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The Situation in Czechoslovakia and U.S. Forces in Europe

Mike Mansfield 1903-2001

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Mr. President:

Many words have been spoken in the Senate about the Soviet invasion of Czechoslovakia. Many others will be spoken. This action was an outrageous affront to the people of that nation and a grave blow to international stability.

Over half a million troops are reported on the move in Central Europe. Great numbers are involved in occupying a small country against its will. They cast a long shadow over the prospects for a peaceful Europe. They dim the hopes of people everywhere for a more peaceful world.

In these remarks, I will not dwell on the various adverse implications of the recent developments in Czechoslovakia. In due course a report on that subject will be forthcoming in consequence of a brief visit which I made to Eastern Europe during the recent adjournment of the Senate. In these remarks, today, I will touch on only one aspect of the subject--the question of American force reductions in Western Europe, in the aftermath of the Czechoslovakia crisis.

Immediately after the Soviet invasion, I stated that there would be no point in continuing to advocate an immediate reduction in the level of these forces. I made that statement with resignation and sadness.
A reduction would have saved American taxpayers hundreds of millions of dollars, over the next few years. It would have had a significant corrective effect on this nation's distorted balance of international payments. It would have helped to restore relationships with the countries of Western Europe to a normal basis; the continued presence of hundreds of thousands of American troops, along with a great number of dependents' homesteads on Western European soil is, per se, an abnormal relationship.

I believe, moreover, that step-by-step reductions of our forces in Europe would have led the Western Europeans to assume a larger share of the burden of their own defense which, in turn, may well have resulted in closer cooperation among them. I believe, too, that it would have contributed to reducing the danger of catastrophic error which necessarily attends the presence of hundreds of thousands of foreign troops confronting hundreds of thousands of other foreign troops across a tense dividing line. Finally, reductions of our forces in Western Europe would have increased the pressures for and may well have brought about reductions of Soviet forces in the Eastern European countries, with or without negotiations to that end.

The Soviet invasion of Czechoslovakia has had the effect of deferring these results. How long they will remain deferred depends, in great part, on the disposition which the Soviet government and its Warsaw Pact allies, Romania excepted, may make of the occupation forces now in Czechoslovakia.

We can hardly make substantial reductions in U. S. forces in Western Europe while the Soviets have vastly increased their forces in Eastern European countries and have done so, furthermore, in connection
with the military steamrollering of the independence of a small country. To be sure, reductions in our forces even now, would not lessen, in any way, our responsibility under the North Atlantic Treaty to join in the common defense against an attack on Western Europe and the regions covered by the North Atlantic Treaty. Those responsibilities would be met in the event of an attack, not only because they are treaty obligations, but because they are inescapable responsibilities in terms of our own survival. They would be met whether the U. S. forces which were encamped in Western Europe at the time of an attack numbered one division or ten divisions.

Nevertheless, a reduction in the U. S. contingents in Europe in present circumstances could be subject to misinterpretation in both West and East, and might conceivably lead to serious miscalculations. That is a risk which, it seems to me, we would be unwarranted in taking at this time, in our interests and in the interests of peace. It was that risk which led me to suggest a temporary deferment of the question.

However, my views on the anachronistic size of the deployment of American forces and dependents in Europe have not changed. Certainly, I do not believe that the number of these Americans should be increased at this time, as some have suggested. Moreover, in my judgment, it remains desirable to undertake a gradual reduction in U. S. forces if and when the situation in Eastern Europe offers reasonable assurance that developments there are not going to spill over into Western Europe. If and when that time comes, I believe a positive plan should be ready to cut American forces in Europe. It should be a plan, phased over several years—perhaps on what might be termed a D plus D basis, that is, the withdrawal of one division of men with their dependents each year. That reduction, in my judgment,
should continue until the force levels remaining would be sufficient only
to insure that military aggression from any source would enable the United
States promptly to set in motion its immense powers for the common defense
of the nations of the North Atlantic Pact. In the light of modern military
technology, the five or six American divisions which are now stationed in
Europe are hardly required for that purpose. In due course, it seems to me
that the number could be reduced to one or at most two.

I would like to make it plain that I believe that there has been
a dereliction in the failure to have set in motion, heretofore, positive plans
to bring about orderly, phased reductions in the European deployment. Indeed,
some of us have been urging these reductions for more than a decade. The
reiterated response, however, has been that "the time is not right." The
time will never be right unless there is the will to face up to this situa-
tion.

Even now, the time is right for a search for substantial savings
in the cost of the European deployment. Events in Eastern Europe, notwith-
standing, possibilities of economy may well exist in streamlining the super-
structures at the various U. S. headquarters in Europe. It is appropriate
to ask, for example, whether they are not top-heavy with high-ranking officers,
staffs, and prerogatives, at the European Command at Stuttgart, the U. S. Air
Force Headquarters in Europe at Wiesbaden, the European Communications Head-
quarters at Zweibrucken, or the Headquarters of the Commander in Chief, U. S.
Naval Forces in London. Substantial cuts, long overdue, have already been
made in U. S. civil establishments abroad on orders of retrenchment from
President Johnson. It would be eminently desirable if the same orders might
now be applied forthwith to the military entrenchments in Western Europe.
Had there been a timely reduction of forces in Western Europe, it would have already saved large sums of public money and contributed greatly to the strengthening of our international financial situation.

May I say that I do not see how timely reductions in our forces would have impaired the defense of Western Europe. Nor do I see--had they been made some time ago, as urged time and again--how they would have had any effect on the present situation in Czechoslovakia. Certainly, the presence of these forces, in full NATO complement, as they are now, has added nothing to our ability to respond to events in that nation. Indeed, we would do well to ask ourselves if, on August 21, we had had three times the number of men we now have in Western Europe or, for that matter, if we had had only one-third the number, what difference it would have made in our reactions to the developments in Czechoslovakia.

The fact is that NATO was formed to defend Western Europe and associated nations in the North Atlantic Treaty against attack. It was not designed to defend a Warsaw Pact nation against an attack from within that group. Though we may deplore the occupation of Czechoslovakia, the tragic event has not fallen--as it has developed to date--within the area of our shared military responsibility under NATO. Much less does it come within an area of unilateral U. S. responsibility.
On the subject of responsibility, I should like to emphasize, in closing, the importance which many Americans attach to Western Europe's responsibility to increase its own defense efforts—relative to our own—in NATO. It is not helpful to the common undertaking when Western European defense budgets drop to levels disproportionate to our own, when the number of men in the uniforms of Allied nations declines, when the periods of conscription are shortened or abolished, and other evidence presents itself of a reluctance on the part of Europeans to make sacrifices for their own defense. It makes Senators who ask their constituents to pay higher taxes to cover increased defense costs and who vote the conscription of young Americans for terms of obligated service which are equaled in length among the NATO members only in Greece, Turkey, and Portugal—it makes us question policies that require these sacrifices of our people when others seem unwilling to make equivalent sacrifices for themselves.

I reiterate, therefore, that while events in Czechoslovakia may counsel a temporary wait-and-see with respect to the present level of the American NATO contingent and dependents in Europe, these events do not cancel the validity of the concept of phased reductions. The fact is that the invasion of Czechoslovakia has not changed, in any way, two basic elements in the proposal for such reductions which the Senate has had under consideration for some time.

1. This nation has budgetary and balance of payments difficulties at a time when the Western European nations are more able than ever before to meet added costs of defense. Indeed, the West Germans have a balance of payments surplus of several billion dollars a year, a level so high that some West Germans describe it as "embarrassing."
2. Our forces are in Europe for the defense of the NATO countries against the threat of military attack from the East. Yet, despite Czechoslovakia, there is little indication that the other NATO nations regard this threat as drastic enough to stimulate any significant increase in financial and other sacrifices for their own defense. Events in Eastern Europe notwithstanding, if the NATO countries are unwilling to make these sacrifices and our present financial plight is prolonged, pressures for a reduction of American forces in Europe may be expected to resume promptly--and properly so.
**House of Representatives**

The House was not in session today. Its next meeting will be held on Monday, September 16, 1968, at 11:00 a.m.

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**Senate**

**FRIDAY, SEPTEMBER 13, 1968**

The Senate met at 11 a.m., and was called to order by Hon. Paul J. Fannin, a Senator from the State of Arizona.

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

Eternal God, Father of our spirits, with a faith that will not shrink though pressed by every foe, we would this day climb the altar steps which lead through darkness up to Thee, for our greatest need is of Thee.

In the crises of our time join us with those who, across the waste and wilderness of human hate and need, preparing the way of the Lord, throw up a highway for our God.

God the All-righteous, man hath defied Thee. Yet to eternity standeth Thy word; falsehood and wrong shall not tarry beside Thee. Give to us peace in our time, O Lord, that the sundered family of mankind at last may be bound by golden cords of understanding fellowship around the feet of the one God.

In the dear Redeemer's name. Amen.

**DESIGNATION OF ACTING PRESIDENT PRO TEMPORE**

The assistant legislative clerk read the following letter:

To the Senate:

Being temporarily absent from the Senate, I appoint Hon. Paul J. Fannin, a Senator from the State of Arizona, to perform the duties of the Chair during my absence.

Carl Hayden.

President pro tempore.

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

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**THE JOURNAL**

Mr. Mansfield. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Thursday, September 12, 1968, be dispensed with.

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

**MESSAGE FROM THE HOUSE**

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2515) to authorize the establishment of the Redwood National Park in the State of California, and for other purposes.

**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.

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**EXECUTIVE SESSION**

Mr. Mansfield. Mr. President, in view of the fact that in the Chamber at this time is the distinguished majority leader of the House, the Honorable Carl Albert, and inasmuch as his presence fits in with the business of the Senate, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar.

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

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**DEPARTMENT OF JUSTICE**

The assistant legislative clerk read the nomination of William J. Holloway, Jr., of Oklahoma, to be U.S. circuit judge, 10th circuit.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

The assistant legislative clerk read the nomination of Lawrence Gubow, of Michigan, to be U.S. district judge for the eastern district of Michigan.

Mr. Griffin. Mr. President, it is a pleasure to indicate my support for the nomination of Mr. Lawrence Gubow of Detroit, Mich., to be U.S. district judge for the eastern district of Michigan.

Mr. Gubow has had a distinguished career as an attorney. Educated at the University of Michigan and its law school, he was admitted to the Michigan bar in 1951. Subsequently, he served as an attorney with the Detroit law firm of Rosin & Kobel.

In 1963, Mr. Gubow joined the Michigan Corporation and Securities Commission and was chosen its commissioner in 1966. He served as commissioner until 1961, when he was appointed U.S. attorney for the eastern district of Michigan, the position he now holds.

Mr. Gubow serves as president of the Jewish Community Council of Metropolitan Detroit, and he is a leader in the Jewish War Veterans of the U.S.A. and various Michigan veterans groups.

I know Mr. Gubow as an able and highly qualified member of the bar and as a widely respected public servant. He has bipartisan support for his nomination.

Mr. President, I am pleased to recommend that the Senate advise and consent to the nomination of Lawrence Gubow.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

Mr. Mansfield. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.
The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business. The motion was agreed to, and the Senate resumed the consideration of legislative business.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that I may proceed for an additional 5 minutes at this time. The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE SITUATION IN CZECHOSLOVAKIA AND U.S. FORCES IN EUROPE

Mr. MANSFIELD. Mr. President, many words have been spoken in the Senate about the situation of Czechoslovakia. Many others will be spoken. This action was on outrageous affront to the people of that nation and a grave blow to the international community. Over half a million troops are reported on the move in Central Europe. Great numbers are involved in occupying a small country against its will. They cast a long shadow over the prospects for a peaceful Europe. They dim the hopes of people everywhere for a more peaceful world.

In these remarks, I will not dwell on the various adverse implications of the recent developments in Czechoslovakia. In due course, a report on that subject will be forthcoming in consequence of a brief visit I made to Eastern Europe during the recent adjournment of the Senate. In these remarks, today, I will touch on only one aspect of the subject—the question of American force reductions in Western Europe, in the aftermath of the Czechoslovakia crisis.

Immediately after the Soviet invasion, I stated that there would be no point in continuing to advocate an immediate reduction in the level of these forces. I made that statement with resignation and sadness. A reduction would have saved American taxpayers from thousands of dollars, over the next few years. It would have had a significant corrective effect on this Nation’s distorted balance of international payments. It would have helped to restore relationships with the countries of Western Europe to a normal basis; the continued presence of hundreds of thousands of American troops, along with a great number of dependents’ homesteads on Western European soil, is, in essence, an abnormal relationship. I believe, moreover, that this step-by-step reduction of our forces in Europe would have led the Western Europeans to assume a larger share of the burden of their own defense which, in turn, may well have resulted in closer cooperation among them. I believe, too, that it would have contributed to reducing the danger of catastrophic error which necessarily attends the presence of hundreds of thousands of foreign troops confronting hundreds of thousands of other foreign troops across a tense dividing line. Finally, reductions of our forces in Western Europe would have increased the pressures for and may well have brought about reductions of Soviet forces in the Eastern European countries with or without negotiations to that end.

The Soviet invasion of Czechoslovakia has had the effect of deferring these reductions. We can hardly make substantial reductions in U.S. forces in Western Europe while the Soviets have vastly increased their forces in Eastern European countries and have done so, furthermore, in connection with the military steamrollering of the independence of a small country. To be sure, reductions in our forces, even now, would not lessen, in any way, our responsibility under the North Atlantic Treaty to join in the common defense against an attack on Western Europe and the regions covered by the North Atlantic Treaty. Those responsibilities would be met in the event of an attack, not only because they are treaty obligations, but also because they are inseparable responsibilities in terms of our own survival. They would be met whether the U.S. forces which were encamped in Western Europe at the time sufficed. How long they will remain deferred depends, in great part, on the disposition which the Soviet Government and its Warsaw Pact Allies, Romania excepted, may make of the occupation forces now in Czechoslovakia.

We can hardly make substantial reductions in U.S. forces in Western Europe while the Soviets have vastly increased their forces in Eastern European countries and have done so, furthermore, in connection with the military steamrollering of the independence of a small country. To be sure, reductions in our forces, even now, would not lessen, in any way, our responsibility under the North Atlantic Treaty to join in the common defense against an attack on Western Europe and the regions covered by the North Atlantic Treaty. Those responsibilities would be met in the event of an attack, not only because they are treaty obligations, but also because they are inseparable responsibilities in terms of our own survival. They would be met whether the U.S. forces which were encamped in Western Europe at the time sufficed. How long they will remain deferred depends, in great part, on the disposition which the Soviet Government and its Warsaw Pact Allies, Romania excepted, may make of the occupation forces now in Czechoslovakia.

Nevertheless, a reduction in the U.S. forces in Western Europe at the time of our numbered division or 10 divisions.

May I say that I do not see how timely reductions in our forces would have impaired the defense of Western Europe. Nor do I see—that they have been made some time ago, as urged time and again, how they would have had any effect on the present situation in Czechoslovakia. Certainly, the presence of these forces, in full NATO complement, as they are now, has added nothing to our ability to respond to events in that nation. Indeed, we would do well to ask ourselves if, on August 21, we had had three times the number of men we have now in Western Europe for that matter, if we had had only one-third the number, what difference it would have made in our reactions to the developments in Czechoslovakia. The fact is that NATO was formed to defend Western Europe and associated nations in the North Atlantic Treaty against attack. It was designed to defend a Warsaw Pact nation against an attack from within that group. Though we may deplore the occupation of Czechoslovakia, the tragic event has not fallen—as it has developed to date—within the area of our shared military responsibility or as it has with NATO. Much less does it come within an area of unilateral U.S. responsibility.

On the subject of responsibility, I should like to emphasize, in closing, the importance which many Americans at
tach to Western Europe's responsibility to increase its own defense efforts—relative to our own—in NATO. It is not helpful to the common defense when Western European defense budgets drop to levels disproportionate to our own, when the number of men in the uniform of the armed forces of our NATO allies is on the decline, when the periods of conscription are shortened or abolished, and other evidence presents itself of a reluctance on the part of Europeans to make sacrifices for their own defense. It makes Senators who ask their constituents to pay higher taxes to cover increased defense costs and who vote the conscription of young Americans for terms of obligated service which are unequal in length among the NATO members only in Greece, Turkey, and Portugal—it makes us question policies that require these sacrifices of our people when others seem unwilling to make equivalent sacrifices for themselves.

I reiterate, therefore, that while events in Czechoslovakia may counsel a temporary wait-and-see with respect to the present level of the American NATO contingent and dependents in Europe, these events do not call into question the validity of the concept of phased reductions. The fact is that the invasion of Czechoslovakia has not changed, in any way, two basic elements in the proposal for such reductions which the Senate has had under consideration for some time.

First, this Nation has budgetary and balance-of-payments difficulties at a time when the Western European nations are more able than ever before to meet added costs of defense. Indeed, the West Germans have a balance-of-payments surplus of several billion dollars a year, a level so high that some West Germans describe it as "arithmetic." Second, our forces are in Europe for the defense of the NATO countries against the threat of military attack from the East. Yet, despite Czechoslovakia, there is little indication that the other NATO nations regard this threat as so acute as to warrant an important increase in financial and other sacrifices for their own defense. Events in Eastern Europe notwithstanding, if the NATO States are unwilling to make the sacrifices and our present financial plight is prolonged, pressures for a reduction in forward European forces which Europe may be expected to resume promptly—and properly so.

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

Mr. MANSFIELD. I yield.

Mr. SYMINGTON. Mr. President, I congratulate the able majority leader, and agree without reservation to his statement this morning.

Recently a representative of the German Government called on us. The able majority leader has expressed my sentiments. If I shall send a copy of his address to that fine gentleman.

I hope our State Department realizes that there is a large and growing feeling in the Senate that concurs with these remarks just made; and hope also that our allies in Europe realize the respect we have for them and the confidence we have, and for this Member of this body who knows so much about our foreign policy and who has just returned from Europe.

CONGRESSIONAL RECORD—SENATE

SEPTEMBER 13, 1968

As one who was in the executive branch at the time of the creation of NATO and the formation of SHAPE, I watch with apprehension the lack of responsibility, apparently, of countries which now have a crisis in their own backyards. I hope they take to heart the wise observation made by Senator Mansfield 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 distinction he carries 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 as much time as the Senator requires.

Mr. JAVITS. Mr. President, the distinguished Senator from Connecticut [Mr. DOUGLAS] asked to 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. Mr. President, the distinguished Senator from Connecticut asked to be recognized immediately after the conclusion of routine morning business and after the pending business is laid before the Senate.

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. DODGE] be 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.

FORTAS-THORNBERY 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.

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. Laws must be income tax reform. Laws should be simplified, tax loopholes closed, and special privileges to the ultrarich denied.

In 1967, 37 American families of more than a half million dollars paid no income taxes whatever on their stupendous incomes. They owned many millions of dollars in 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 these farms increase every year after, 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 not tax-free places in many instances, or take advantage of various available tax loopholes.

Another tax loophole is the 27%-per-cent depletion allowance for oil and gas producing companies and the 23-per-cent depletion allowance for some 41 other minerals produced. The oil depletion allowance, in particular, has always appeared indefensible since the time in 1942 when I served on the Ways and Means Committee. I have, since that period, consistently voted to reduce it or abolish it in the committee. In 1967, five of the largest oil and gas producing corporations in the United States with net profits approximating $6 billion paid only 3% 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.
Mickey Mantle should be on the All-Star American backfield or deciding whether I am advised that at least one member: Jaworski, of Houston, Tex., a close as­

sidered approval by the American Bar As­

ber of the committee, participated in 

which lasted the better part of 1 hour.

or by its governing body, the house of 

delages. The only approval has come

from the ABA's Committee on the Fed­

eral 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 commit­

te "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 commit­
tee members were informed of the Presi­
dent's intention, and they were advised of investigative reports on the nominees. Surprisingly, the advice reached Mr. Thornberry was conveyed by Leon Jaworski, of Houston, Tex., a close as­

sociate for many years of President John­

son. Apparently, although the entire 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 won­
der what weight the members of the U.S. Senate are expected to assign to the of­
cited approval by the American Bar As­

sociation on the Fortas-Thornberry nominations.

After all, we are not picking an all­

America backfield or deciding whether Mr. Johnson should be 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? Ac­

cording to the New York Times of August 3, 1968, Mr. Jaworski is "a former attor­

ney for President Johnson, who has been associated with Mr. Johnson for years." 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 im­

portant nominations? As I understand it, the committee generally takes much more time—often a week—to consider nominations.

Of course, it is not the function of Congress to effect reforms in the proce­
dures of a private professional organiza­

tion. But the Supreme Court has acknowledged limitations on its role. For example, letters from the chairman of the committee, Albert E. Jenner, to pages 1, 69 of the hearings on nominations of Fortas and Thornberry—transmitting the committee’s recommendation with respect to Messrs. Fortas and Thorns­

berry 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 opin­

ion at any time with respect to any other consideration not related to such professional qualifications which may properly be consid­

ered by the appointing or confirming au­
thority.

Clearly, in its own letters, the ABA committee recognizes that the confirm­ing authority 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 institutional 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 Sen­

ate to substitute ABA judgment for its own. Indeed, for the Senate to follow such a course would be an abdication of its constitutional responsibility.

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 cov­

ered by the ABA.

In order to determine the weight to be accorded the ABA approval in the For­

tas-Thornberry case, the Senate should know what matters were, in fact, consid­

ered by the ABA committee in the hour­long telephone meeting. Is a tran­

script of that discussion available to the Senate? To what extent did the ABA committee concern itself with Mr. For­

tas’ role as an advisor 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 com­

mittee during that hour?

As a member of the ABA, I have been interested to find that a significant num­

ber of other members share my concern about the inadequacy of present ABA procedures—particularly in light of the role the ABA continues to assert for the ABA by some of its leaders.

During the course of this controversy, some members have been surprised to hear 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 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 Phila­

delphia, two resolutions calling for re­

forms 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 dis­

turbed because they were expected on the morning of June 26 to give such hasty rubber-stamp approval to the Fortas-Thornberry nominations. Be­

cause the time allowed for such consid­

eration was so short and because the political character of these and other Supreme Court nominations is so apparent, I understand that members of this ABA committee came close at Phila­

delphia to recommending that the ABA disavow its role with respect to ap­

pointments to the Supreme Court.

Mr. President, while I am critical of certain procedures which have been fol­

lowed by one ABA committee in this par­

ticular 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 gen­

erally advanced the judicial role of the legal profession in many com­

mendable ways.

Nonetheless, on this occasion, I am con­

vinced that there can be no prospec­

tive and maintain a proper perspective concerning the appropriate roles of the U.S. Senate and the ABA in the appoint­

ing process.

Mr. President, I ask unanimous con­

sent that an article from the New York Times of August 3, 1968, an article from the Los Angeles Times of August 3, 1968,