Development Act of 1966, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. LENNON, Mr. ROGERS of Florida, Mr. DOWNING, Mr. MOSHER, and Mr. PELLY 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. 17903) making appropriations for public works for water and power resources development, including certain civil functions administered by the Department of Defense, the Panama Canal, certain agencies of the Department of the Interior, the Atlantic-Pacific Interoceanic Canal Study Commission, the Delaware River Basin Commission, Interstate Commission on the Potomac River Basin, the Tennessee Valley Authority, and the Water Resources Council, and the Atomic Energy Commission, 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. KIRWAN, Mr. EVINS of Tennessee, Mr. BOLAND, Mr. WHITTEN, Mr. MORRIS of New Mexico, Mr. MAHON, Mr. RHODES of Arizona, Mr. DAVIS of Wisconsin, Mr. ROBISON, and Mr. BOW were appointed managers on the part of the House at the conference.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 15794) to provide for United States standards and a national inspection system for grain, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PURCELL, Mr. FOLEY, Mr. STUBBLEFIELD, Mr. BELCHER, and Mr. TEAGUE of California were appointed managers on the part of the House at the conference.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 15678. An act to increase the salaries of judges of the District of Columbia Court of General Sessions and the District of Columbia Court of Appeals and the salary of the judge of the District of Columbia Tax Court; and

H.R. 18248. An act to amend the act of August 9, 1955, relating to certain common carrier operations in the District of Columbia.

ENROLLED BILLS SIGNED

The message further announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 272. An act to extend the period during which amounts transferred from the employment security administration account in the unemployment trust fund to State accounts may be used by the States for payment of expenses of administration;

H.R. 5815. An act for the relief of Lt. Comdr. William W. Gentry;

H.R. 10923. An act to authorize the Secretary of the Interior to convey the Argos National Fish Hatchery in Indiana to the Izaak Walton League;

H.R. 14330. An act to provide a comprehensive program for the control of drunkenness and the prevention and treatment of alcoholism in the District of Columbia, and for other purposes;

H.R. 16024. An act to extend for 2 years the act of September 30, 1965, relating to high-speed ground transportation, and for other purposes; and

H.R. 18340. An act to amend section 212 (B) of the Merchant Marine Act, 1936, as amended.

HOUSE BILLS REFERRED OR PLACED ON CALENDAR

The following bills were each read twice by their titles and referred or placed on calendar as indicated:

H.R. 15678. An act to increase the salaries of judges of the District of Columbia Court of General Sessions and the District of Columbia Court of Appeals and the salary of the judge of the District of Columbia Tax Court; placed on the calendar; and

Approved For Release 2005/12/14 : CIA-RDP70B00338R000300180011-4

Approved For Release 2005/12/14 : CIA-RDP70B00338R000300180011-4

H.R. 18248. An act to amend the act of August 9, 1955, relating to certain common carrier operations in the District of Columbia.

REPORT OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of March 16, 1967, Mr. STENNIS, from the Committee on Appropriations, reported favorably, with amendments, on July 22, 1968, the bill (H.R. 18188) making appropriations for the Department of Transportation for the fiscal year ending June 30, 1969, and for other purposes, which bill was placed on the calendar.

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.

AMENDMENT OF THE AGRICULTURAL ACT OF 1956

Mr. MONTOYA. Mr. President, I move to reconsider the vote by which H.R. 10915 to amend section 202 of the Agricultural Act of 1956 was passed yesterday.

Mr. BYRD of West Virginia. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. YOUNG of Ohio. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Cuba file

WE SHOULD RESUME DIPLOMATIC RELATIONS WITH CUBA—IT IS TO OUR ADVANTAGE TO DEAL DIRECTLY INSTEAD OF THROUGH THE SWISS EMBASSY

Mr. YOUNG of Ohio. Mr. President, almost 10 years ago—January 1, 1959—the corrupt Cuban dictator Batista fled from Cuba following his reign as an absolute monarch for a period of years over our close neighbor to the south. Since that time he has enjoyed a good life in exile in Spain and on the French Riviera drawing out from time to time money from the huge sum he deposited in Swiss bank accounts. Fidel Castro, leading his guerrillas, immediately entered Havana in triumph, and for almost 10 years he has ruled Cuba. Years have elapsed, and it appears that Fidel Castro is firmly entrenched and that he has the steadfast support of the large majority of the 7 million citizens of Cuba. I express regret over that fact, but it is a historic fact.

It has always been my judgment, Mr. President, that a mistake was made by President Eisenhower and our State Department officials in closing the U.S. Embassy in Havana and completely severing diplomatic relations between the United States and Cuba. I shall not question, compare, or even dispute that the tyranny of Castro's avid Communist rule of Cuba may be worse than Batista's tyrannical and corrupt rule of the preceding years. However, the facts are that the people of Cuba—the workers in the sugarcane fields and the poor living in the slums of Santiago, Havana and other cities—are better off and have somewhat greater contentment than they did during the Batista regime. By breaking diplomatic relations and closing our Embassy, unfortunately, the United States deprived itself of a listening post in Cuba. Throughout the past 10 years we have been entirely dependent upon the Swiss Embassy and its staff members.

I have advocated over the years and advocate now that President Johnson should no longer appear to be blind to the fact that this little country, Cuba, 90 miles from Key West and within our sphere of influence, has a viable government—a Communist government which we despise—but a government that apparently is firmly established there. Our neighbors, Canada and Mexico, have recognized the government of Fidel Castro. They have friendly relations with that government. The commerce and trade they maintain has been profitable to both countries. In 1966 Canada exported 24.5 million bushels of wheat to Cuba and received $49 million in payment. In 1967 Canadian wheat exports to Cuba totaled 16.4 million bushels at a cost of $32 million.

Cuba and the United States historically have enjoyed close economic relations with each other. Americans have enjoyed visiting in Cuba and have profited by those visits. Before the turn of the century, Americans died in Cuba to help that little island establish its independence. It would seem that we should renew those economic and commercial relations that we have enjoyed in the past and that we should again take delight in enjoying cultural relations.

It has been awkward to deal with the government of President Dorticos of Cuba through a third party, the Swiss Embassy. That is not much of an open window for us to know precisely what is going on next door to us, although I know we have some CIA operatives on the spot. Officials of our Government would do better and secure a more accurate picture of what is going on in Cuba were we to have an embassy in Havana staffed with American officials. What have we to lose by permitting a Cuban Embassy and a Cuban Ambassador in Washington? Nothing. President Dorticos has been seeking for several years to have diplomatic relations restored. In fact, the Cuban Government has indicated a willingness to negotiate to compensate U.S. citizens and firms for their property seized by the Castro regime provided that diplomatic relations will be resumed by our two countries.

It may be that for selfish reasons certain business interests such as the beet and sugar industries in our country may oppose recognition of Cuba. It is certain that witch hunters and extremist lunatic rightwing splinter groups such as the John Birchites or "Birchsaps," the Liberty Lobby, and other witch hunters would express horror at our recognizing the Government of Cuba.

Mr. President, it can hardly be said that the United States has a mandate from Almighty God to dictate to every little country in the Western Hemisphere what sort of government it must maintain. We have previously recognized the militarists of the Argentine Republic who in a midnight coup overthrew the duly elected President. We have diplomatic relations with that fascist regime. In Brazil the generals overthrew the elected government in another coup. We recognize and do business with that facist government.

The present leaders of the Soviet Union would apparently like to disengage themselves from their relationship with Castro's Cuba which is costing the U.S.S.R. more than $1 million a day. To show his gratitude, Castro has supported the Chinese Communists in their bitter and intense ideological battle with the Russians and has been following the Chinese brand of communism.

Castro continues to support efforts to overthrow Latin American governments. It is apparently a fact that the Cuban Government has aided and abetted guerrillas seeking to overthrow the Government of Bolivia and establish a Communist government there. That resulted in a disaster for the present Cuban leadership. As a condition for recognition and resumption of normal relations between the United States and Cuba we should demand that the Cuban Government cease and desist any further attempts to subvert the government of any Latin American country.

It beats me why we should be complacent while our progressive neighbor to the north, the Commonwealth of Canada, is profiting from commercial relations with Cuba. The United Kingdom, Mexico and many other nations have recognized the Government of Cuba now in existence for almost 10 years. We should resume diplomatic relations with Cuba and obtain the same economic benefits through trade and commerce as our allies and our neighbors to the north and south. Furthermore, we are at a disadvantage in dealing with Cuba through a third party, the Swiss Embassy. Cuba without doubt would become a good customer of the United States. Cubans need American products including medicines and drugs, clothing, beef, and many other nonstrategic products of American farms and factories. We Americans, in turn, would no doubt import Cuban products such as sugar, rum, and fruits produced in the tropics, simply to mention a few. Trade makes for good neighbors. Good neighbors make for peace.

Let us hope that our President and the Secretary of State will propose a

Approved For Release 2005/12/14 : CIA-RDP70B00338R000300180011-4

Approved For Release 2005/12/14 : CIA-RDP70B00338R000300180011-4

diplomatic exchange and take the blinders from our eyes which should have been removed years ago; in fact, should never have been placed there on January 3, 1961, by President Eisenhower less than a month before the end of his term of office.

CORRECTION OF THE RECORD

Mr. COTTON. Mr. President, I ask unanimous consent that the permanent Record be corrected to show that on legislative vote No. 220 the position of the Senator from Illinois [Mr. PERCY] be shown as "yea." The position of "nay" as recorded is incorrect.

The ACTING PRESIDENT pro tempore. The correction will be made.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the permanent Subcommittee on Investigations of the Committee on Government Operations and the Committee on Post Office and Civil Service be authorized to meet during the session of the Senate today.

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

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. SPONG, from the Committee on the District of Columbia, with an amendment.

H.R. 16361. An act to provide additional revenue for the District of Columbia, and for other purposes (Rept. No. 1448).

WHOLESOME POULTRY PRODUCTS ACT—REPORT OF A COMMITTEE—MINORITY VIEWS (S. REPT. NO. 1449)

Mr. JORDAN of North Carolina. Mr. President, from the Committee on Agriculture and Forestry, I report favorably, with an amendment, the bill (S. 2932) to clarify and otherwise amend the Poultry Products Inspection Act, to provide for cooperation with appropriate State agencies with respect to State poultry products inspection programs, and for other purposes. I ask unanimous consent that the report be printed, together with minority views.

The ACTING PRESIDENT pro tempore. The report will be received and the bill will be placed on the calendar; and, without objection, the report will be printed, as requested by the Senator from North Carolina.

BILLS AND JOINT RESOLUTION INTRODUCED

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

By Mr. MOSS (for himself, Mr. BURDICK, Mr. CHURCH, Mr. METCALF, and Mr. GRUENING):

S. 3868. A bill to amend the Revised Organic Act of the Virgin Islands; and

S. 3869. A bill to amend the Organic Act of Guam; to the Committee on Interior and Insular Affairs.

(See the remarks of Mr. Moss when he introduced the above bills, which appear under a separate heading.)

By Mr. BIBLE:

S. 3870. A bill for the relief of Teodoro L. Legarreta and Juan L. Uriarte; to the Committee on the Judiciary.

By Mr. HILL:

S. 3871. A bill to amend the Public Health Service Act to support research and training in diseases of digestive tract, including the liver and pancreas, and diseases of nutrition, and aid the States in the development of community programs for the control of these diseases, and for other purposes; to the Committee on Labor and Public Welfare.

By Mr. BREWSTER:

S. 3872. A bill for the relief of Fu Luen Kwan; to the Committee on the Judiciary.

By Mr. THURMOND:

S. 3873. A bill for the relief of Orin Brewington; to the Committee on the Judiciary.

By Mr. ERVIN:

S.J. Res. 194. Joint resolution proposing an amendment to the Constitution relating to the appointment of members of the Supreme Court of the United States; to the Committee on the Judiciary.

(See the remarks of Mr. ERVIN when he introduced the above joint resolution, which appear under a separate heading.)

S. 3868 AND S. 3869—INTRODUCTION OF BILLS TO AMEND THE ORGANIC ACTS OF THE VIRGIN ISLANDS AND GUAM

Mr. MOSS. Mr. President, I introduce for myself, Mr. BURDICK, Mr. CHURCH, Mr. GRUENING, and Mr. METCALF, two bills to amend the Organic Acts of the territories of Guam and the Virgin Islands to make the colleges there land-grant colleges eligible for the grants and services that such institutions receive.

This would mean that both the College of the Virgin Islands and the College of Guam would provide agricultural and mechanical arts education, and agricultural extension services.

In lieu of the donations of public land or land script provided to other land-grant colleges, both the colleges at Guam and the Virgin Islands would receive an appropriation of $3 million. Beyond that they would receive only the same annual proportionate share of funds and services that other land-grant colleges receive.

The ACTING PRESIDENT pro tempore. The bills will be received and appropriately referred.

The bills, introduced by Mr. Moss (for himself and other Senators), were received, read twice by their titles, and referred to the Committee on Interior and Insular Affairs, as follows:

S. 3868. A bill to amend the Revised Organic Act of the Virgin Islands; and

S. 3869. A bill to amend the Organic Act of Guam.

SENATE JOINT RESOLUTION NO. 194—INTRODUCTION OF JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION RELATING TO THE APPOINTMENT OF JUSTICES TO THE U.S. SUPREME COURT

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

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

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

But the method of selecting the Supreme Court Justices continues unchallenged just as it was in 1791, and I feel, Mr. President, that it is even more important to ensure careful selection of the judiciary than the other two branches. As Alexis de Tocqueville, one of the most perceptive observers of American institutions and life, said:

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

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

Mr. President, the drafters of the Constitution undertook to free Supreme Court Justices from all personal, political, and economic ambitions, fears, and pressures which harass the occupants of other public offices by stipulating that they should hold office for life, and receive for their service a compensation which no authority on earth could reduce. They undertook to impose upon each Supreme Court Justice a personal obligation to interpret the Constitution according to its true intent by requiring him to make an affirmation to support the Constitution. It causes me great pain to observe that the actions of the present

Approved For Release 2005/12/14 : CIA-RDP70B00338R000300180011-4

Approved For Release 2005/12/14 : CIA-RDP70B00338R000300180011-4

Supreme Court lead to the inescapable conclusion that the Founding Fathers did not devise a method of selecting Justices comparable to the trust they placed in them.

Mr. President, I intend to offer a constitutional amendment designed to insure, as far as humanly possible, the appointment of the best qualified people to the Supreme Court. In order to afford greater protection to the judicial branch, my amendment proposes a three-step method of approving a Supreme Court Justice.

The procedure is as follows:

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

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

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

I believe that my proposed amendment will make it as certain as possible that members of the Supreme Court will not be chosen on the basis of personal friendship with the President, political service rendered to the political party in power, or past association with politically potent groups. Undoubtedly, these are worthwhile objectives.

Mr. President, I hope all Members of the Senate will study the problem and will support my proposed solution. At the very least, however, I hope my proposed amendment will serve as a catalyst to inspire dialog on this vital and unfinished constitutional business.

I ask unanimous consent that my proposed joint resolution be appropriately referred and that a copy of it be printed at this point in the body of the RECORD.

I also ask unanimous consent that a copy of an article by Prof. Philip B. Kurland, of the University of Chicago Law School, which appeared in the May 1966 issue of Nation's Business, which points out the weaknessess of the present method of selecting Supreme Court Justices, be printed at this point in the RECORD.

The ACTING PRESIDENT pro tempore. The joint resolution will be received and appropriately referred; and, without objection, the joint resolution and article will be printed in the RECORD.

The joint resolution (S.J. Res. 194) proposing an amendment to the Constitution relating to the appointment of members of the Supreme Court of the United States, introduced by Mr. ERVIN, was received, read twice by its title, referred to the Committee on the Judiciary, and ordered to be printed in the RECORD, as follows:

S.J. RES. 194

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. Whenever a vacancy occurs in the office of Chief Justice of the United States or Associate Justice of the Supreme Court, the President shall convene a conference which shall be attended by the presiding judge of the highest appellate court of each State and the chief judge of each judicial circuit of the United States. The senior chief judge of a judicial circuit of the United States shall preside at the conference. By majority vote the conference shall designate, and the presiding officer of the conference shall transmit to the President in writing, the names of five or more persons deemed by the conference to be qualified to fill the vacancy.

"SEC. 2. The President shall nominate one of the persons so designated to fill the vacancy. If the Senate advises and consents to the appointment of such person, such person shall be appointed to fill the vacancy. If the Senate does not advise and consent to the appointment of any person so nominated, the President shall nominate another person so designated to fill the vacancy.

"SEC. 3. The Congress shall have power to carry this Article into effect by appropriate legislation.

"SEC. 4. This Article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

The article, presented by Mr. ERVIN, is as follows:

WANTED: A NONPOLITICAL SUPREME COURT

(NOTE.—Philip B. Kurland, author of this article, is professor of constitutional law at The University of Chicago and the author of several books on the Supreme Court. He was graduated from the Harvard Law School in 1944, where he edited the Harvard Law Review. He has served as law clerk to Justice Felix Frankfurter of the United States Supreme Court. Professor Kurland has been a Department of Justice attorney and consultant to the Economic Stabilization Agency. He is now consultant to the Senate judiciary subcommittee on separation of powers.

(In 1960, Professor Kurland established The Supreme Court Review, an annual volume devoted to a critical analysis of the Supreme Court, and has been editor since its founding.)

Appointments to the U.S. Supreme Court are among the most important tasks assigned to the Presidency. And yet the appointments are generally made with the same bows to political expediency as the appointing of local postmasters.

The fault lies not alone with the President, for the Senators who treat lower federal court appointments as personal prerogatives have been willing to leave appointments to the Supreme Court as the personal prerogative of the Chief Executive. Not since Judge John Parker was rejected more than three decades ago has the Senate blocked a Presidential Supreme Court nomination. So seldom do nonpolitical factors play a part in judicial appointments that the surprise of the matter is that we have a Court which is not worse than it is.

The President ought to put aside politics and patronage and seek out only the best talents to staff the Court. Obviously, there is something wrong with a method that allows a Learned Hand to remain a judge on the Court of Appeals, while appointments are offered to a Frank Murphy, to allow a William H. Hastie to remain on a Court of Appeals but give a Thurgood Marshall a High Court seat. The shame of the matter has been that a long list could be made up of the names of those best qualified to do the task of a Supreme Court Justice who were never appointed because political considerations took precedence.

There have been times when a President acknowledged the appropriate standards, as when President Hoover appointed Benjamin Cardozo to the Court. But these have been rare.

It is somewhat strange that those who so vociferously denounce the advanced age of Congressional committee chairmen are so unconcerned about the septuagenarian and octogenarian attainments of Justices of the Supreme Court. Perhaps these critics do not realize that Justice Hugo Black is 82; that the Chief Justice is 77; William O. Douglas, 69; John Marshall Harlan, 68.

When the "Nine Old Men" reached similar distinction, President Franklin Delano Roosevelt proposed to Congress that a new Justice be added to the Court for each of those over the age of 70, on the ground that aged judges are incapable of performing their jobs.

Roosevelt did not need to succeed with his court-packing bill because time was on his side. During his long tenure he appointed eight Justices to the Court, in addition to elevating Harlan F. Stone to the Chief Justice's chair. So, too, is it likely that the next President, whoever he is, will be called upon to make several appointments to the high tribunal. It seems appropriate, therefore, to look at the appointive process now.

CHOOSING THE "RIGHT" MAN

History demonstrates that Presidents have not infrequently named persons to the Supreme Court because the appointees were expected to express judicial views sympathetic to those of the President. This basis for choice has resulted in disappointments.

Joseph Story was appointed by President James Madison to counteract John Marshall's rampant federalism. Somehow Story's Jeffersonian Republicanism disappeared as soon as he donned his judicial robes, and he quickly became Marshall's strongest and most effective ally.

President Theodore Roosevelt carefully checked with Henry Cabot Lodge about what he thought to be Oliver Wendell Holmes' political predilections before putting him on the Court. After one decision, Roosevelt was purported to have remarked that he could have put a banana on the Court with more backbone than Holmes had shown.

President Wilson's fighting, liberal Attorney General, James C. McReynolds, turned into an archreactionary on the Supreme Court.

If one looks at recent history he, will see that of the eight appointments by FDR, four have generally been lined up on the left: Black, Douglas, Murphy and Rutledge. But the other four have been thought to be on the right: Reed, Frankfurter, Byrnes and Jackson.

Of Eisenhower's appointees, Warren and Brennan would be classified as liberal, but Harlan, Whittaker and Stewart are usually regarded as conservatives.

President Kennedy appointed the left-

Approved For Release 2005/12/14 : CIA-RDP70B00338R000300180011-4